
(2002) 04 OHC CK 0004

In the Orissa High Court

Case No : Miscellaneous Appeal No. 826 of 1996

The New India Assurance Co. Ltd.

APPELLANT

Vs

Kumudini Nayak and Others

RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 173, 95(1), 95(4), 96, 96(1)

Citation : (2003) 95 CLT 684

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—This Misc. Appeal has been filed u/s 173 of the Motor Vehicles Act challenging the award passed by the Fourth Motor Accident Claims Tribunal, Puri in M.A.C.T. Misc. Case No. 475/831 of 1993-89.

2. The deceased was a Government servant employed in the Department of Information Education and Communication Centres (Health Education Bureau), Directorate of Family welfare, Orissa. He was 46 years old when the fatal accident took place. At the relevant time, his monthly salary was Rs. 2,300/-. Bereft of all unnecessary details, it is suffice to say that on 1.6.89 when the deceased was proceeding on a bicycle, the offending Truck bearing Registration number B.P.A. 3033 caused the accident and the victim died. The widow and the four minor children of the deceased filed Misc. Case No. 831 of 1989 before the Fourth M.A.C.T., Puri claiming a sum of Rs. 4,50,000/- towards compensation. The statement of facts of the petition filed by the claimants clearly reveals that the offending vehicle belonged to respondent No. 6, and was insured with the appellant-Insurance Company. Respondent No. 6, the owner of the vehicle who was opp. party No. 1 before the Tribunal, filed a written statement admitting his ownership and stated that the vehicle was insured with the appellant - Insurance Company, Opp. party No. 2 and that the number of the Insurance Policy was 3152020300809. The factum of accident was also admitted.

The appellant-opp. party No. 2-Insurance Company in its written statement

baldly repudiated the assertions made in the claim application including the averments that the vehicle was insured with the said Insurance Company.

In course of hearing, the claimants examined three witnesses and exhibited eight documents to substantiate their claim whereas the appellant-company neither adduced any oral evidence nor exhibited any document. In course of trial a xerox copy of the policy was filed and a copy of the same was served on Insurance Company.

3. The learned Tribunal after discussing the evidence in extenso, held that the claimants were entitled to an award of Rs. 2,63,900/-and relying upon the decision of the Apex Court in the case of National Insurance Co. Ltd. v. Jugalkishore 1988(1) TAC 418, also held the Insurance Company liable to pay the entire awarded amount.

4. The Insurance Company, as stated earlier, has filed this appeal. The only submission, forcefully advanced by Mr. Sinha, learned counsel for the appellant is that the Court below acted illegally in saddling the entire amount of compensation i.e. Rs. 2,63,900/- upon the Insurance Company. It is submitted that the liability of the Insurance Company is limited and is only to an extent of Rs. 50,000/-. Mr. Sinha also submitted that there is no evidence to show that the owner of the offending Truck had paid any additional premium for extending the liability beyond the statutory limit and the Tribunal lost sight of the said fact. It is needless to say that the appellant-Insurance Company rightly has not challenged the quantum of the award, but has only confined its arguments with regard to its limited liability.

5. On the basis of the submissions made by the parties, this being the final court of facts, the pleadings and evidence are carefully scrutinised. Opp. Party No. 1-owner, in paragraph 5 of his written statement has stated as follows :

"That the statement as per column 8, 9, 12, 14, 15 and 16 however are admitted to be true. It is admitted that this O.P is the owner of the truck bearing registration No. B. P. A. 3033 and the said vehicle had been insured with the New India Assurance Co. Ltd. and the policy No. of the same is 3152020300809 being valid upto 19.7.89."

The Insurance Company - Opp. party No. 2 has also filed a written statement . In paragraph-6 of the written statement, the Insurance Company has stated as follows :

" ... This O. P. does not admit the insurer of the alleged vehicle."

P. W. 1 is one of the claimants. In her deposition in Paragraph-9 she has clearly stated that the offending vehicle was insured with Opp. Party No. 2 and that Opp. Party No. 2 is liable to pay the entire claim amount because she has ascertained that Opp, Party No. 1- owner has paid additional premium to widen the liability of Opp. Party No. 2-Insurance Company. This statement was not challenged in cross-examination either by Opp. Party No. 1 or by opp. party No. 2 and goes

uncontroverted. Apart from the aforesaid oral evidence, a xerox copy of the Insurance Policy was also produced before the Tribunal and a copy of the same was also served on the insurance Company. Surprisingly, the Insurance Company has neither adduced any oral evidence nor produced any document to controvert the allegations made or the evidence adduced before the Tribunal. I have also perused the copy of the Insurance Policy which is available on record. The same clearly reveals that a sum of Rs. 2,887/- was paid as premium and that the Insurance Policy was valid on the date of the accident. The policy number as well as the other particulars are clearly mentioned in the said policy. At the cost of repetition, it is once again reiterated that though the copy of the policy was served on the learned counsel for the Insurance company in court below, on rebuttal evidence was adduced. Attention of Mr. Sinha is also drawn to the xerox copy of the Insurance Policy which is available on record in course of hearing. Surprisingly, though the case was adjourned once, no step has been taken by the Insurance Company to substantiate its stand, that no extra premium was paid.

The Insurance Policy available on record clearly reveals that the same was prior to 1 st July, 1989. The liability of the Insurance Company to satisfy judgments against persons insured in respect of the third-party risk is covered u/s 96 of the Act. Sub-section (1) of which provides :

" 96. Duty of insurers to satisfy judgments against persons insured in respect of third-party : (1) If after a certificate of insurance has been issued under Subsection (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this Section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

6. On scrutiny of the evidence both, oral and documentary, as well as the pleadings, I have no hesitation to agree with the findings of the court below that the appellant-Insurance Company has totally failed to adduce any evidence with regard to non-payment of extra premium so as to cover third-party claim. Though the Insurance company was confronted with the number of the Insurance policy and though copy of the policy was served on the learned counsel for the Company in court below, no steps had been taken by the Insurance Company to substantiate its stand that no extra premium was paid. As stated earlier, tariff paid, so far as the policy is concerned, appears to be Rs. 2,887/- which according to the claimants is in higher side and includes the extra premium. The said claim is not controverted. The appellant in this appeal has

submitted that the Insurance Company's liability is restricted to Rs. 50,000/-. But then the offending vehicle is a Truck and not a Bus. Being confronted with the said fact, Mr. Sinha, learned counsel for the appellant in his usual fairness submitted that the limited liability of the Company is Rs. 1,50,000/- and not Rs. 50,000/-. In view of the aforesaid admission, the controversy centres round Rs. 1,13,900/- only.

7. Be that as it may, in view of the fact that the Insurance Company has not substantiated its claim that an extra premium was paid, I am not in a position to find fault with the findings of the learned Tribunal. Admittedly, the accident took place in the year 1989. The young widow and four minor children who have lost their husband and father respectively and have become destitutes, are running from pillar to post for their subsistence. It is fairly admitted by the learned counsel for the parties that though 13 years have elapsed in the meanwhile, not a single paisa has been paid to the claimants thereby subjecting them to stringent financial difficulties. Taking into consideration all the facts in the light of the ratio of the decision of the Supreme Court in the case of *Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and Ors.* 2001 (1) TAC 656, I have no hesitation to confirm the decision of the Tribunal and dismiss the appeal. In the result, I hold that the appellant-Insurance Company is liable to pay the entire awarded amount to the claimants. After making such payment, if so advised, the appellant can proceed against the owner for realisation of any amount if it has paid by virtue of this order which the Insurance Company is not liable to pay. If such an eventuality occurs and a petition is filed by the Insurance Company before the Accident Tribunal, Puri, the Tribunal below will do well to adjudicate the liability of the Company vis-a-vis the owner and pass necessary orders after giving opportunity and strictly in consonance with law. It is made clear that the claimants shall not be parties to such a proceeding.

The Registrar (Judl.) is directed to remit the amount already deposited by the Insurance Company along with the interest if any accrued thereon to the Tribunal. The Insurance Company shall deposit the balance amount before the Tribunal within two months from today. After the deposit is made, the Tribunal shall disburse the amount in consonance with the observations made in the judgment.

With the aforesaid directions, the Misc. Appeal is dismissed. Parties to bear their own costs of this appeal.