Item-28. 24-04-2025

sg

Ct. 8

FMA 1368 of 2024

United India Insurance Company Limited
Vs.
Tufani Ram @ Chaudhury & Ors.

Mrs. Sucharita Pal
… for the appellant

Mr. L. M. Ghosh
…for the respondent no.1

1. This matter has come for admission of the appeal.
2. The Commissioner, 1st Court, Employees' Compensation, West Bengal, in Claim Case No. 39 of 2012, has allowed the compensation scheme based on oral and documentary evidence. The Tribunal, on the basis of the documentary evidence, has arrived at a definite finding that at the time of accident, the driver of the victim vehicle has valid driving licence. Exhibit 12 and Exhibit 13 are sufficient to consider that at the time of accident, the deceased was 20 years old and died out of RTA.
3. During the admission of the appeal, it has been argued that the victim did not have the valid driving licence and that Rule 9(3) of the Central Motor Vehicles Rules, 1989 makes it clear that the driving licence of a driver carrying hazardous goods must mandatorily bear an endorsement to drive such type of a vehicle. Moreover, the owner had knowingly violated the policy conditions by allowing his driver to drive involved Oil Tanker with an invalid driver licence.

4. These points were never urged before the Court of Commissioner, Employees' Compensation, West Bengal.

5. Moreover, the learned Counsel for the respondent as has relied upon a decision of the Madras High Court in the matter of ***A. Yesudhas vs. M.C.A. Subramaniam & Anr.*** reported in ***2020 ACJ 150*** to show that the provision of the Motor Vehicles Act may not have any application in considering the scheme under the Workmen's Compensation Act. In ***A. Yesudhas*** (supra), the same issue came up for consideration in which the judgment in ***National Insurance Co. Ltd. v. Panibudi Chulia, 2007 ACJ 164 (Orissa)*** was relied upon in the said decision in paragraph 8 which has been categorically stated as follows:

   "(8)… In paras 21 an 34 of the judgment, the Apex Court having laid down that under the 1988 Act if the driver of the vehicle has no licence, the insurer shall not be liable to indemnify the insured and that in a given situation the Accidents Claims Tribunal having regard to its rights and liabilities vis-à-vis the third person may direct the insurance company to meet the liabilities of the insured permitting it to recover the same from the insured and that the 1923 Act does not envisage such a situation, we are of the view that the decision rendered in the case of Oriental Insurance Co. Ltd. v. Akadasi Das, 96 (2003) CLT 126, has not been correctly decided."

6. In view of the fact that the appeal does not involve any substantial questions of law and facts, the finding arrived

at by the learned Tribunal does not suffer from perversity.

7. In view of the aforesaid, the appeal is dismissed at the admission stage.

(Soumen Sen, J.)

(Smita Das De, J.)