
(1995) 06 OHC CK 0016

In the Orissa High Court

Case No : Miscellaneous Appeal No. 97 of 1992

The United Insurance Co. Ltd.

APPELLANT

Vs

Krutibas Lenka and Others

RESPONDENT

Date of Decision : 26-06-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(1)

Citation : (1997) ACJ 611 : AIR 1996 Ori 81

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Advocate : A.K. Mohanty, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

P.C. Naik, J.—Against the award dated 17-12-1991 passed by the Second Motor Accident Claims Tribunal, Cuttack in Misc. Case No. 198 of 1984, the insurer (Opp. Party No. 3) has filed this appeal.

2. The Respondent No. 1/Claimant was employed as an overseer in the Horticulture Department at Cuttack. On 18-6-1984 at about 1.30 p.m. while he was coming down the Cuttack -- Paradeep Road, he was knocked down and injured by a car bearing Registration No. ORB 925 which was being towed by a van bearing Registration No. ORC 5328 which was coming from the opposite direction. According to the claimant, the accident was due to the rashness and negligence on the part of the driver of the van ORC 5328 and the driver who was on the steering of the car bearing Registration No. ORB 925 which was being towed. The claimant alleges that as a result of the impact, he was thrown off the cycle and the car ran over his thigh which resulted in grivious injury on his thigh. He also received other multiple injuries on his body. It is further alleged that as a result of the injuries, he was removed to the S.C.B. Medical College Hospital, Cuttack where after prolong treatment he was declared fit. Accordingly, he claimed compensation amounting to Rs.70,000/-from the owner as well as the insurer of the offending vehicle.

3. As in spite of notice, the owners of the two offending vehicles, that is the van and car, remained absent they were proceeded ex parte. The insurer of the vehicle ORC 5328 (van), opp. party No. 3/ appellant entered appearance and filed its written statement denying its liability.

4. In support of his case, the claimant examined himself as P.W. 1 and one Gajendra Kumar Das who was a witness to the accident was examined as P.W. 2. In support of its case, the insurer examined one Bibhuti Bhusan Sahu, the Administrative Officer as R.W. 1 who stated that the vehicle ORC 5328 was no doubt insured with it but the insurance policy was issued in favour of "Excise Superintendent", C/o -- Hamakunda Ice Factory, Paradeep" and that Sardar Surjit Singh was not the insured and no policy for the relevant period had been issued in favour of the said Sardar Surjit Singh by the insurer,

5. On an appreciation of the evidence on record, the learned Tribunal held that the accident was due to the rashness and negligence on the part of the driver. It accordingly held that the owner and the insurer of the said vehicle were liable to pay compensation to the claimant and considering the facts and circumstances of the case, compensation amounting to Rs. 35,000/- was awarded. Relying on the judgment in the case of New India Assurance Company Ltd. Vs. Sanatan Nayak and Others, , the learned Tribunal overruled the contention of the insurer that it was not liable and fastened the liability on it. Hence the appeal by the insurer.

6. On going through the, record, I find that in this appeal by the insurer, the claimant and the owners of the two offending vehicles are impleaded as parties. The name of Respondent No. 3 was, however, expugned on 10-1-1995. The record revealed that the claimant was served with notice of appeal and Respondent No. 2, Sardar Surjit Singh was served on 2-9-1994. As in spite of service which has been held valid, the Respondents Nos. 1 and 2 failed to appear, the appeal is being disposed of after hearing the appellant.

7. Sri S. N. Satpathy, learned counsel for the appellant submits that as a policy was not issued in favour of Sardar Surjit Singh by the insurer, no liability could have been fastened on the insurer. It is submitted that the Tribunal has lost sight of the fact that liability can be fastened on the insurer only when the insurer is held liable. Learned counsel further submits that the learned Tribunal has erred in relying on the decision in the case of New India Assurance Company Ltd. Vs. Sanatan Nayak and Others, and has arrived at his conclusion on a complete misreading of the said decision where the facts and circumstances were altogether different.

8. Having considered the submissions of the learned counsel for the appellant, I am of the opinion that there is much substance in the submission and the appeal has to be allowed.

9. Section 96 of the Motor Vehicles Act, 1939 (which was applicable on the date of the accident) relates to the duty of insurer to satisfy judgments against persons insured in respect of third party risks. Sub-section (1) of Section 96

provides that, "if, after a certificate of insurance has been issued under Subsection (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being the liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

10. Thus the Section which fastens the liability on the insurer itself provides that it will be bound to satisfy the award only when it is passed against the person in whose favour a policy has been issued and in no other case, the insurer will be liable. In the instant case, the insurer produced the insurance policy which is on record as Ext. A, This policy is issued in favour of "Excise Superintendent, C/o -- Hemakunda Ice Factory, Paradeep". Admittedly, in this case, the Excise Superintendent who is the insured has not been impleaded as a party, instead, one Sardar Surjit Singh was impleaded as a party. Admittedly, as the policy is not in his name, it cannot be said that Sardar Surjit Singh is the insured. There is no explanation, either in the claim petition or in the evidence adduced by the claimants explaining why or under what circumstances the said Surjit Singh and not Excise Superintendent was impleaded as a party. The liability in the instant case has admittedly been fastened on Sardar Surjit Singh who is not the insured. So in view of the provisions contained in Sub-section (1) of Section 96 of the Act, the insurer is not bound to satisfy the award it having not been passed against the insured i.e., "Excise Superintendent". The learned Tribunal, it seems, overruled this contention in view of the judgment of this Court reported in *New India Assurance Company Ltd. Vs. Sanatan Nayak and Others*, . It appears that the learned Tribunal failed to carefully go through the judgment to see whether the point involved in that case was similar to one in the case at hand. A mere perusal of even the head note, which extracts para. 12 of the judgment would show that in that case though the registered owner of the vehicle was Smt Jasbir Kaur, the wife of respondent Harbhajan Singh, the policy of insurance was issued in the name of the said Sardar Harbhajan Singh, who was impleaded as an opposite party in that case. Therefore though Harbhajan Singh was not the owner of the vehicle he was the insured and as the award was passed against the insured Harbhajan Singh. it was held that the insurer who had issued the policy in favour of Harbhajan Singh was bound to satisfy the award. The facts in the present case are entirely different. Hence, the above case has no application whatsoever to the facts of this case. Needless to say, the finding holding the insurer liable cannot be sustained.

11. It is contended that in the absence of the insured, the claimant may not be

able to realise the compensation expeditiously. If this is so, he has to thank himself for not impleading the insured. Assuring, that at the time of claim petition, he did not know the name of the insured, he became aware of his name after the insurer adduced evidence and filed the insurance policy showing that the person impleaded was not the insured. Having failed to take prompt action at the appropriate stage in bringing the proper parties before the Court, the claimant may have to suffer but that cannot be helped.

12. For the reasons aforesaid, though the award is affirmed, the direction holding the insurer liable is set aside. It is held that under the facts and circumstances of the case, no liability can be fastened on the insurer. There will be no order as to costs.