

(2010) 11 JH CK 0014
Jharkhand High Court
Case No: S.A. No. 283 of 2007

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Ritesh Prasad Sen

RESPONDENT

Date of Decision: Nov. 25, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 397

Citation: AIR 2011 Jhar 80 : (2011) 2 JCR 434

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Alok Lal, for the Appellant; M.K. Dey and B.V. Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Narendra Nath Tiwari, J.

Insurance Company-Defendant is the Appellant in this appeal. Both the courts have recorded their findings and passed judgments and decrees fixing liability against the Appellant.

2. The Plaintiff had filed money suit in the trial court praying for a decree of Rs. 4,15,000/- together with pendentelite and future interest @ 18 per annum.

3. The Plaintiff's case was that his Mahendra Jeep bearing No. JH-06A-0656, make 2001 was registered in the office of District Transport Officer, Chaibasa and was insured with the Defendant-company as a private vehicle for a value of Rs. 4,15,000/-. The vehicle was being used by the Plaintiff for his own personal purpose and was being driven by his driver-Mr. Tabrej Alam with valid driving licence. On 5.3.2002, the said vehicle was sent with the driver to bring the family of his sister from Ranchi. While the vehicle was to leave for Chaibasa, two miscreants stopped the vehicle and forcibly boarded in the vehicle and threatened the driver on the

point of revolver and directed him to drive towards Chakradharpur. When the vehicles reached Chakradharpur, three more persons, who were waiting for them, also boarded in the vehicle and directed the driver to drive the vehicle towards Ranchi. When the driver was coming towards Ranchi, the miscreants put some intoxicating substance in his nose. The driver lost his sense and control over the vehicle. The driver was also assaulted by the miscreants, who fled away with the vehicle leaving the driver on road side in unconscious condition. When the driver regained consciousness, he reported the incidence to the local police, but they refused to take his report saying that the matter is of Keraikela police station. The driver then reported the incidence to Keraikela police station. His report was recorded in the police station, Keraikela. Further case of the Plaintiff was that even at that time, the driver had not regained full consciousness and he was not able to properly convey the entire incidence. However, the police on the said information registered a case u/s 397 of Indian Penal Code. The driver then returned Chaibasa where he was treated by the doctor. When he fully recovered and gained consciousness, he filed a petition before the S.D.J.M., Porahat praying to record his statement u/s 164 Code of Criminal Procedure, but the same was rejected. Informant again filed a petition praying for forwarding a copy of his statement to the Officer in Charge, Keraikela on 17.8.2002 and the same was allowed. The police thereafter again recorded the statement of driver in the case diary. On that basis, the Plaintiff lodged a claim before the Defendant-Insurance Company requesting to pay the amount as per the Insurance Policy. The Insurance Company appointed Sri Keshav Prasad as an Investigator. The investigator recorded the statement and submitted a report supporting the Plaintiffs claim, but even thereafter amount was not paid by the Defendant. The Plaintiff claimed that he is entitled to get the amount covered by the Insurance.

4. The Defendant appeared and contested the suit denying its liability almost on technical ground and also on the ground that the suit was premature as investigation was still in progress till the date of filing the suit. The Defendant also took a ground that there was violation of terms of the Insurance Policy as the vehicle was being used for hire.

5. Both the parties adduced their evidences oral and documentary. Learned trial court after thorough discussion and appraisal of the evidences on record, came to the finding that the Plaintiff has not violated the terms and conditions of the Insurance Policy and there was no legal impediment in allowing the Plaintiff's claim. However, learned court on the basis of market price assessed on the date of loss decreed only a sum of Rs. 3,50,000/- against the Plaintiffs claim of Rs. 4,15,000/- and directed the Defendant to pay the said sum of Rs. 3,50,000/-with interest @ 6% P.A. from the date of decree till the date of realization.

6. Aggrieved by the said decree, the Defendant had preferred money appeal before the District Judge, Chaibasa being Money Appeal No. 06/2006.

7. Learned lower appellate court having heard the parties, independently scrutinized and discussed the facts and evidences on record and arrived at the conclusion that the Plaintiff was entitled to get the sum from the Defendant as decreed by the court and that there was no infirmity and illegality in the judgment and decree of learned trial court. Learned lower appellate court dismissed the appeal.

8. Assailing the decree of learned lower appellate court, learned Counsel for the Appellant submitted that the judgments and decrees of learned trial court as well as learned lower appellate court are not legal. The courts below have not properly appreciated the evidences on record particularly Exhibits-A & E, which are F.I.R. and the Surveyor's report respectively. Learned Counsel invited this Court to appraise the evidences and to see as to how the courts below have arrived at wrong conclusion on the basis of the said evidences. Learned Counsel submitted that the Insurance Company has got no total liability as has been held in the case of "Amalendu Sahu v. Oriental Insurance Co. Ltd.,. Learned Counsel referred to the said judgment of the Supreme Court reported in AIR 2010 SCW 2666.

9. I have heard learned Counsel and considered his submissions. I also perused the judgments of learned courts below. Learned trial court as well as learned lower appellate court have thoroughly and independently assessed and appraised the oral and documentary evidences including Exhibits-A & E and have come to the concurrent findings of fact that there was no violation of terms of Insurance Policy and that the Plaintiff has been able to establish his claim against the Insurance Company.

10. The said concurrent findings of fact are binding in second appeal. This Court cannot delve into appraisal of facts and evidences in its second appellate jurisdiction. Even if a third view is possible on appraisal of the evidences, the said ground taken by learned counsel for the Appellant is not tenable for the purpose of Second Appeal and the same does not give rise to any substantial question of law.

11. The decision of Hon"ble Supreme Court in Amalendu Sahu's case was on different facts. The liability of the Insurance Company to the extent of 50% claimed by complainant-owner was fixed on the Insurance Company even if there was breach of the terms and conditions of the policy. In the instant case there are clear findings of the courts below that there was no breach of terms and conditions. The said decision is, thus, not applicable to the facts of the instant case.

12. I, therefore, find no ground to entertain this appeal. This second appeal is, accordingly, dismissed.