

(1999) 06 OHC CK 0004

In the Orissa High Court

Case No : Miscellaneous Appeal No. 771 of 1997

United India Insurance Co. Ltd.

APPELLANT

Vs

Raj Kumari Sahoo and Others

RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Orissa Motor Vehicles (Accidents Claims Tribunals) Rules, 1960 — Rule 7

Citation : (2001) ACJ 224 : (1999) 2 OLR 214

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

Bench : Single Bench

Advocate : A.K. Mohanty and M.C. Nayak, for the Appellant; G.K. Mishra and G.N. Mishra (R-1), for the Respondent

Final Decision : Dismissed

Judgement

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

2. Respondents 1 to 5, the legal representatives of deceased Sachikanta Sahu are the claimants. It is claimed that the deceased while travelling in a Scooter on 27.5.1994 was hit by a truck bearing registration number OR-02A-3797 coming from the front side resulting in the death of Sachikanta Sahu. It is claimed that he was earning Rs. 2,800/- per month and the contribution to the family members was Rs. 2,100/- per month. Claimant- respondent No. 1 is the widow of the deceased; claimant No. 2 is the daughter and claimants 3 to 5 are sons. The children were admittedly minors at the time of the accident.

3. The owner filed a written statement stating that there was contributory negligence on the part of the deceased. It was further stated that the liability, if any, should be borne by the Insurance Company, as the vehicle had been validly insured. However, subsequently the owner did not participate in the trial. The Insurance Company in its written statement while denying about the accident and the income et cetera, pleaded that the amount claimed was excessive.

4. The Tribunal found that the accident occurred due to negligence of the truck driver and the annual income, of the deceased was about Rs. 30,000/- and the contribution to the family was about Rs. 20,000/-. Applying the multiplier of 15 and allowing some other claims on other heads, the Tribunal awarded a sum of Rs. 3,15,000/- in all out of which a sum of Rs. 2,50,000/- was directed to be kept in fixed deposit in the names of the claimants. It was directed that the amount should be paid by the Insurance Company which had filed a memo confirming the validity, of the policy.

5. In the present appeal, the two main questions raised by the Insurance Company relate to merit of the case. The grounds of appeal indicate that the Insurance Company is challenging the findings relating to negligence of the truck driver and also relating to quantum payable. It has been contended that there are contributory negligence on the part of the deceased and in any case, the annual dependency found by the Tribunal and the multiplier adopted are on the higher side. In other words, the points raised by the Insurance Company do not come within the scope of Section 149 of the Act. Whatever might have been the position relating to the right of the Insurance Company to challenge the award on merit in appeal, the position is now well settled by the decisions of the Supreme Court reported in 1997 (2) TAC I (SC) (Narendra Kumar and Anr. v. Yarenissa and Ors. and Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, .

6. It is contended by the counsel for the appellant that since the Insurance Company is liable to pay the compensation, it has got the natural right to file an appeal challenging the compensation and it must be taken to be a "person aggrieved" entitled to file appeal on merit. It is further contended that when the Insurance Company is asked to pay the amount, principles of natural justice require that such Insurance Company must be afforded every opportunity of defending a case on merit and also challenging the same in appeal if the award is found to be erroneous. It is further submitted that the permission to-contest a case on merit as contemplated in Section 170 of the Act is to be granted suo motu whenever the Tribunal finds that the owner is exparte or there is collusion between the owner and the claimant. In support of such contention, attention has been invited to Rule 7 of the Orissa Motor Vehicles (Accident Claims Tribunal) Rules, 1960, which is quoted as follows :

"7. Appearance and examination of parties - (1) The owner of the motor vehicles and the insurer may, and if so required by the Claims Tribunal shall, at or before the first hearing or within such further time as the Claims Tribunal may allow, file a written statement dealing with the claims raised in the application, and any such written statement shall form part of the record.

(2) If the owner or the insurer contests the claim, the Claims Tribunal may, and if no written statement has been filed, it shall proceed to examine the owner and the insurer upon the claim and shall reduce the substance of the examination to writing."

It is further contended that the Act does not specifically contemplates any application by the Insurance Company seeking permission to contest a case on merit and as soon as the owner is found to be ex parte, it is the duty of the Tribunal to record such permission suo motu.

7. I am afraid such nebulous contention of the appellant cannot be accepted keeping in view the provisions contained in Section 170 of the Act as well as the decisions of the Supreme Court reported in 1997 (2) TAC 1 (SC) and 1998 (2) TAC 379 (SC). It is, of course, true that an insurance company is not required to be impleaded as a party from the inception. The impleading of an insurance company as a party may crop up at the stage of Section 170 when it is found that there is collusion between the claimant and the owner, or when it is found that the owner is ex parte. As a matter of fact, for convenience and as a matter of practice, the insurance companies are being impleaded from the very inception by the claimants and notices are issued to such insurers. This gives an opportunity to the insurance company to participate in the proceeding. If it appears to the insurance company during the trial that there is collusion between the owner and the claimant, the insurance company can immediately seek permission of the Tribunal to contest the case on merit. Similarly, if it is found that the owner is ex parte, an application seeking permission to contest on merit can always be filed by the insurance company without any difficulty. It may be that when the owner is ex parte, grant of such permission is almost a matter of course. However, it cannot be said that no permission is necessary in view of the specific language contained in Section 170. There cannot be anything as "implied permission" in such cases as the Statute itself requires express permission in writing. In the reported decision of the Supreme Court 1998 (2) TAC 379 (SC) admittedly the owner had been set ex parte and admittedly, the insurance company had been impleaded as a party from the very inception. Yet, the Supreme Court observed that it was necessary for the insurance company to seek for express permission to contest the case on merit.

8. Once the insurance company is not allowed to contest a proceeding on merit, it is axiomatic to hold that it does not have any right to file appeal challenging the award on merit. Filing of appeal is a statutory right to be conferred by Statute and cannot be said to be an inherent right. If the Legislature thought it fit to confer a right of filing appeal only on limited grounds, the insurance company cannot be heard to say that it has got right to file appeal on any ground. The question of violating principles of natural justice does not arise. As is well-known, natural justice is not an embodied rule and where the provision of the Act itself excludes the applicability of principle of natural justice". Courts cannot infer that natural justice must be followed. The provisions contained in Sections 149 and 170 of the Act make it amply clear that apart from the provisions contained in Sections 149 and 170 of the Act, the insurance company has no other right. It cannot be said that in every case where the owner is set ex parte, permission is to be granted by the Claims Tribunal suo motu. The provisions contained in Rule 7 of the Orissa Motor Vehicles (Accident Claims

Tribunal) Rules, 1960, do not support such a proposition. For the aforesaid reasons, I am unable to accept the contentions of the appellant. It is held that the appellant did not have the right to challenge the award on merit, that is to say, on the questions of negligence and quantum.

9. Even otherwise, the contentions are not acceptable. The driver of the truck has not been examined either by the owner or by the Insurance Company. Merely from the report of the M.V.I., it cannot be said that there was contributory negligence on the part of the scooterist. Non-examination of the driver of the truck calls for raising of strong adverse inference against the owner and the Insurance Company.

10. So far as the quantum is concerned, it cannot be said that the amount awarded is excessively high so as to warrant interference in appeal. It is stated that the multiplier of 15 is on the higher side. Similarly, it is stated that the Tribunal should not have considered Rs. 20,000/- to be the contribution to the family. It has been found on the basis of discussion of the evidence on record that the annual income of the deceased was about Rs. 30,000/-. Keeping in view the number of dependents, the possibility of increase in the income in future and keeping in view the age of the deceased as well as the age of the claimants including the four minor children, it cannot be said that the amount ultimately awarded to the claimants is grossly high. Even assuming that the multiplier would have been 13 or so, it can be also observed that possibly the contribution should have been taken to be more. In any case, the amount does not appear to be excessively high.

11. In course of hearing, the learned counsel for the appellant had raised some question relating to lack of driving licence. Such a question had not been specifically raised before the Tribunal. The grounds of appeal are conspicuously silent about such a contention. No attempt had been made by the Insurance Company to take such a plea or to prove that there was no valid driving licence. For the aforesaid reasons, I am unable to accept any of the contentions raised by the appellant. " The Misc. Appeal is accordingly dismissed. There will be no order as to costs.

12. It appears that a sum of Rs. 25,000/- has been kept in fixed deposit in this Court. The said amount along with accrued interest may be paid to the claimant-respondents and the balance amount should be paid by the Insurance Company within a period of two months from today failing which the principal awarded unpaid amount shall carry interest at the rate of fifteen per cent thereafter.