IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.112 of 2011

Jadumani Parida and others .... ***Appellants***
Mr. K. Das, Advocate

-versus-

D. Venkateswar Rao and others .... ***Respondents***
Mr. B. Dasmohapatra, Advocate for Respondent No.3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
19.12.2022

Order No.
18.

1. Heard Mr. K. Das, learned counsel for the Appellants-claimants as well as Mr. B. Dasmohapatra, learned counsel for the Respondent No.3-Insurance Company.

2. Present appeal by the claimants is directed against the common judgment dated 13.09.2010 of learned 2nd M.A.C.T., Cuttack in Misc. Case No.940 of 1995, wherein compensation to the tune of Rs.71,800/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.2.11.1995 on account of death of the deceased in the motor vehicular accident dated 6.11.1994.

3. Learned Tribunal while directing for payment of compensation, discharged the Insurance Company of the liability stating that the policy number mentioned by the claimants is not in respect of the offending vehicle and further, there is violation of policy condition in absence of indication of D.L. Number.

4. The claimants have challenged such direction of the learned Tribunal exonerating the insurer from the liability.

5. Upon hearing both parties and perusal of the impugned judgment, it is seen that no evidence has been adduced from the side of the Insurance Company. The owner of the Truck bearing Registration No.AEP-2859 did not come to contest the claim. The Police upon completion of investigation submitted charge-sheet against the driver of the offending Truck for commission of offences under Section 279/304-A, I.P.C. and mentioned that the offending Truck was validly insured on the date of accident. The MVI was also requested by the Police to submit a report of enquiry. Ext.5 is the said report of the MVI, which further discloses that the offending Truck was insured with valid Insurance Policy No.150701/31/2104309/99. Accordingly, the claimants averred in their claim application about the same policy number as mentioned in the Police report as well as the MVI report. The Insurance Company filed their WS stating that the said policy number as mentioned in the claim application is in respect of a motorcycle and not the offending vehicle. But the Insurance Company never said that the offending vehicle was not validly insured with the claim on the date of accident nor did adduce any positive evidence to support their stand.

6. It is well-known that the Insurance Company must by adducing positive evidence deny their liability in the case on non-availability of the insurance policy. The claimants cannot be expected to produce more material than what is brought in the police investigation report with regard to validity of the policy.

As stated earlier, the Insurance Company did not adduce any evidence to that effect either by producing the concerned register or by any other material. But learned Tribunal said that the MVI is not authorized to mention about validity of insurance policy and any such opinion of the MVI recorded in his report cannot satisfy the validity of the insurance policy. It is true that the report of the MVI to mention validity of policy would not satisfy the required standard. But it gives a prima facie support to the contention of the claimants regarding validity of the insurance policy. When the owner did not come to contest and the insurer did not adduce any evidence but simply deny its liability on the question of validity of the insurance policy, keeping in view the beneficial intention of the legislation, a prima facie presumption has to be taken in favour of the claimants. Accordingly, in absence of any positive evidence adduced by the insurer in support of denial of valid insurance policy, this Court holds in favour of the claimants that the offending vehicle had a valid insurance policy on the date of accident.

7. Next, what is mentioned about D.L. Number of the offending Truck in the impugned judgment at paragraph 11 (page 7) is incomprehensive. The same is not found related to the context where it is mentioned. Even if, it is understood that no D.L. number of the driver of the Truck has been mentioned, then also the same would not exempt the insurer from its liability. The prima facie presumption that the driver had a valid driving license is evident from the submission of the charge-sheet, since it alleges for the offences under the I.P.C. only and does not disclose any offence under the M.V. Act.

8. In view of the discussions made above, the insurer is held liable to indemnify the compensation amount and nevertheless, since the owner does not appear to contest the claim application and remains ex-parte, the insurer is granted right of recovery of the compensation amount from the owner in accordance with law.

9. Admittedly no dispute is raised with regard to quantification of the compensation amount by either party.

10. In the result, the Insurance Company is directed to deposit the entire compensation of Rs.71,800/- (rupees seventy-one thousand eight hundred) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 2.11.1995 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

11. The MACA is disposed of with aforesaid directions.

12. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik