

(2009) 11 JH CK 0043
Jharkhand High Court
Case No: None

Ajit Kumar Mohanty

APPELLANT

Vs

Papa Devi Mahali, Sanjay Mahali,
Puja Mahali and Oriental
Insurance Company Ltd.

RESPONDENT

Date of Decision: Nov. 18, 2009

Citation: (2011) ACJ 1081 : AIR 2010 Jhar 85 : (2011) 4 TAC 244

Hon'ble Judges: M.Y. Eqbal, J; Jaya Roy, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard the learned Counsel for the parties and perused the judgment and award passed by the tribunal, Jamshedpur.
2. The appellant -owner has challenged the judgment and award passed by the Additional District Judge, F.T.C. III-cum-Motor Vehicle Accident Claim Tribunal, Jamshedpur in Compensation Case No. - 66 of 2008. The tribunal passed the order and saddled the appellant with the liability to pay compensation after recording conclusive finding that the driver of the offending vehicle was not holding a valid driving license. From the record, it is evident that one Balaji Mahto was driven the vehicle. The finding recorded in paragraph-11 of the judgment passed by the tribunal is quoted here-in-below:
3. The insurance company in its rejoinder has claimed that owner of the offending vehicle bearing registration No. WB 20B 4400 had violated the terms and condition of the policy of insurance by allowing the vehicle to be driven by a person who did not possess valid driving license.

The applicants have affirmed that the offending vehicle was being driven at the relevant time by its driver namely Balaji Mahto. They have also affirmed that the offending vehicle belong to (O.P. No. 1) Ajit Kumar Mohanti and (O.P. No. 1) in his

rejoinder has admitted the fact that the offending vehicle belonged to him and was duly insured with the Oriental Insurance Company Ltd. (O.P. No. 2) under comprehensive policy No. 2351 of 2008 which is valid from 17.8.2007 to 16.8.2008. It further appears from the copy of the F.I.R. and the charge sheet pertaining to Musaboni P.S. case No. 21 of 2008 dated 6.5.2008 that the case was registered in respect of the accident involving the Tata Sumo bearing registration No. WB 20B 4400 against the driver of the vehicle and the investigation of the case by the police has confirmed that the offending vehicle at the relevant time was being driven by the accused Balaji Mahato. It appears from the rejoinder of the insurance company (O.P. No. 2) that the fact of insurance regarding the offending vehicle Tata Sumo bearing registration No. WB 20B 4400 has not specially been denied by it. It amounts that the factum of insurance of the vehicle under (O.P. No. 2) is admitted by (O.P. No. 2). Learned Counsel for the insurance company has submitted that driver of the offending vehicle was not holding driving license at the time of accident and therefore, the insurance company has no liability for payment of any compensation. He has filed Xerox copy of the judgment of Hon'ble High Court of Jharkhand dated 16.12.2008 passed in MA No. 141 of 2007 in which Their Lordship held that "if the driver is not holding driving license, the insurance company gets exonerated". Learned Counsel on behalf of the applicant has submitted that this rule of law relied on by the learned Counsel for the insurance has no application in the facts and circumstances of the case. He has submitted that in the rule of law relied on by the learned Counsel for the applicant, the deceased was not driver and as such the facts and circumstances of the instant case is altogether different from the facts and circumstances of the case law relied on by the learned Counsel for the insurance company. He has further submitted that in the instant case deceased was a third party and he relied on a case of Sardari & Ors v. Sushil Kumar and Ors. 2008 A.I.A.R (civil) 300 Supreme Court of India. I perused the case law relied on by both the parties. I found that the case law relied on by the learned Counsel for the applicant has also been discussed in the judgment as relied by the learned Counsel on behalf of the insurance company and after considering the case law relied on by the learned Counsel for the applicant, the Hon'ble High Court has been pleased to pass the judgment dated 16.12.2008 in MA No. 141 of 2007. In the light of above judgment of the Hon'ble High Court, I am of the view that there is no evidence on the record to establish that the owner has allowed the offending vehicle Tata Sumo being driven by the said driver who did not possess valid driving license which is clear violation of the terms and conditions of the policy of insurance and this issue is decided accordingly.

4. The appellant contested the case before the tribunal but there is even no whisper that the vehicle was being driven by the person other than Balaji Mahto in order to any evidence was led to that effect.

5. In that view of the matter, we do not find any reason to interfere with the finding recorded by the tribunal.

6. Having regard to the fact that the driver was not holding a valid driving license, the award passed by the tribunal against the appellant cannot be disturbed.
7. Accordingly, this appeal is dismissed.