IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4700 of 2019
(Through hybrid mode)

National Insurance Company Limited and another	....	***Petitioners***

Ms. N. Mohanty, Advocate

-versus-

G. Dilesu Patra and others	....	***Opposite Parties***

Mr. R. K. Sahu, Advocate for O.P.1

Mr. A. R. Sethy, Advocate for O.P.2

CORAM: JUSTICE ARINDAM SINHA

ORDER
12.08.2022

Order No.

03. **1.** Ms. Mohanty, learned advocate appears on behalf of petitioner-insurance company. She submits, impugned is award dated 7th February, 2018 made by the Permanent Lok Adalat (PLA). In spite of her client having repudiated the claim on basis of the driver not holding a valid licence, the PLA proceeded to adjudicate and made award.

2. She submits, the vehicle being driven was a Tata Magic. It was carrying passengers. The driver had licence permitting him to drive transport vehicle M/HMV. On query from Court regarding judgment of the Supreme Court, referred in the award and particularly **judgment dated 3rd July, 2017** in **Mukund Dewangan vs. Oriental Insurance Company Limited** passed in **Civil Appeal no.5826 of 2011**, she submits, said judgment came after the repudiation.

3. Mr. R. K. Sahu, learned advocate appears on behalf of opposite party no.1 while Mr. A. R. Sethy, learned advocate, for opposite party no.2.

4. Exhibit-B before the PLA was the driving licence. It authorized the driver to drive light motor vehicle(LMV) (non-transport), transport vehicle (Medium and Heavy Motor Vehicle) and motor cycle with gear. Exhibit-C before the PLA was the permit contract carriage in respect of the vehicle. Spot survey said, inter alia, unladen weight of the vehicle is 1000 Kgs. and registered laden weight 1600Kgs. That points to the vehicle being LMV. It further appears that the vehicle, while carrying passengers and driven by the driver holding aforesaid licence, suffered a mechanical failure, of the left hand side (LHS) front spring leaf breaking, causing the vehicle veer off the road and over turn, sustaining damage, giving rise to the claim.

5. Court is satisfied that the vehicle is a light motor vehicle (LMV) going by particulars of unladen and laden weight given in the spot survey report. The dispute raised by petitioner was in repudiating the claim on basis of the driver holding licence to drive LMV non-transport vehicle. The vehicle in question had a contract carriage permit. That appears to be different from category transport or non-transport.

6. The Supreme Court in **Mukund Dewangan** (Supra) answered the question on whether a driver, who is having a licence to drive LMV and is driving transport vehicle of that class is required additionally to obtain an endorsement to drive a transport vehicle. The Court answered in the negative. The PLA relying on the judgment rejected contention put forward by the insurance company.

7. Law declared appears to be that no separate endorsement was necessary for the driver to drive the contract carriage of LMV class since he was holding licence to drive LMV non-transport. So far as the declaration of law on whether it can cover the incident happened before date of the judgment is concerned, the Supreme Court also declared in **Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited**, reported in (**2008**) **14 SCC 171** that judicial decision acts retrospectively on subsequent discovery of the correct principle of law.

8. Without prejudice, Ms. Mohanty submits further, final survey assessed damage cost at Rs.20,000/- (Rupees twenty thousand only) but by impugned award the PLA directed payment of Rs.79,983/- (Rupees seventy-nine thousand nine hundred eighty three only) along with interest and cost. This could not have been done. She relies on judgment of the Supreme Court in **United India Insurance Company Limited Vs. Roshan Lal Oil Mils Limited**, reported in (**2000**) **10 SCC 19** paragraph 7, reproduced below.

> *"7. The appellant had appointed joint surveyors in terms of Section 64-UM(2) of the Insurance Act, 1938. Their report has been placed on the record in which a detailed account of the factors on the basis of which the joint surveyors had come to the conclusion that there was no loss or damage caused on account of fire, was given and it was on this basis that the claim was not found entertainable. This is an important document which was*

placed before the Commission but the Commission, curiously, has not considered the report. Since the claim of the respondent was repudiated by the appellant on the basis of the joint survey report, the Commission was not justified in awarding the insurance amount to the respondent without adverting itself to the contents of the joint survey report specially the factors enumerated therein. In our opinion, non-consideration of this important document has resulted in serious miscarriage of justice and vitiates the judgment passed by the Commission. The case has, therefore, to be sent back to the Commission for a fresh hearing."

9. Regarding award on direction to pay, inter alia, Rs.79,983/-(Rupees seventy nine thousand nine hundred eighty three only), it appears that though the final survey assessed the damage to extent of Rs.20,000/- (Rupees twenty thousand only), the PLA found the investigator had certified in its spot verification report (Exhibit-A) that repairs undertaken by M/s. S.S. Automobiles, hence satisfactory. In the circumstances, the PLA had no reason to doubt bill dated 17th June, 2014 raised by the garage/workshop, for Rs.64,000/- (Rupees sixty four thousand), another person for repairing seats at Rs.8,500/- (Rupees eight thousand five hundred only) and other incidental expenditure sustained at aggregate Rs.2,463/-(Rupees two thousand four hundred sixty three only) adding up to the figure Rs.79,983/-(Rupee seventy nine thousand nine hundred eighty three only). The PLA disregarded the estimate of repair cost at Rs.81,220/- (Rupees eighty one thousand two hundred twenty only) to award aforesaid sum of Rs.79,983/-(Rupees seventy nine thousand nine hundred eighty three only) on verification of the bills.

10. In **United India Insurance Company Limited Vs. Roshan Lal Oil Mils Limited** (supra) the Commission had directed payment on the policy disregarding the joint survey report saying that there was no damage caused. The Supreme Court found non-consideration of the joint survey report, to set aside judgment of the Commission. Said case is distinguishable on facts inasmuch as the final survey report assessing damage at Rs. 20,000/- (Rupees twenty thousand only) was considered by the PLA against, the surveyor also saying that the repair job was satisfactory and on verification of the bills. On the happening of contingency insured against, where there is necessity for survey, the survey is for purpose of reporting on whether or not there is damage and, if so, to what extent. Particulars of damage caused should be the survey report. The surveyor is the expert to assess the extent of damage, not the cost of it. The cost of repairs are specifically provided in the schedule of rates for spares and labour, maintained by the workshops. Once the survey report reveals there has been damage sustained, there is then the next step of causing repairs, as covered by the policy. Commenting on costs of repairs is not in the domain of the surveyor. The surveyor, on pain of repetition, is to report on whether or not damage has been caused and, if so, to what extent and with particulars of it. Any further comment on the cost of repairs of damage sustained is additional information that cannot stand in the face of actual costs incurred for the repair.

HIGH COURT ORISSA

11. In view of aforesaid no merit is found in the writ petition. It is dismissed.

(Arindam Sinha)
Judge

Prasant