
(2004) 06 OHC CK 0033
In the Orissa High Court
Case No : Misc. Appeal No. 4 of 1997

The National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Gini Sahu and Others		RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) ACJ 989 : (2004) 98 CLT 648

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : S.S. Rao, Syd Asit Ali and B.K. Mohanty, for the Appellant; S.K. Nayak-2, B.K. Rout, B.K. Sahoo, P. Misra, M.K. Jena and A.K. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—This is an appeal u/s 173(1) of the Motor Vehicles Act by the Insurer M/s. National Insurance Company Ltd. against the judgment and award of the Second Motor Accident Claims Tribunal (Northern Division), Sambalpur awarding a compensation of Rs. 72,000/-along with interest " 10% per annum to be paid by the appellant insurer.

2. The respondents 1 and 2 are the claimants in the Tribunal below for award of compensation for death of Late Dusasan Sahoo, husband of Respondent No. 1 and the father of Respondent No. 2 caused due to the accident which occurred on 4.5.1993, while the deceased was a passenger along with others in the Trekker bearing No. OR 05 6262 belonging to Respondent No. 3 and insured with the appellant. Shortly stated, deceased Dusasan Sahoo along with others, while proceeding towards village Dankidi under Balini PS from Village-Tukura in the offending Trekker, and while reaching near Baishnab Bandra, Dudulakote, turning due to the rash and negligent driving of the Trekker, he lost control and the Trekker went to its right side and remained in a tilted position, as a result of which the deceased was pressed under it causing various injuries. He was shifted

to the Sub-Divisional Hospital, Hindol, where he succumbed to the injuries. The claimants sought for a sum of Rs. 4,50,000/- as compensation on account of the death of Dusasan.

3. The owner (Respondent No. 3 herein) remained ex parte and the appellant-insurer filed its written statement denying the insurance policy and the accident said to have occurred on 4.5.1993. The learned Motor Accident Claims Tribunal framed two issues:

(a) Whether, the accident took place on 4.5.1993 due to rash and negligent-driving of the Trekker No. OR 05 6262 resulting in death of Dusasan Sahoo ?

(b) Whether, the applicants are entitled to get any compensation ? If so, to what extent and from whom ?

4. The Tribunal, in its impugned judgment, has found that the death of the deceased was not in dispute. On the basis of statement of A.W. 1 Gini Sahu, the widow of the deceased and the evidence of A.W. 2 Kuber Sahu, a co-passenger in the offending vehicle, and the police papers, the Tribunal came to hold that the accident, which resulted in the death of Dusasan Sahoo, took place due to the rash and negligent driving by the driver of the Trekker. The learned Tribunal, on consideration of the evidence of witnesses, A.Ws. 1 and 2, did not believe that the deceased was working as a mason and was earning Rs. 80/- per day, but however, taking the minimum wages of labourers into account it found the daily income as Rs. 25/- per day, and accordingly a monthly income of the deceased has been taken as Rs. 750/- per month. Deducting 1/3rd for the personal expenditure of the deceased, the Tribunal assessed his contribution to the family as Rs. 6,000.00 per annum. Taking the age of the deceased, the income and the dependency, applied a multiplier of 12, the compensation payable to the claimants have been determined as Rs. 72,000/- with interest.

5. The learned Tribunal took into consideration the plea of the appellant at the time of hearing, as to whether the driver of the offending vehicle did not have a professional license, but a valid license authorizing him to drive a light motor vehicle. The learned Tribunal has held that since the driver had an effective Driving License on the date of accident, the liability of the insurer cannot be avoided. Accordingly, the liability has been fixed upon the insurer.

6. The main thrust of argument of Sri S. S. Rao, learned counsel for the appellant is that the driver of the offending vehicle, the Trekker, having not held a valid Driving License for commercial vehicles (passenger carriage) at the material time of accident, the liability could not be fastened against the appellant insurer since it is in violation of the condition of the policy and provisions of law. The learned counsel has relied on an unreported decision of this Court in Misc. Appeal Nos. 807 and 808 of 1996 dated 15.12.1999 in support of his contention. But that is a case where the insurance company pleaded that the offending vehicle had not been insured, but subsequently, it was considered at the time of hearing that there was an Insurance Policy available but the Tribunal did not

frame an issue, whether the Driving License was valid or not. The learned Judge, on such submission, directed the learned Tribunal to re-determine the question relating to inter se liability between the owner and the Insurance Company by framing an appropriate issue. However, the Court directed that the Insurance Company should pay the compensation as determined, but ultimately it is found that the Insurance Company is not liable to reimburse the amount paid by the Insurance Company, then the amount would be reimbursed to the Company at the relevant time. The decision therefore is not applicable to the facts of the present case, which stands on a completely different footing.

7. It appears from the materials on record with particular reference to the written statement filed by Opp. Party No. 2 the present appellant that the plea taken was totally evasive. The insurer took the plea that in absence of better particulars, it is not in a position to give the details and reserves its right to file written statement later. The appellant disputed that the deceased was traveling in the vehicle bearing No. OR 05 6262 a Trekker and the accident caused due to the rash and negligent driving of the driver. In paragraph 9 of the written statement it has been stated that the owner of the vehicle may be directed to produce the registration document, fitness certificate, permit, tax token and Driving License of the driver etc. failing which it shall be presumed that there is a statutory violation of the condition of the policy, if any, as contemplated under the M.V. Act. It appears that no further affidavit or modified written statement has been filed, but as reflected in the impugned order of the Tribunal, the existence of a policy in respect of the offending vehicle on the alleged date of accident has been admitted. In this appeal also the Insurance coverage in respect of the offending Trekker is not in dispute.

8. The appellant-insurer has neither produced any document nor adduced any oral evidence in support of its claim that the driver of the offending Trekker did not have a valid license to ply a commercial vehicle nor there is any whisper in the written statement that the offending vehicle was a commercial vehicle or it was being plied as a passenger carriage vehicle requiring its driver to have endorsement in its driving license to drive commercial vehicle or a passenger vehicle or that the driver was a paid professional driver, in absence of any pleading whatsoever to the aforesaid effect, the contention of the learned counsel for the appellant that in absence of the endorsement to ply commercial vehicle the Driving License is of no avail and the insurer is not liable to cover the liability of the claimants cannot be accepted.

9. This case at hand is covered by the decision of the Apex Court in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., . The Apex Court in the aforesaid case considered the definition of light motor vehicles in the context and the plea taken by the insurer was negatived and it was held that in absence of materials to show that the vehicle in question was a good carriage vehicle or a transport vehicle, it cannot be held as such on account of the statutory provisions contained in Section 66 of the M.V. Act. It was held that the whole case of the

insurer had been built up in a wrong premise. In the case at hand there is absolutely no plea or evidence with regard to the nature and uses of the vehicle in question nor any evidence is adduced by the appellant-insurer and in such circumstances, the Driving License of the driver cannot be questioned and the plea is not permissible to be taken to the effect that there is violation of the condition of the policy, the driver having no endorsement for driving a commercial vehicle. The quantum of compensation, the earning of the deceased or his age is not in question and as such, I need not enter to such question.

10. In such view of the matter, I do not find any illegality or infirmity in the impugned order for interference in the present appeal. Accordingly, the appeal is dismissed, but there is no order as to cost. The amount of compensation along with the accrued interest be paid promptly within three weeks hence.