

(2002) 05 OHC CK 0045

In the Orissa High Court

Case No : Miscellaneous Appeal No. 877 of 1997

The New India Assurance Co. Ltd.

APPELLANT

Vs

Koili Bahalia and Others

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 140(2), 173

Citation : (2002) 05 OHC CK 0045

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

Bench : Single Bench

Advocate : A.K. Mishra B and D.K. Mohapatra, for the Appellant; B. Mohanty, for R. 1, P.K. Mishra and A.K. Mohapatra for R. 1, P.K. Mishra and A.K. Mohapatra for R. 3, for the Respondent

Judgement

P.K. Tripathy, J.—Award u/s 140 of the Motor Vehicles Act, 1988 (in short "the Act") passed in Misc. Case No. 334 of 1995 by Second MACT. Cuttack on 16.9.1997 is under challenge at the instance of M/s. New India Assurance Company Ltd. (in short, "Insurance Company") which figures as Opposite parties Nos. 3 and 4.

2. It is not disputed at the Bar so far as the facts are concerned. When a horrible accident on 26.4.1995 on the Express Highway near Kusunpur occurred due to head on collision between a "Trekker" and a "Truck" both insured with the Appellant-Insurance Company at different branches that accident took a toll of 13 human lives at the spot besides causing injuries to several Ors. . Claim cases were filed and the present one is one of such claim cases in which the dependants and the legal representatives of the deceased have made claim for compensation. They moved application u/s 140(1) of the Act for "no fault liability" as an interim measure. Admittedly no evidence was adduced and learned Tribunal called for and perused the G.R. Case record in which the accident and the death has been noted and after being satisfied about the death of the deceased he awarded a sum of Rs. 50,000/- in accordance with Section

140(2) of the Act jointly as against Opposite party Nos. 3 and 4 i.e. the Appellants.

3. The Insurance Company availing the opportunity as provided in Section 173 of the Act, has preferred this appeal. Contention of learned Counsel for the Appellant in a nutshell is that when the Trekker had the capacity to carry nine passenger excluding the driver, and the Insurance Company under the Policy had extended its liability to that extent, grant of interim relief u/s 140 to thirteen death victims of the motor accident, is beyond the liability undertaken by the Company and therefore the present case should be considered whether it should come within the first nine. His other contention is that when the accommodation of passenger beyond the capacity, i.e. altogether 21 in number in the Trekker contributed to the accident, the extent of liability of the Insurance Company should be appropriately considered even at the stage of consideration of the liability u/s 140 of the Act. Appellant also argues that the Claims Tribunal may be directed to analogously dispose of all such claim cases so that in view of the peculiar facts and circumstances involved in this case, the extent of liability of the Insurance Company can be crystalised the accordingly the Insurance Company shall be made liable to pay to the extent its liability extends. Appellant also prays for issue of direction for early disposal of such cases.

4. learned Counsel appearing for the claimants on the other hand argues that the questions, as raised above by the Appellant, are required to be considered at the time of hearing of the case on merit and at the stage of consideration of no fault liability the aforesaid contentions of the Appellant deserves no consideration. Whether or not the Insurance Company has the liability to pay the no fault dues to the family of all the 13 deceased persons, but in view of the recent decision of the apex Court in the case of New India Assurance Co. Ltd. Simla v. Kamala and Ors. AIR 2001 SC 7479 even if any amount is paid in that respect, that can be recovered or adjusted in accordance with law while settling the extent of liability of the insurer and the owner of the vehicles. However, peculiarly enough the claimants/Respondents do not agree for early disposal of the claim cases as the learned Counsel appearing for the Respondents does not agree to the proposal given by the learned Counsel for the Appellant in that respect.

5. The factual aspect of the case which is not disputed by the parties resolves the dispute at present regarding payment of no fault liability" by the insurer of the Trekker with respect to nine deceased. When both the vehicles were insured with the same Insurance Company and the death occurred as a result of head on collision between both the vehicles, the intricate question as to which or both the vehicles was/were responsible for the accident, whether or not over-loading in the Trekker was reason for the accident and who was at fault for the accident and the deaths are all the questions which will be required to be considered upon evidence if adduced at the time of adjudication of the claim applications. When the facts scenario stands thus, this Court at present is not inclined to carve out the extent of liability of the Insurance Company with respect to any identified

nine claimants. However, this Court observes that the payment made shall be taken into due consideration by the Claims Tribunal and pass appropriate direction for its adjustment, if over-paid, fixing the extent of the liability of the persons other than the Insurance Company if that emerges from the evidence on record. In view of the aforesaid reasons, this Court is not inclined to interfere with the impugned judgment and dismisses the appeal.

6. When the cry is louder and louder for early delay in disposal of cases, in this particular case this Court finds a peculiar attitude of the claimants who do not want early disposal of the case relating to a death occurred in 1995. May be that the interest which the claimants are to earn prompting them to delay disposal of the case. While not appreciating and disapproving such attitude of the claimants, in this case, notwithstanding no consent from the claimants, this Court directs that the Claims Tribunal shall dispose of the claim cases within two months from the date of receipt of a copy of this judgment. Any amount of dilatory tactics if shown by the claimants that shall disentitle them from any interest for the relevant period and if such occasion shall arise then learned Tribunal shall state such fact in its award.

7. The no fault liability should have gone to the hands of the claimants at the earliest after registration of the case. So far it has not gone to their hands the obsequies and other necessity which were to be made was long seven years back. Therefore, even if this Court dismisses the appeal but it directs that the amount awarded u/s 140(1) of the Act as interim award shall be kept in Fixed Deposit for a period of one year or disposal of the case which event occurs earlier and it shall not be encashed in any manner till then and appropriate order shall be passed by the Claims Tribunal. The Appellant, who has deposited statutory amount is permitted to withdraw the same but shall deposit Rs. 50,000/- (fifty thousand) in the Court below within seven days from the date of withdrawal of the said amount from the said Court or by 18.7.2002 whichever occurs earlier. Non-compliance shall be regarded as violation of the direction of this Court. So far as the prayer for analogous hearing is concerned, it is observed that if any such application shall be moved in the Court below then learned Tribunal shall consider the same and pass appropriate order in that respect.

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