

(2007) 04 JH CK 0063
In the Jharkhand High Court

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Kailash Ram and Others

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Citation : (2008) ACJ 91

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Judgement

1. Heard the learned Counsel for the appellant and learned Counsel appearing for the claimant-respondent.

In spite of all steps taken for service of notice on the owner of the vehicle (Metador) including publication of notice in the newspaper, the respondent-owner has not appeared in this appeal. The Insurance Company in the instant appeal assailed the impugned judgment and award dated 12.8.2004 passed by the Motor Vehicles Accident Claims Tribunal, Hazaribagh in Claim Case No. 144 of 1991 whereby a sum of Rs. 1,20,000/- has been awarded for the serious injuries leading to permanent disablement caused to the claimant in a motor vehicle accident.

The facts of the case are that on 22.4.1991, the claimant was travelling by a Metador bearing registration No. BR-13L-8551 and was going to Hazaribagh. On the way, the Metador collided with a truck which was allegedly being driven in a very rash and negligent manner. The claimant sustained grievous injury and he became permanent disabled. The claimant, therefore, filed application claiming compensation of Rs. 2 lacs. Both the insurers of the Metador and the Truck appeared and contested the claim case. The respondent-owner of Metador also appeared but no written statement was filed as appears from the judgment. The present appellant is the insurer of the Metador, while the National Insurance Co. Ltd was the insurer of the truck. The present appellant took a specific defence that the driver of the Metador was not having a valid driving licence and therefore, the insurer is not liable to pay compensation. The Tribunal, after

hearing the parties, held both the insurers of Metador and the Truck liable to pay compensation. Accordingly, the Tribunal directed both the Insurance Companies to pay the entire compensation amount in equal share.

Learned counsel appearing for the appellant, who is the insurer of the Metador, assailed the impugned judgment on the ground that when the driver of the Metador was not having a valid driving licence and no evidence was led by the owner of the Metador to prove that he had no knowledge about the fake licence of the driver, the appellant-Insurance Company is not liable to pay compensation.

We have perused the judgment passed by the Tribunal. It would be useful to quote paragraphs 14 to 17 of the judgment herein under:

14. Mukesh Kumar Singh (O.P.W.1) is the Assistant Administrative Officer of the Oriental Insurance Co. Ltd. He has stated that Maxi Taxi No. BR-131-8551 was insured with the Oriental Insurance Co. Ltd. The owner of that vehicle did not inform to the insurance company about the accident and injury. The driving licence of the driver of that vehicle was fake. Truck No. 1199 dashed. He has stated in cross-examination that he did not see the accident.

15. Abhay Kumar Srivastava (O.P.W.2) is the Investigator. He has stated that he investigated driving licence No. 8488/90 from the District Transport Office, Hazaribag and obtained certificate that the licence was fake. He has proved his report and certificate of D.T.O. which marked Ext.-A and B respectively. He has stated in cross-examination that D.L. No. 8488/90 was not issued from the D.T.O. Hazaribag. He filed application in the office of D.T.O. for investigation. The name of father not mentioned in the certificate.

16. Arun Kumar Singh (O.P. W.3) is the clerk of D.T.O., Hazaribag. He has proved the memo 494 dt. 16.7.04 of D.T.O., Hazaribagh regarding D.L. No. 8488/90/Pro Akbar Ali. He has stated that the said D.L. Number and name was not entered into the driving licence register of 1990. The photocopy of driving licence received in his office which marked Ext.-X for identification. He has stated in cross-examination that he did not bring driving licence register of 1990. Name and address of father of the driver not mentioned in the driving licence. He does not know how many registers of driving licence were maintained in 1990. He has further stated that he did not see driving licence of Akbal.

17. Ext.-A is the report of A.K. Srivastava (O.P.W.2). Ext.-B is the memo No. 494 dt. 16.7.04 issued by District Transport Officer, Hazaribagh address to Sri A.K. Srivastava mentioning therein that driving licence No. 8488/90/Pro of Akbal Ali not issued from this office.

As noticed above, no evidence was led by the owner of the Metador for the purpose of discharging his onus to the extent that the Metador was entrusted to the driver after verifying the driving licence and after having satisfied that the driver was holding a valid driving licence. In the aforesaid premises, we are of the view that the insurer of the Metador cannot and shall not be held liable for

payment of compensation. The owner of the Metador, in the facts and circumstances of the case, must be held liable to pay compensation amount determined by the Tribunal.

We, accordingly, allow the appeal in part and hold that the owner of the Metador shall be liable to pay half of the compensation amount which the appellant was directed to pay being the insurer of the Metador. However, in the facts and circumstances that the claimant-respondent became permanent disabled and he is fighting the case for the last 17 years, it is just and proper that the appellant-Insurance Company shall pay the compensation amount to the claimant and recover the same from the owner of the Metador by initiating appropriate proceeding before the Tribunal as held by the Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, . The appellant-Insurance Company shall issue a cheque as per award passed by the Tribunal to the claimant and hand over the same to the claimant within three weeks from today. Needless to say the statutory amount deposited shall be withdrawn by the appellant.