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**IN THE HIGH COURT OF ORISSA, CUTTACK**

**W.P.(C) No.16183 of 2016**

The Divisional Manager,  
Oriental Insurance Co. Ltd.  
Bhubaneswar.

.....

Petitioner

-Versus-

Ghansyam Pradhan &  
another

.....

Opposite Parties

**For Petitioner**

:

**Mr. G.P. Dutta,  
Advocate**

**For Opposite Party No.1**

:

**Mr. B.K. Behera,  
Advocate**

**For Opposite Party No.2**

:

**None**

**CORAM: JUSTICE SANJAY KUMAR MISHRA**

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**Date of Hearing and Judgment: 14.11.2023**

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**S.K. MISHRA, J.**

1. This Writ Petition has been preferred by the Petitioner-Insurance Company against the order dated 02.07.2016 (Annexure-3) passed by the 3<sup>rd</sup> M.A.C.T.-Cum-Additional District Judge, Bhanjanagar, Ganjam in M.A.C. No.32 of 2010.

2. Vide the said order the Tribunal rejected the prayer made in the petition dated 02.07.2016 of the Petitioner-Insurance Company (O.P. No.2 in the Court below) to direct the Claimant (present Opposite Party No.1) to disclose the insurance policy details or to the owner of the offending vehicle (present Opposite Party No.2) to cause production of the Insurance Policy of the offending vehicle. However, the Court below, relying on Exhibits 3 and 3/a i.e. seizure list and zimanama respectively, rejected the said petition with an observation that the same is devoid of any merit.

3. On being noticed, both the Opposite Party No.1 (Claimant) so also the Opposite Party No.2 (Owner of the offending vehicle), though have rendered appearance, the learned Counsel for the Opposite Party No.2 is absent on call.

4. Since the Court below passed the impugned order relying on Exhibits 3 and 3/a i.e. seizure list and zimanama respectively, and the said documents have not been disclosed in the Writ Petition, in order to ascertain as to whether those two documents disclosed the policy details of the offending vehicle and the Tribunal was justified to pass the impugned order, a query being made by this Court, Mr. Dutta, learned Counsel for the Petitioner files photocopies of the certified copy of those two documents along with a Memo during hearing of this case.

5. Heard learned Counsel for the Petitioner and the Opposite Party No.1.

6. Mr. Dutta, learned Counsel for the Petitioner draws attention of this Court to the petition dated 02.07.2016 filed before the Court below as at Annexure-2 and submits, without inviting any objection, the Court below mechanically rejected the said petition on the very day. He further submits, a prayer was made before the Court below to direct the Petitioner (O.P.No.1 in the present case) to disclose the Insurance particulars of the offending vehicle or cause the owner of the offending vehicle to produce the Insurance Policy. However, while rejecting the said petition, the Court below did not deal with the alternate prayer made in the said petition in the impugned order. The said order has been passed only dealing with the prayer to direct the Petitioner to disclose the Insurance Policy of the offending vehicle. The Court below also was not justified to reject the said petition on the plea that Insurance Company and validation period have been mentioned in those two documents and such an observation is perverse.

7. That apart, relying on the judgment of this Court reported in 1992 (2) T.A.C. 576 (*New India Assurance Co. Ltd v. Ramani Bewa and others*) and drawing attention of this Court in paragraph no.4 of the said

judgment, Mr. Dutta submits, without disclosing the policy details of the offending vehicle, arraying his client as one of the Opposite Parties in M.A.C. No.32 of 2010 is illegal and unjustified. Rightly his client filed an application either to give a direction to the Petitioner (claimant before the Court below) to disclose the policy details of the offending vehicle or to the Opposite Party No-2 to cause production of the insurance policy. The Court below was unjustified to reject the said application and the impugned order is a glaring example of non-application of judicious mind and deserves to be set aside.

8. This Court in *New India Assurance Co. Ltd (supra)*, vide Paragraph No.4 held as follows:-

“The question is whether the owner should be given an opportunity by establishing that the vehicle was insured with the appellant. As rightly submitted by learned Counsel for appellant, it was the duty of the owner of the vehicle to place materials in support of his plea of insurance with a particular Insurance Company. **Without furnishing necessary particular, to require an Insurance Company to say whether the vehicle is insured would tantamount to asking it to locate a needle in a mountain. Lakhs of policies are issued by the Insurance Companies. Mere mention that a vehicle is insured with an Insurance Company without particulars of the policy would be insufficient to prove that the vehicle is really insured. That is why insistence is on the giving of particulars of Insurance policy.** The facilities in finding out whether as a matter of fact, a vehicle is insured or not. In this context, reference to section 151 of the Motor Vehicles Act, 1988 (in short, the ‘Act’) is necessary. Similarly was the position

under section 98 of Motor Vehicles Act, 1930 (in short, the 'old Act'). The statutory prescription is that no person against whom a claim is made shall on demand by or on behalf of the person making the claim to state whether or not he was insured in respect of that liability by any policy issued or would have been so insured if the insurer had not avoided or cancelled the policy not shall he refuses, if he was or would have been so insured to give such particulars with respect to that policy as were specified in the certificate of insurance issue in respect thereof. **The Tribunal should insist on particulars of insurance being given by the insured. The Claimant has the statutory right to get it from the insured. That would help in deciding the question of liability, i.e. whether it is to be discharged by the owner of the vehicle, or any Insurance Company.** In the instant case, except mention of "New India Company, Sambalpur", there is no other material relating to any insurance. In the fitness of things therefore, the owner should get an opportunity to establish that the vehicle was insured, and if it was insured with which Insurance company."

(Emphasis Supplied)

9. On perusal of Exhibits 3 & 3/a, it is ascertained that in Seizure List, under the heading "Article Seized", it has been indicated that "the Oriental Insurance-Company Limited Valid- 06-05/2009". Similar is the noting in Zimanama under the heading "Articles taken in Zima". Admittedly, those two documents do not disclose the policy details of the offending vehicle. From the contents of the Seizure List and Zimanama, which have been marked as Exhibits 3 and 3/a respectively, it is amply clear that those two documents do not disclose the policy details

justifying arraying the Petitioner (Insurance-Company) as one of the Opposite Parties to M.A.C. No.32 of 2010.

**10.** In view of the above, this Court is of the view that, the order dated 02.07.2016 passed in M.A.C. No. 32 of 2010 is liable to be set aside. Accordingly, the order dated 02.07.2016, as at Annexure-3, is hereby set aside.

**11.** Matter is remitted back to the Court below with a direction to deal with the said petition dated 02.07.2016 of the Petitioner (O.P. No.2 before the Court below) afresh and dispose of the same by passing necessary order as to production/disclosure of the policy details, as prayed therein and proceed further in accordance with law.

**12.** Mr. Behera, learned Counsel for the Opposite Party No.1 (Claimant before the Court below) submits, because of the interim order, further proceeding in M.A.C. No.32 of 2010 has been stayed since the year 2016. Accordingly, Mr. Behera prays for a direction to the Court below to dispose of the Claim Application within a stipulated period.

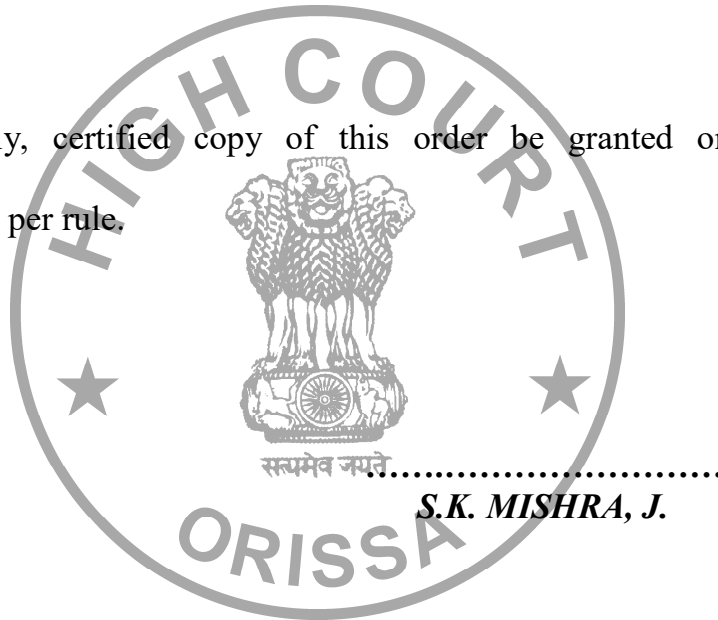
**13.** In view of the said submission made by Mr. Behera, the Court below is directed to deal with and dispose of the M.A.C. No.32 of 2010 within four months from the date of disposal of the application filed by

the Petitioner-Insurance Company (O.P. No.2 before the Court below) in terms of the observation and direction, as detailed above.

14. To avoid delay, both the parties are directed to appear before the Claims Tribunal on 4<sup>th</sup> December, 2023 and produce the certified copy of this judgment enabling the Tribunal to do the further needful, as directed above.

15. With the said observation, the Writ Petition stands allowed and disposed of.

16. Urgently, certified copy of this order be granted on proper application as per rule,



*Orissa High Court, Cuttack.  
Dated, 14<sup>th</sup> November, 2023/ Banita*