Branch Manager, United India Insurance Co. Ltd. Vs. Mohan Chandra Patnaik and anr.

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Court : Orissa

Decided On : Sep-27-2002

Reported in : I(2003)ACC12; 2004ACJ382; 2003(I)OLR86

Judge : A.S. Naidu, J.

Acts : Motor Vehicles Act, 1988 - Sections 147(3), 149(2) and 149(4)

Appeal No. : M.A. No. 248 of 1996

Appellant : Branch Manager, United India Insurance Co. Ltd.

Respondent : Mohan Chandra Patnaik and anr.

Advocate for Def. : P.C. Mishra, A.K. Mohapatra, B.S. Misra, D. Sethi, B.N. Rath and M.R. Nanda, Advs.

Advocate for Pet/Ap. : Ajaya Kumar Mohanty, Adv.

Judgement :

A.S. Naidu, J.

1. This appeal has been filed under Section 173 of Motor Vehicles Act, 1988, by the insurer, challenging the judgment and award passed in M.A.C. No. 281 of 1993 (79 of 1993) by the Second Motor Accidents Claims Tribunal (SD), Berhampur. The sole grievance of insurance company is that the offending Canter bus bearing registration No. OR 07-7808 of which respondent No. 2 was the owner, did not possess a route permit to travel on the route on which it was proceeding. It is submitted by Mr. A.K. Mohanty, learned counsel for the appellant insurance company that in the absence of a valid route permit, which is a condition of the insurance policy, the insurance company cannot be held liable to pay the compensation amount.

2. Admittedly on 15.1.1993 the offending vehicle caused the accident, as a result of which, the claimant and other occupants of the vehicle sustained serious injuries. Subsequently, claimant filed a claim case demanding compensation of Rs. 1,00,000. Learned Claims Tribunal on the basis of the evidence, both oral and documentary, awarded compensation of Rs. 47,800 in favour of the claimant with interest at the rate of 9 per cent per annum from the date of application, i.e., 18.2.1993 till the date of realisation. The said award, as stated earlier, is impugned in this appeal.

3. In course of hearing, Mr. Mohanty, learned counsel for the appellant, has filed a petition under Order 41, Rule 27 of the Code of Civil Procedure praying to accept the certificate dated 24.11.1994 said to have been issued by the Regional Transport Officer, Ganjam, Berhampur indicating therein that on verification of the office records, it was found that no permit was issued in favour of OR 07-7808 (minibus) and the permit produced is a forged one. It is submitted by Mr. Mohanty that in spite of diligent efforts, the company could not procure the said certificate and they were not in a position to file the same in course of hearing of the matter before the learned Tribunal. It is further submitted that the law is well settled that any document in

support of the case to prove forgery can be brought to the notice of the court at any stage of the proceeding and taking a liberal view, the document be accepted as additional evidence.

4. Mr. B.N. Rath, learned counsel for the owner, respondent No. 2, has filed an objection to the said petition. According to Mr. Rath, there being no averment to the effect that the vehicle in question did not possess valid route permit, the document sought to be introduced as additional evidence cannot be accepted. The law is well settled that no evidence can be adduced beyond the pleadings. In support of his submission, Mr. Rath relied on a decision of this court in Oriental Insurance Co. Ltd. v. Abdul Sahid Khan, 1995 ACJ 624 (Orissa) and decision of the Apex Court in the case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., (1979) 3 SCC 371.

In Britannia Biscuit's case (supra), the Supreme Court has held that it is not open for a quasi-judicial authority to decide a lis on an extraneous consideration. Evidence is led to establish an allegation made by a party and if there is no pleading raising a contention, there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side had no notice of it and if entertained, it would tantamount to granting an unfair advantage to the first mentioned party. Similarly, in Oriental Insurance Co. Ltd. 's case (supra), this court has also held that in absence of pleadings and as the evidence produced was not satisfactory, the contention raised by the insurance company cannot be considered.

On the touchstone of the aforesaid decisions, I carefully perused the inter se pleadings. It is well-known fact that strict proof of pleadings is not adhered to while contesting the claim case before the learned Tribunal. But then, no case can proceed without proper pleadings as has been observed by the Apex Court inasmuch as in absence of pleadings, the other side cannot get opportunity to countenance the allegations put forth. It appears on scrutiny of the written statement filed on behalf of the insurance company that in para 3, it has been averred as follows:

'The respondent No. 1 did not produce the fitness certificate and route permit of the vehicle OR 07-7808 minibus, the driving licence of the driver of the said vehicle and registration certificate, etc., for verification and scrutiny by the respondent company taking defences open to it under Section 149, Motor Vehicles Act.'

While denying the allegations made in the claim petition, it was also averred by the insurance company in its written statement that the claimant was put to strict proof of the same.

5. Though the owner, respondent No. 2, has vehemently challenged the prayer to accept the certificate issued by Registering Authority certifying that route permit is a forged one as additional evidence, he has neither entered appearance before the Tribunal nor any document was filed by him before it. As a matter of fact, the averments made by the insurance company were not traversed by the owner and thus, there was no occasion for the insurance company to adduce any evidence regarding non-existence of a valid route permit. It is submitted that the owner had not received notice from the Tribunal. On perusal of the records it appears that the notice was duly served on the owner, respondent No. 2, who chose not to contest.

Mr. B.N. Rath, learned counsel further submitted that non-possession of a valid route permit cannot vitiate the terms of the policy and as such, the argument made by Mr. Mohanty that the insurance company is not liable, is not correct. But then, at this juncture, I propose not to enter into the arena of the said controversy in view of the nature of the order proposed to be made.

6. The learned counsel for the claimant-respondent No. 1 supported the judgment passed by the learned Tribunal and submitted that claimant had undergone pain and suffering due to the injuries sustained by him in the accident which occurred in the year 1993 and as a result of the accident and the disability caused, he has been put to insurmountable hardship and passing his days with stringent financial difficulties. It is vehemently submitted that the insurance company should be directed to pay the amount awarded as the insurer is statutorily liable to satisfy the judgment and the award in consonance with Section 149 of the Motor Vehicles Act.

7. Keeping in view the principle laid down in Section 149(4) of the Motor Vehicles Act, 1988 interpreted by this court in the case of Powmex Steel Ltd. v. Gopal Krishna Chand, 2001 ACJ 1942 (Orissa), as the plea taken by the insurer relates to the question of breach of a term of the policy, I feel that the insurance company should be directed to pay the claimant and if ultimately it is found that the insurance company is not liable, necessary direction can be issued for realisation of the amount from the owner.

8. After hearing learned counsel for the parties, and after perusing the evidence, both oral and documentary, in the light of the observations made by the Supreme Court in the case of New India Assurance Co. Ltd. v. Kamla, 2001 ACJ 843 (SC) and the decision of this court in Powmex Steel Ltd., 2001 ACJ 1942 (Orissa), I have no hesitation to hold that the insurer is liable to pay the compensation amount to the third party on account of the certificate of insurance issued by it. If there is breach of any of the terms of the insurance policy, it is open to the insurer to recover the amount paid by it from the owner. It is no longer res integra that if any term of the insurance policy is violated, the insurance company is not liable to pay the compensation. But then, the third party claimant who has undergone hardship, pain and suffering cannot wait till the dispute regarding breach of the policy is determined. In the light of the aforesaid decision, I am inclined to uphold the compensation awarded by the Tribunal and direct that the insurance company shall disburse the compensation amount to the claimant-respondent No. 1 within a period of two months from today with interest accrued thereon as per the order of the Tribunal, failing which it would be open for the claimant to realise the amount with interest at the rate of 12 per cent per annum by due process of law. I further direct that M.A.C. No. 281 of 1993 (79 of 1993) shall be remitted back to the Second Motor Accidents Claims Tribunal (SD), Berhampur to decide the question as to whether the owner possessed a valid route permit to travel on the route on which the offending vehicle was travelling on the date of accident, i.e., 15.1.1993. It is made clear that the said aspect of the dispute shall be decided inter se between insurer and the owner and the claimant has no role to play. No notice need be issued to claimant nor his presence in court is necessary. Opportunity shall be given to both the parties to file their written statement/additional written statement bringing further facts to the notice of the Tribunal for a proper and effectual adjudication of the issue. It shall also be necessary for the Tribunal to decide as to whether not possessing a valid route permit on the route where the accident took place is a breach of condition of the policy thereby exonerating the insurance company from paying the compensation. In case it is held that the owner did not possess a valid route permit and the insurer is not liable to pay the compensation amount on that ground, it would be open for the insurer to realise the entire amount paid to claimant, from the owner with interest in accordance with law. In view of the fact that the claim case relates to the year 1993, I direct that the entire process shall be completed within a period of one year. The parties, i.e., the appellant and respondent No. 2 (owner) undertake to co-operate with the Tribunal.

The lower court record be sent back immediately.

With the observations aforesaid, the misc. appeal is disposed of. No costs.