(2003) 11 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2574 of 2002

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Asarathun Bibi and Others RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 1 ACC 390 : (2004) 97 CLT 92 : (2004) 1 OLR 61

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : S.K. Swain, L.P. Swain and S.B. Mohanty, for the Appellant; None, for the Respondent

Judgement

B. P. Das, J.—The Petitioner-insurer has filed this writ petition challenging the order dated 19.10.2001 by which the 2nd Motor Accidents Claims Tribunal, Keonjhar, has rejected the application filed by the petitioner with a prayer to set aside the award passed by the Tribunal directing payment of compensation of Rs. 1,30,000/- to the claimants-opposite party Nos. 1 to 3 by the insurer-petitioner, on the basis of a compromise effected between the insurer and the claimants in a LokAdalat held on 28/29.10.2000. The compromise petition was made a part of the award. The standard form of compromise contains certain conditions which are as follows :

1. Disposal of case filed u/s 140 of the Motor Vehicles Act, if any.

2. Confirmation of policy by the Insurer within two/three months.

3. Confirmation of D/L by the Insurer within two/three months.

4. Place of issue of D/L by the claimant (S) within one month and verification by the Insurer within two months thereafter.

5. Place of issue of policy by the claimant within one month and verification by the insurer within two months thereafter.

6. Filing of affidavit that no other claim case is filed by the claimant or any other legal heir before any other MACT/WC Court for the same cause of action.

2. The case of the insurer is that the compromise entered into in the Lok Adalat was subject to one or more of the above conditions, as the case may be. In some cases, it is alleged by the insurer, the driving licence of the driver of the offending vehicle was not valid while in some other cases, existence of valid policy of insurance is disputed. So, as per the case of the insurer, they are not liable to pay the amount under the award which was passed on the basis of the compromise entered into in the Lok Adalat. According to them, in case of violation of policy conditions as well as in cases where there is no valid insurance policy, it is the owner of the offending vehicle, who is liable to satisfy the awarded amount.

3. In most of the cases which have come up for admission, I observe that writ petitions have been filed after long lapse of time and the delay is due to failure on the part of the insurer to verify the driving licence within the time stipulated. Fact also remains that the insurers have not satisfied the awards. In the cases in which the claimants-opposite parties have appeared, they have vehemently argued that rejection of the application of the insurer by the Tribunal to set aside the award passed on the basis of the compromise entered into in the Lok Adalat is correct and no interference is warranted by this Court, My attention is also drawn to the hardship suffered by the claimants due to non-payment of the awarded amounts.

4. Law is well settled that even if there was violation of any policy condition, the insurer is statutorily liable to pay the compensation to third parties on account of the certificate of insurance issued and shall be entitled to recover from the insured the amount paid to the third parties.

5. The proposition is based upon the sound principle that the insurer and insured are bound by the conditions enumerated in the policy and insurer is not liable to the insured if there is violation of any policy conditions but the insurer, who is made statutorily liable to pay compensation to the third parties on account of the certificate of insurance issued, shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid licence. (See New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . But one aspect cannot be overlooked. The compromise was entered into in the Lok Adalat between the insurer and the claimants. The owner was not a party to the said compromise. When it is alleged that there is deficiency in the policy conditions, it would not now be proper to direct the insurer to satisfy the awarded amount and recover the same from the owner in terms of the decision in Kamla case (supra), without giving an opportunity of hearing to the owner, who definitely has a say on the question of quantum of compensation.

Thus, in my considered opinion, the rules of principle of natural justice demand that the owner should be given an opportunity of hearing on the question of deficiency of policy conditions as well as quantum. But while doing so, this Court cannot shut its eyes to the plight of the claimants, who are waiting for years together to receive the amount awarded by the Tribunal on the basis of the compromise entered into in the Lok Adalat.

6. Taking all these aspects into consideration, I dispose of this writ petition with the following directions :

(1) The insurer shall deposit 50% of the amount agreed to in the Lok Adalat before the Tribunal by 18.12.2003 and the same shall be released in favour of the claimants on proper identification and application before the Tribunal. The Tribunal shall ensure that a substantial amount is kept in fixed deposit at least for a period of five years.

(2) After such deposit, the Tribunal shall rehear the matter only on the question of deficiency in policy conditions and/or question of validity of insurance policy and shall fix the quantum of compensation after issuing notice to the owner and the claimants and shall decide the same within four months from the date of issuance of notice to the owner/claimants.

(3) In the event it is found that the insurer is liable to indemnify the awarded amount, the same shall be paid to the claimants with appropriate rate of interest from the date of filing of the claim application. If it is found that there was breach of the policy conditions, the Tribunal shall direct the insurer to satisfy the award and thereafter the insurer shall be allowed to recover the amount paid by it from the insured,

(4) In the event it is found that there is no policy of insurance on the data of accident, the Tribunal shall direct the insured to satisfy the awarded amount with appropriate rate of interest from the date of filing of the claim application and the amount deposited by the insurer as per this order shall be recovered from the owner by the insurer.

(5) If any amendment to the claim is sought for by the claimants, that shall be allowed by the Tribunal.

(6) Court-fee, if any, payable on the claim petition, shall be paid by the claimants only after the closure of the proceedings before the Tribunal.

(7) In the event the owner does not appear after due notice, the Tribunal shall proceed with the matter in accordance with law.

(8) The Tribunal shall not be influenced by the quantum arrived at in the Lok Adalat and shall assess the just compensation evaluating the evidence on record. The parties will be at liberty to adduce evidence in support of their respective pleas which shall be confined to the question of violation of policy conditions, existence of policy of insurance and quantum of compensation.

(9) The petitioner-insurer is directed to appear before the Tribunal on 19.12.2003

to receive further directions in the matter. In the event any of the opposite parties do not appear before the Tribunal on the date fixed, the Tribunal shall issue due notice to the said party requisites for which shall be filed by the insurer.

(10) If any certificate proceeding has been initiated against the insurer, the same shall be dropped on deposit of 50% of the amount agreed to in the Lok Adalat compromise by the insurer, as directed above.

7. The impugned award passed by the Tribunal in Annexure-4 as well as the order refusing to set aside the award vide Annexure-6 are set aside subject to the aforesaid directions.

