

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.234 of 2003

United India Insurance Company Limited ***Appellant***

Ms. R. Pati, Advocate

-versus-

Sri Madan Mohan Panda and others ***Respondents***

Mr. P.K. Swain, Advocate for Respondent No.1

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
14.09.2022**

Order No.

20.

1. Heard Ms. R. Pati, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Swain, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 01.10.2002 of learned 1st M.A.C.T., Balasore in Claim Misc. Case No.309(C) of 1995 wherein compensation to the tune of Rs.40,345/- has been granted to the claimant on account of injury sustained by him in the motor vehicular accident dated 7.5.1995.

3. The main dispute raised by the Appellant is that the offending motorcycle bearing Registration No.ORB-3347 was not insured with the Appellant-Insurance Company on the date of accident. In this regard additional evidence adduced by the Appellant was

admitted on record by order dated 28.7.2022 of this Court. On that date, Mr. R.K. Nayak, learned counsel appearing for the Respondent Nos.2 & 3, who are the owner and driver of the offending vehicle, submitted about possession of the original insurance policy certificate. Thus he was directed to produce the same before this Court and further, it was made clear that failing to produce the insurance policy certificate would render adverse inference against the owner. Today on repeated call, no one appears for Respondent Nos.2 & 3. Therefore this Court is bound to take adverse view against the owner-Respondent and held that no such original insurance policy certificate is with the owner.

4. Now coming to the additional evidence adduced by the Appellant in support of their contention that the vehicle in question was not validly insured on the date of accident, it is seen that the insurer has produced copies of their address directory for Balasore region to suggest the code number of such policies issued by Balasore Branch. In other words, it becomes clear that the alleged copy of the policy as seized by the Police was never issued by the Appellant-Insurance Company and thus the insurer is bound to be exonerated from the liability.

5. In the result, the appeal is allowed and the Appellant-Insurance Company is exempted from the liability saddled upon it and the direction of the Tribunal to the contrary as contained in the impugned judgment is set aside.

6. Further, the claimant is at liberty to realize the entire compensation amount from the owner.

7. The appeal is disposed of as allowed.

8. The statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

9. The copy of the WS filed by Ms. R.Pati, learned counsel for the Appellant is kept on record.

(*B.P. Routray*)
Judge

