
(1986) 10 OHC CK 0027
In the Orissa High Court

United India Insurance Company Ltd. APPELLANT
Vs
Draupadi Behera and Others RESPONDENT

Date of Decision : 28-10-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 11QD

Citation : (1987) 1 ACC 85

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

Bench : Single Bench

Judgement

P.C. Misra, J.—This is an appeal u/s 11Q-D of the Motor Vehicles Act in which the United India Insurance Company has challenged its liability to pay the compensation awarded.

2. One Kasinath Behera of Kalupada, P.S. Purusottampur died in a motor accident on 30-3-1982 near village Palia, Chatrapur on the National High Way No. 5. His widow and mother claimed compensation before the Second Motor Accident Claims Tribunal, Berhampur against the owner and the driver who caused the accident. Initially the name of the Insurance Company was not disclosed in the application filed u/s 110-A of the Act. It was merely against column No. 16 which is the relevant place mentioning the same that the address of the Insurance Company will be disclosed after the appearance of the owner in the case. The owner, however, did not appear to contest the claim of the claimants. An application was filed by the claimants praying to amend the application by impleading M/s United India Insurance Company Ltd. represented by the Divisional Manager, Cuttack as Opp. party No. 3 which was allowed by the trial court. It is the Insurance Company who alone filed a written statement denying its liability and contested the case. The learned Claims Tribunal passed an award of Rs. 27,000/- in favour of the two claimants apportioning the same between them and also allowed interest @ 6% per annum from the date of application till the realisation of the amount.

3. In this appeal the Insurance Company has taken a ground that the vehicle

which was involved in the accident was not insured with this Insurance Company and that it was insured with the Oriental Fire & General Insurance Company Ltd., (Vijayawada Branch) in insurance policy No. 41420/301/MV/78 and the said insurance was valid till 3-2-1983 covering the date of accident. It was, therefore, contended that the appellant Insurance Company has no liability whatsoever to pay the compensation, awarded.

4. Mr. Sinha, learned Counsel for the appellant laid stress on the fact that the original application, the copy of which was served on the Insurance Company did not contain the name of the Insurance Company far less the policy number and other details from which appellant company could trace out as to whether the vehicle in question was insured with them. He also invited my attention to the written statement where a specific plea has been taken that the claimants should be put to strict proof that the vehicle was validly insured with the appellant company and that the policy was subsisting on the date of accident. The application dated 13-12-1983 sworn on 29-12-1983 applying for impletion of the appellant Insurance Company no doubt gave a policy number different from the one now stated in the memo of appeal by the appellant, but nothing was produced in the trial court in order to prove that the vehicle in question was insured with the appellant company. As a matter of fact, repeated grievances have been made before the Tribunal by the appellant to direct the claimants to furnish the details of the policy to trace out as to whether the vehicle was insured with the appellant company. On 19-7-1984, when the witnesses were examined on behalf of the claimants and their evidence was closed, an application was filed by the appellant company praying for a direction to the claimants to supply the insurance particulars which prayer was allowed and the order-sheet shows that the insurance policy number was supplied. But thereafter, the court adjourned the matter to 27-7-1984 requiring the insurance company to adduce evidence if they so choose within the short time granted. As argued by Mr. Sinha, it was not possible for the insurance company to trace out the necessary details for establishing that the vehicle was not at all insured with the appellant company. The court, however, after quantifying the compensation payable to the claimants, on a finding that the accident was caused due to rash and negligent driving of the vehicle in question has saddled the liability of paying compensation on the appellant insurance company, apparently without recording a finding as to whether the vehicle was insured with the appellant company.

5. As rightly contended by Mr. P. Roy, appearing for the respondents, Section 110-B of the Motor Vehicles Act requires that on receipt of the application for compensation made u/s 110-A of the Act, the Claims Tribunal shall hold an enquiry into the claim and determine the amount of compensation payable to the claimants and also enquire into the liability of the Insurance Company with which the vehicle involved in the accident was insured. Before the liability of the Insurance Company is fixed, the court is obliged to find out if the vehicle was insured with the Insurance Company and what were the terms of the policy if any. In this particular case the name of the appellant company was revealed at a

late stage without incorporating the other insurance particulars in the application itself. The Insurance Company operating in this country has several branches throughout the country and unless necessary particulars are disclosed it is impossible for any Insurance Company to trace out the policy number or the other necessary details relevant for its purpose. In this case neither the claimants disclosed the particulars nor did the court while adjudicating the application u/s 110-A of the Act made any enquiry as to whether the vehicle involved in the accident was insured with the Insurance Company impleaded as a party in the case. It may also be mentioned that none of the witnesses examined whispered a single word as to with whom the vehicle involved in the accident was insured. Thus, there was no material whatsoever on record for saddling the appellant Insurance Company with the liability to pay the compensation to the claimants.

6. Mr. Roy appearing for the respondents submitted that the owner of the vehicle has chosen not to appear and contest the case before the Tribunal and the compensation having been determined the question as to the amount of compensation and the liability of the owner can in no event be reconsidered. All the same his submission is that the claimants are rustic people and it was not expected of them to gather the correct particulars necessary for the purpose of binding the Insurance Company with whom the vehicle involved in the accident was insured. With the analogy of the provision of the Order 1 Rule 7 of the C.P.C. his submission is that in the event the claimants were in doubt as to which of the Insurance Company is liable to pay the compensation the same can be determined by the Tribunal. In this case, the appellant in the memo of appeal has alleged that the vehicle in question was insured with the Oriental Fire & General Insurance Company Ltd. (Vijayawada Branch) and that the appellant Company is not liable in any way. It would, therefore, be appropriate to remand the matter to the Tribunal for a determination of the limited question as to if any or which of the above two Insurance Company, namely, the appellant company and the Oriental Fire & General Insurance Company Ltd. (Vijayawada Branch) is liable to cover the liability of the owner. In the circumstances, the operative portion of the order directing the Insurance Company-appellant to pay the compensation is set aside and the case is remanded to the Tribunal subject to the observation made above.

7. The Tribunal after receipt of the record shall issue notice to the Oriental Fire & General Insurance Company Ltd., (Vijayawada Branch) and after the notice is made sufficient, dispose of the question as referred to earlier within two months thereafter. The appellant as well as the respondents should appear before the Tribunal on 17-11-1986.

8. There will be no order as to costs of this appeal.