(2007) 12 OHC CK 0024

In the Orissa High Court

United India Insurance Co. Ltd. APPELLANT

Vs

Dhana Bhotra RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2009) ACJ 1693 : AIR 2008 Ori 68 : (2008) 105 CLT 475 : (2008) 1 OLR 191

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Judgement

B.N. Mahapatra, J.—This matter is listed today for orders but on the consent of the learned Counsel for both parties, the same is taken up for final disposal.

2. This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the ''Act''), filed by the Insurance Company challenging the award dated 30.6.2001 passed by the Addl.District Judge-cum-Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal"), Nabarangpur, in M.J.C. No. 49 of 2000/ M.J.C. No. 73/1997 of D.J.-cum-M.A.C.T., mainly on the ground that the Insurance Policy issued by the appellant in respect of offending vehicle was a commercial vehicle meant for carriage of goods and that the appellant does not cover the risk of passengers carried in the vehicle but covers the risk of driver, helper and four labourers in the vehicle. The further ground of the appellant is that since the deceased was travelling as passenger in a private goods vehicle which is contrary to policy condition, liability of the Insurance Company does not arise. Moreover, at the time of accident the driver of the offending vehicle was not having valid driving licence and, therefore, the appellant is not liable to pay any compensation.

3. It is submitted by the learned Counsel for both parties that keeping in view the manner and spirit in which motor accident claim cases are disposed of in Lok Adalat, this appeal may be disposed of accordingly.

4. Learned Counsel for both parties agree to the quantum of compensation i.e., Rs. 89,000/- as awarded by the Tribunal. They further agree that the rate of interest would be 6% per annum instead of 9%.

However, learned Counsel for the appellant-Insurance Company submits that keeping in view the decision of the Hon''ble Supreme Court, the appellant may be permitted to recover the amount paid by it to the claimant, from the owner of the vehicle, since the owner has violated the terms and conditions of the policy.

It may be relevant to mention here that the Hon''ble Supreme Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and also in the case of National Insurance Co. Ltd. v. Challa Bharathamma reported in 2005 (1) T.A.C. 4 (S.C.) held that not possessing a valid driving license being breach of policy condition the poor claimants should not suffer. The Supreme Court has further held that the Insurance Company may be directed to pay the amount and should be permitted to recover the same from the owner of the vehicle. In consonance with the ratio of the aforesaid decision and Section 149 of the Motor Vehicles Act, it is directed that the Insurance Company should pay the amount to the claimant-Respondent No. 1 and realize the same from the owner in due process of law as was observed by the Hon''ble Supreme Court.

5. In view of the above, the appellant-Insurance Company is directed to pay a sum of Rs. 89,000/- (Rupees eighty nine thousand) to the claimant-Respondent No. 1 towards compensation along with interest at the rate of 6% from the date of application i.e., from 5.5.1997 till the date of realization within a period of eight weeks from the date of this order failing which interest at the rate of 9% shall be charged after expiry of eight weeks till the date of realization. Out of the compensation awarded a sum of Rs. 80,000/- (Rupees eighty thousand) be kept in fixed deposit in the name of claimant-Respondent No. 1 in any Nationalized Bank for a period of five years with the condition that the monthly interest on such fixed deposit shall be paid to the claimant-Respondent No. 1 regularly. The balance amount along with its interest be paid to the claimant-Respondent No. 1. The Bank shall not allow any loan to be raised on the above fixed deposit treating the same as security nor it shall allow any premature payment.

With the aforesaid direction, the appeal is accordingly disposed of.