(1999) 06 OHC CK 0026

In the Orissa High Court

Case No : Miscellaneous Appeal No. 694 of 1997

United India Insurance Co. Ltd. APPELLANT

Vs

Kashinath Barik and Another RESPONDENT

Date of Decision : 26-06-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(4)

Citation : (2000) 1 OLR 497

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A.K. Mohanty and M.C. Nayak, for the Appellant; B.N. Rath, M.K. Panda and T.S.S. Patro (R-1), for the Respondent

Judgement

P.K. Misra, J.—This appeal has been filed u/s 173 of the Motor Vehicles Act, 1988 ((hereinafter referred to as the "Act") by the Insurance Company.

2. On 10.5.1995, the injured-respondent No. 1 was going on a cycle and was hit by a Trekker bearing number OR-07-A-3133 as a result of which the claimant sustained certain injuries including fracture and was treated in the hospital. The owner did not contest the proceeding. However, the Insurance Company filed written statement denying the allegations made in the claim application. It took the plea that the driver of the Trekker did not have driving licence authorising him to drive a passenger carrying vehicle and as such the Insurance Company was not liable to pay the amount. The Claims Tribunal found that the accident occurred due to negligent driving of the driver of the Trekker. It assessed that a sum of Rs. 15,000/- was payable as compensation and since the vehicle had been insured, it directed the Insurance Company to pay the compensation.

3. A Cross-Objection has been filed on behalf of the claimant claiming higher compensation. The owner-respondent has not entered appearance in spite of notice.

4. In this appeal, the main contention of the counsel for the appellant relates to

question of liability of the Insurance Company to pay the amount. It has been submitted that though a specific plea had been taken, no issue had been framed by the Claims Tribunal relating to existence of valid driving licence and as such, the Insurance Company has been prejudiced.

5. Before considering this aspect, it would be necessary to consider the Cross-Objection filed by the claimant-respondent No. 1. It appears from the record that the claimant had sustained a fracture. He was treated in the hospital as an indoor patient for quite some time. Keeping in view the nature of injury sustained by the claimant and the period during which he remained under treatment in the hospital, I think award of a sum of Rs. 15,000/- appears to be on the conservative side and award of a sum of Rs. 25,000/- would be just compensation. Hence it is directed that the claimant-respondent is entitled to a sum of Rs. 25,000/- and the Cross-Objection is allowed to that extent.

6. Coming to the question raised by the Insurance Company, it appears that no specific issue had been framed by the Claims Tribunal. In this Court, the owner has not entered appearance. If it is found that the Insurance Company is not liable, the amount has to be paid by the owner. The question as to whether there was valid driving licence or not is essentially a question of fact and when such a plea had been raised, it was the duty of the Tribunal to frame a specific issue on this aspect. It is, therefore, necessary that such question has to be re-determined by the Claims Tribunal by framing a specific issue and by affording opportunity to the Insurance Company as well as the owner to adduce evidence on this aspect.

7. The learned counsel for claimant-respondent, however, submitted that though the issue is required to be determined afresh, the compensation amount may be paid by the Insurance Company without waiting till the final determination on this aspect. In support of such contention, the learned counsel for the claimant-respondent has pressed into service the provision contained in Section 149(4) of the Act. Section 149(4) reads as follows :

"149. Duty of insurance to satisfy judgments and awards against persons insured in respect of third party risks;

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(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, no such of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect :

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person."

From the aforesaid provision it is apparent that even where there is no valid driving licence, so far as the claimant and the Insurance Company are concerned, any condition in the policy which is required to be covered, is of no effect and the Insurance Company can be made liable to pay such amount to the claimant. Of course, the Insurance Company is to be reimbursed by the owner, if it is ultimately found that there was no valid driving licence.

8. For the aforesaid reasons, the appeal and the Cross-Objection are disposed of with the following directions : The Insurance Company shall pay a sum of Rs. 25,000/-. It appears that a sum of Rs. 7,500/- has been kept in fixed deposit in this Court. The said amount along with the accrued interest shall be paid to claimant-respondent No. 1. The Insurance Company is required to pay further sum of Rs. 7,500/- with interest from the date of the application within two months from today. The enhanced amount of Rs. 10,000/- is also to be paid within a period of two months from today. If the sum of Rs. 7,500/- and the enhanced amount of Rs.. 10,000/- are not paid within two months from today, the said amounts shall become payable with interest at the rate of twelve percent thereafter. If the amounts as directed are not paid by the Insurance Company, the issue relating to liability of the Insurance Company or existence of driving licence need not be gone into by the Claims Tribunal. However, if the amounts are paid within the period of two months, the Claims Tribunal shall frame issue relating to liability of the Insurance Company and relating to existence of driving licence and shall issue notice to the owner at the cost of the Insurer and decide the matter thereafter after taking evidence from both the parties. The claimant-respondent may participate in such proceeding, but it is not necessary to issue any notice to the claimant-respondent. If the amounts are not paid within two months, it would be open to the claimant-respondent to proceed against the Insurance Company by initiating appropriate proceeding.

9. Subject to the aforesaid directions, the Misc. Appeal and the Cross-Objection are allowed. There will be no order as to costs.

