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IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.887 of 2007

Divisional Manager, The Oriental Insurance Company Ltd., Misson Road, Cuttack .... ***Appellant***

Mr. N.B. Das, Advocate

-versus-

Smt. Subasha Naik and Others .... ***Respondents***

Mr. Abhaya Kumar Parida, counsel for Respondents 1 & 3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
12.12.2022

Order No.

12. 1. The matter is taken up through hybrid mode.

2. Heard Mr. N.B. Das, learned counsel for the insurer –Appellant and Mr. A.K. Parida, learned counsel for claimant – Respondents 1 & 3.

3. Present appeal by the insurer is against the impugned judgment dated 4th July, 2007 of the learned 1st MACT, Keonjhar passed in MAC No.24 of 1996, wherein compensation to the tune of Rs.1,72,700/- has been granted on account of death of deceased Bharat in the motor vehicular accident dated 13th July, 1995.

4. Mr. Das submits that the offending vehicle, i.e. dumper bearing registration number ORJ 6219 did not have a valid insurance policy and its driver did not possess a valid driving licence on the date of accident.

5. Upon perusal of the impugned judgment it reveals that a copy of the insurance policy was produced from the side of the claimants and marked as Ext.5. The insurance company did not dispute the same before the tribunal nor produced any material before this court to dispute said copy of insurance policy under Ext.5. Therefore the contention raised by Mr. Das at this stage to dispute the validity of the insurance policy in respect of the offending vehicle on the date of accident is without merit and hence rejected.

6. As per the finding of the tribunal, the driving licence produced by the accused driver, namely Kalusingh Purty is found a fake one. So taking note of Ext.A and Ext.B as adduced from the side of the insurer the tribunal while holding that the driver had a fake lincense, has further opined that the incompetency of the accused to drive the vehicle was never questioned by the insurer and no evidence was also adduced in that regard.

7. In the case of ***National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297*** the Hon'ble Supreme Court has held as follows:-

> "110. (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty

> of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

8. Relying on the decision rendered in the case of ***Swaran Singh*** (supra), the Supreme Court further in the case of ***Lal Chand v. Oriental Insurance Co. Ltd., (2006) 7 SCC 318,*** held that, the insurer has the onus to prove that the owner of the vehicle was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant point of time.

9. Again in the case of ***Nirmala Kothari vs. United India Insurance Company Limited, (2020) 4 SCC 49*** it is held by Supreme Court that the owner while hiring a driver is though expected to verify that the driver has a driving licence, if the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise and if the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence, then there would be no breach of Section 149(2)(a)(ii) of the MV Act and the insurance company is liable under the policy to indemnify the compensation.

10. In the case of ***Rishi Pal Singh vs- New India Assurance Co. Ltd, Civil Appeal No.4919 of 2022 (decided on 26 July 2022)***, the Supreme Court set aside the liberty given to the Insurance Company to recover the amount from the owner by holding that, once the owner

is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver.

11. So, keeping in view the principles decided in afore-stated cases, the approach of the tribunal to saddle the liability on the insurer cannot be faulted with. It is true that no material is produced on record to doubt competency of the accused driver. As such, no merit is seen in the submission of Mr. Das to warrant any interference in the impugned award. It is needless to say that no dispute is raised with regard to quantification of compensation amount which otherwise also appears reasonable and just. However, the rate of interest is reduced to 6% from 9%.

12. In the result, the appeal is disposed of with a direction to the Appellant – insurer to deposit the entire compensation amount of Rs.1,72,700/- (One lakh seventy two thousand seven hundred) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, within a period of three months from today; where-after the same shall be disbursed in favour of the claimant – Respondents 1 & 3, namely Smt. Subasha Naik and Kumari Sangeeta Naik on such terms and proportion to be decided by the learned tribunal.

13. It is submitted by Mr. Das that in terms of direction of this court dated 12th May, 2022 the entire award amount along with interest has been deposited before this court.

14. The Appellant is permitted to take back the same and deposit before the tribunal within the stipulated period stated above.

15. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

16. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda