

(2002) 11 OHC CK 0015

In the Orissa High Court

Case No : Miscellaneous Appeal No. 468 of 2001

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Banani alias Padmini Khuntia and Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(1)
Motor Vehicles Act, 1988 — Section 147, 147(1)

Citation : (2002) 11 OHC CK 0015

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : A.K. Mohanty, for the Appellant; T.K. Mohanty, for Respondent Nos. 1, 2 and 3, for the Respondent

Judgement

Pradipta Ray, J.—The present appeal has been preferred by the Insurer. Oriental Insurance Co. Ltd. against the judgment and award dated March 8, 2001, passed by the 1st. Motor Accident Claims Tribunal, Mayurbhanj, in M.A.C.T. Misc. Case No. 61 of 1996 awarding compensation is favour of the deceased a pillion rider on a scooter and holding the Insurer liable to pay such compensation.

2. The main question urged by the Appellant in the present appeal is whether the pillion rider travelling gratuitously can be said to be covered under the "Act only" Insurance Policy"

3. The deceased Bijendra Khuntia was travelling as a pillion rider on a scooter bearing registration No. OSM 2917 driven by Sri Harihar Das the owner of the said scooter. They were going to Bisoi from Bangriposi. On Bamamghaty hill while the offending scooter was giving side to a vehicle coming from the opposite direction, the scooter dashed against a road side stone and the deceased was thrown on the road and sustained grievous injuries on his head and other parts of the body. The deceased was initially treated in Baripada Hospital, and, thereafter, removed to S.C.B. Medical College and Hospital, Cuttack. He ultimately succumbed to his injuries on the day following the date of the

accident. At the time of death the deceased was working as a Senior Clerk under Orissa State Electricity Board and getting a monthly salary of Rs. 3.200/- The widow, son and the daughter of the deceased filed claim case before the Motor Accident Claims Tribunal, claiming a compensation of Rs. 2.00,000/-.

4. Mr. Mohanty, learned Advocate appearing for the Appellant-Insurance Company has referred to several decisions, namely; 1992 ACJ 851 (Ori) Jibananda Mohanty v. Artatrana Misra and Ors.; 1995 ACJ 189 (Ori) New India Assurance Co. Ltd. v. Ashok Kumar Acharya and Ors.; 1988 ACJ 270 (SC) National Insurance Co. Ltd v. Jugal Kishore and Ors.; 1988 ACJ (AP) Sada Nirmala and Ors. v. Indrapaul Singh and Anr. and 1989 ACJ 466 (P&H) Surjit Singh and Anr. v. Santosh Kumari and Ors.

5. Most of the aforementioned decisions were decided in the context of the provisions of the Motor Vehicles Act, 1939. By dropping one of the clauses from the provisos to Section 95(1) of the Motor Vehicles Act, 1939 the Motor Vehicles Act of 1988 requires the Insurer to issue policy against the death or bodily injury to any person carried in a vehicle. Even before the enactment of the Motor Vehicles Act, 1988 the Tariff Advisory Committee issued a circular dated June 2, 1986. intimating all the insurance Companies that the standard Motor Cycle comprehensive policy should cover liability to pillion riders treating them as occupants in the Motor Cycle and provide indemnity to such persons who are not carried for hire or reward. After such instructions the Insurance Policy is to cover death or bodily injury to the person carried in or upon a Motor Cycle provided such person is not carried for hire or reward, in other words. The Insurance Coverage is extended to gratuitous passengers carried in or upon a Motor Cycle. The decision relied upon by Mr. Mohanty are not applicable to the situation of the present case.

6. The learned Advocate appearing for the claimant-Respondents has referred to the following decisions to support the judgment of the Tribunal:

1. 1995 ACJ 888 (Ker) United India Insurance Co. Ltd. v. Appukuttan.
2. 1995 ACJ 1015 (Kar) New India Assurance Co. Ltd. v. K. Rajanna and Ors.
3. 1995 ACJ 1125 (HP) Oriental Insurance Co. Ltd. v. Ved Prakash and Ors.
4. 1988 (I) OLR 144 Oriental Fire and General Insurance Co. Limited v. Santan Pradhan and Anr.
5. The New India Assurance Co. Ltd. Vs. Satyanath Hazarika and Others,
6. 2000 ACJ 385 (Kar) Oriental Insurance Co. Ltd. v. Minaxi and Ors.
7. In United India Insurance Co. Ltd. v. Appukuttan (supra) the division Bench of Kerala High Court distinguished the earlier decision of the same Court reported in 1989 ACJ 833 (Ker) K. Velunni v. Premalatha on the ground that Velunni's case was decided under the Motor Vehicles Act, 1939. It has referred to the changes brought about by the Motor Vehicles Act, 1988. The Division Bench observed

6. But the position has completely been changed when the new Motor Vehicle Act, 1988, came into force. In Section 147 of the new Act which corresponds to Section 95 of the old Act there is no limit in certain cases as contained in Clause (ii) of the old Act. The corresponding proviso in the old Act contained three clauses whereas now there are only two clauses. What was dropped in the new Act is the clause which excluded the coverage for death or bodily injury to person carried in or upon the vehicle. That means such liability cannot now be excluded from the policy. The result is when a policy of insurance is an Act policy, it does not necessarily mean that the insurance company will and absolved from the liability in respect of the pillion rider of a motor cycle.

In *Oriental Insurance Co. Ltd. v. Minaxi and Ors.* the Karnataka High Court interpreted Section 147 of the Motor Vehicles Act, 1988:

15. By reading the provision in Section 147(1)(i) it appears to me that the policy one issuable by the insurance company must cover as against any liability which may be incurred by the owner of the vehicle in respect of the death of or bodily injury to any person and must include the death or bodily injury or injuries likely to be suffered by the third parties too. It further appears to me that the term any person used in the above section also covers the pillion rider, for in the Explanation below the proviso thereto, it is clarified that the death of or bodily injury to any person or damage to any property, of a third party shall be deemed to have been caused by or to have arisen out of the use of the vehicle in a public place at the point of time of accident that occurred in a public place. Therefore, it is obvious that Section 147 of the Act contemplates coverage of risk of the third parties too. Who suffered either bodily injury or death as the case may be.

In the aforesaid judgment the" Karnataka High Court has also referred to the circulars dated June 2, 1986, issued by the Tariff Advisory Committee to show that a comprehensive policy should cover liability of passengers treating them as occupants in the Motor Cycle.

8. Mr. Monanty has urged a question of fact that the insurance Company has not taken any extra premium and as such its liability is confined to only to the statutory amount. It does not appear from the judgment of the Tribunal that any such contention was raised before it. The Insurance company has also not produced any copy of the Insurance Policy in this Court to support such argument. According to Mr. Mohanty, it is for the insured to produce the policy to show that extra premium has been paid for unlimited liability. Such contention cannot always be accepted. Once particulars of the Insurance Policy are disclosed. It is for the Insurance Company to produce the copy of the policy or certificate of insurance in support of its contention regarding the extent of coverage and the liability undertaken under it. In this connection, reference may be made to the observations of the Supreme Court in *National Insurance Company Ltd. v. Jugal Kishore Ors.* reported in 1988 ACJ 270.

In paragraph 9 of the judgment. The Supreme Court has observed:

9. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the insurance companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the high Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the Appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the insurance company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with the its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the Court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

9. In a full Bench decision of Gauhati High Court reported in AIR 1990 Gau 26, *New India Assurance Co. Ltd. v. Satyanath Jazarika*, it has been laid down:

...It has the duty of the insurance company to file the copy of the policy before the Tribunal or even before the High Court to satisfy that the liability of the insurers is not in excess of the statutory liability.

10. There is no-evidence on record to show that the deceased was carried in the scooter for reward. In view of the provisions of Section 147 of the Motor Vehicles Act, 1988, and the Instructions issued by the Tariff Advisory Committee and incorporated in the standard Insurance policies, this Court has does not find any substance in the contentions raised on behalf of the Appellant-Insurance Company.

11. Accordingly, the appeal is dismissed.