
(1975) 12 OHC CK 0009
In the Orissa High Court
Case No : M.A. No. 24 of 1974

The Orissa Cooperative Insurance Society Ltd.	APPELLANT
Vs	
Gnnei Behera and Another	RESPONDENT

Date of Decision : 16-12-1975

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1976) ACJ 385

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : K.C. Jagadeb Ray, for the Appellant; S.S. Basu, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Ray, J.—This appeal has been filed by the Orissa Cooperative Insurance Society Limited (Opp. Party No. 2) before the Claims Tribunal, Puri in an application u/s 110-A of the Motor Vehicle Act filed by Respondent No. 1 Gunei Behera. The case of the applicant Gunei Behera before the Tribunal is as follows:

On 3.3.72 he along with his brother was going from Sainik school side to village Pahala with six stones on his bullock cart. The applicant was walking just behind and his brother in front of the cart. The bullock cart was moving slowly and steadily on its left. The vehicle bearing registration No. ORC 4921 which was a truck came from behind in the same row at a very high speed without blowing horn being driven most rashly and negligently. While so coming, the truck dashed against the applicant and the bullock cart. The applicant, his brother and the bullock cart were all pushed to a great distance. The applicant received fatal injuries, his brother was also injured, the bullock cart was broken into pieces and the two bullocks were seriously injured. The accident happened due to the negligence of the truck driver. The applicant became unconscious as a result of the injuries sustained by him in the accident, and was carried to the Capital hospital at Bhubaneswar where he was treated for a long time and was ultimately discharged on 3.6.72.

On these allegations the applicant claimed compensation of Rs. 31,500/-.

2. Both the owner of the truck who is Respondent No. 2 and the present Appellant resisted the claim before the Tribunal by filing separate written statements. The Tribunal, after recording evidence, has granted a compensation of Rs. 21,400/- with interest at the rate of 6 per cent per annum from the date of application till the date of payment with consolidated costs of Rs. 200/- to Respondent No. 1. It is against this order the present appeal has been filed.

3. The New India Assurance Co. Ltd. Vs. Srikanta Ghosh and Another, Counsel for the Appellant, contends that in view of the specific plea taken by the Appellant before the Tribunal that the driver driving the vehicle which caused the accident in question had no proper license, the insurer was not liable for the compensation awarded. In support of his contention, he invites my attention to the evidence of O.P.W. 1 who is a witness for the owner, Respondent No. 2, in the present appeal. It appears from the evidence of this witness that to a question put to him he has answered that he does not know the driver of the truck who was driving the vehicle at the time of the accident. From this it is argued by Mr. Ray that it was for the Respondent No. 2 to disclose before the Tribunal the identity of the driver. This not having been done the insurer could not substantiate its plea that the said driver had no proper licence at the time of driving the vehicle. So, an adverse inference should have been drawn against the owner and on the basis of such inference the Appellant's plea should have been accepted. It is not disputed that the onus of proving the plea that the driver had not a valid licence is always upon the insurer. It is only when the opposite party being in possession of knowledge about the identity of the driver does not disclose the identity or being in possession of the licence of the driver does not produce it then only an adverse inference can be drawn against the owner, and in such an event, it may be said that the onus is on the insurer to establish the plea has been discharged. In the case before me, there is nothing to show that the owner was in possession of the knowledge about the identity of the driver or was in possession of the driver's licence. That being so, no adverse inference can be drawn against the owner. Therefore, it is for the insurer Appellant to establish affirmatively that the driver who was driving the vehicle at the time of the accident was not holding a valid licence. This has obviously not been done by the Appellant. It must therefore follow that the onus which was upon the Appellant has not at all been discharged. I am supported in my view by a decision of this Court reported in The New India Assurance Co. Ltd. Vs. Srikanta Ghosh and Another, . The following observation of R.N. Misra, J. in that decision may be quoted herein below:

The view adopted by the Claims Tribunal cannot be said to be erroneous. Mr. Roy's plea that an adverse inference should be drawn against the owner of the vehicle for non-production of the licence cannot be accepted because it is not shown that the licence is still in his custody and though it is available with him he had intentionally withheld it. The explanation given by the truck owner that the

licence has since been returned to the driver who is no more in his employment on the materials on record, cannot but be accepted and once such an explanation is accepted, there is no basis in law to draw an adverse inference against the truck owner and on the basis of such inference to find that the driver of the truck was not properly licensed. If the insurance company wanted to rely on that fact, steps should have been taken to bring into evidence the licence and the fact that the truck driver was not licensed to drive a heavy vehicle. Difficulty in establishing such a fact by the insurer cannot give rise to a position that an adverse inference can be drawn against the truck owner and the burden that lay on the insurer can be taken to have been discharged.

4. In the result, I do not find any merit in this appeal which is accordingly dismissed. In the circumstances, there will be no order for costs.