
(2003) 09 OHC CK 0003
In the Orissa High Court
Case No : M.A. No. 10 of 2000

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bhaiga Pradhan and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2004) 2 ACC 685 : (2003) 96 CLT 793

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : Ajay Ku. Mohanty, M.C. Nayak and D.C. Dey, for the Appellant; D. Mishra and P.K. Nanda, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—Aggrieved by the order dated 22.9.1999 of the Member, 2nd Motor Accidents Claims Tribunal (S.D.), Berhampur, in M.A.C. No. 118/94(39/94), the appellant-Insurance Company has filed this appeal.

2. The fact of the case, in brief, is that on 2.9.1998 at about 10.30 P.M. while one Satyanarayan Pradhan (hereinafter referred to as the "deceased") was travelling in the Trekker bearing Registration No. OSG 7680 as a passenger, due to rash and negligent driving of the driver, he fell down and succumbed to the injuries. The claimants, who are the parents of the deceased have filed the claim petition for compensation.

The owner of the offending vehicle contested the case denying the allegation. He has taken the stand that the vehicle was insured with the appellant and there was valid driving licence. The Insurance Company filed written statement and took the stand that the deceased was not a passenger, but the helper of the vehicle and, therefore, the policy does not cover the risk and, hence, the appellant is not liable to pay compensation.

Upon hearing the parties and taking into account the evidence on record, the

learned Tribunal awarded Rs. 75,000/- as compensation to the petitioners with interest at the rate of 9% from the date of application.

3. This matter was once before this Court in M.A. No. 597 of 1996 and by order dated 15.4.99 this Court remitted it back to the Tribunal for fresh disposal after giving opportunity of adducing evidence and hearing the parties.

4. Mr. A. K. Mohanty, learned counsel for the appellant-Insurance Company, strenuously contended that upon a glimpse on the evidence on record, it would be crystal clear that the deceased, at the alleged time of accident, was travelling as a helper of the offending trekker, but the respondents have tried to shift the burden on the appellant-Insurance Company by taking a stand that the deceased was a passenger in the said vehicle. The learned Tribunal taking a lenient view considered that since the deceased was travelling as a passenger in the offending trekker at the material time of the accident, the appellant-Insurance Company is liable to pay the compensation, which finding of the Tribunal is based on no evidence on record. He further contended that a helper in a trekker is not covered under the policy issued to the respondent No. 3 -owner. His further submission is that the driver of the trekker at the alleged time of accident was neither possessing a valid and effective driving licence to drive a passenger carrying vehicle nor issued with any P.S.B. badge.

Counsel for the respondents 1 and 2 submitted that the deceased was working as a mechanic near his village which was admitted by P.W. 2, a co-passenger of the deceased and P.W. 1, father of the deceased. He further submitted that the scribe of the FIR was not examined by the Insurance Company nor the I.O. has examined the scribe and, therefore, the finding of the learned Tribunal that the deceased was travelling as a passenger is justified. He also submitted that the present appeal is not maintainable as per law in absence of specific permission from the Tribunal. Mr. Mishra has vehemently submitted that the Insurance Company had never pleaded that there was collusion between the claimants and the owner.

5. The core question that arises for consideration in this appeal is whether the deceased was travelling in the offending vehicle at the material time as a "passenger" or a "helper" ?

On perusal of the claim petition, it is found that the father of the deceased stated in the said petition that his son (deceased) was travelling as a passenger. Both P.Ws. 1 and 2 (father of the deceased and the co-passenger of the deceased respectively) in their evidence have admitted that the deceased at the relevant time was working as a mechanic. Ext. B, the insurance policy covers the accident. The policy came into force with effect from 8.3.2003 and was valid till 7.3.1994. The accident occurred on 2.9.1993. The respondent No. 3, the owner of the vehicle pleaded both in M.A. No. 597 of 1996 and in his written statement that the deceased was a passenger in the vehicle. Admittedly, the scribe of the FIR was not examined during the course of the trial nor the Investigating Officer

examined him at the time of investigation. The Insurance Company had never pleaded that there was collusion between the claimants and the owner. No evidence was led before the Tribunal regarding the collusion. No suggestion was given to P.W. 1 during his cross-examination that there was a collusion. In absence of any pleading by the appellant-Insurance Company with regard to the collusion, it cannot be permitted to raise such a plea at the time of appeal. Law is further well settled that the FIR and police papers are not substantive pieces of evidence. These are only available for the purpose of corroboration and/or contradictions and cannot take the place of substantive evidence recorded during trial. Therefore, the appellant-Insurance Company is estopped from taking such a plea at the appeal stage. These are all disputed questions of facts which cannot be interfered with at this stage.

6. The last contention of the appellant-Insurance Company is that, at the relevant time the driver had no valid driving licence and, therefore, the impugned award cannot be sustained. It is the settled principle of law decided by the Apex Court in the cases of the New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and the United India Insurance Company Ltd. Vs. Leheru and Others, that the insurer is to proceed against the insured for violation of the policy condition and that at the first instance the Insurance Company has to satisfy the claims arising out of the policy. Therefore, the claimant will not suffer.

In view of the observations made above, the appeal is devoid of any merit and is accordingly dismissed.