

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.10 of 2022

The Divisional Manager, M/s. National Insurance Company Ltd. *Appellant*

Mr. Bijoy Dasmohapatra, Advocate

-versus-

Susanta Bhoi and Other *Respondents*

Mr. P.K. Nayak, counsel for Respondents 1&2

Mr.

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
26.10.2022

Order No.

04.

1. The matter is taken up through hybrid mode.
2. Heard Mr. B. Dasmohapatra, learned counsel for the insurer-Appellant and Mr. P.K. Nayak, learned counsel for the claimant – Respondents 1&2.
3. Notice on the owner - Respondent No.3 is treated sufficient in view of the paper publication. No one appears on call for Respondent No.3.
4. Present appeal by the insurer is against the impugned judgment dated 5th August, 2021 of the learned 3rd MACT, Talcher passed in MAC Case No.47 of 2019 wherein compensation to the tune of Rs.9,77,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 20th April, 2019 has been granted

on account of death of deceased Hemanta Bhoi in the motor vehicular accident dated 8th November, 2018.

5. Mr. Dasmohapatra contends that since the present offending motor cycle bearing registration number OD 35C 4187 is involved in more than one accident cases therefore, involvement of the same in the present accident is doubtful.

6. It reveals from paragraph 12 of the impugned judgment that the offending motor cycle was involved in many accidental cases at different places. However, the learned tribunal has rejected the contention of the insurer regarding non-involvement of the offending motor cycle in the accident.

7. Admittedly, the insurer has not adduced any evidence to satisfy non-involvement of the offending motor cycle in the present accident, except making contention to the effect that the motor cycle is involved in many other accidental cases. This does not satisfy the standard of proof required and the tribunal has thus rightly held that the burden is on the insurer to disprove the contention of the claimant regarding non-involvement of the offending motor cycle in the accident. The insurer having not discharged the burden satisfactorily, no point is made out in favour of the insurer to disbelieve the claim of the applicants. As such, the contention raised by the Appellant is rejected.

8. With regard to quantum of compensation no further dispute being raised, the direction of the tribunal is confirmed. It needs to be mentioned here that the contention of the insurer with regard to dependency of the claimants has no merit in view of the principles

decided by Hon'ble Supreme Court in the case of *National Insurance Company Ltd. v. Birender and Others*, (2020) 11 SCC 356.

9. At this stage Mr. Nayak, learned counsel submits that the claimant – Respondent No.2, Prasanta Bhoi, died in the meantime on 19th April, 2022 and a copy of the death certificate is filed by Mr. Nayak. The same is kept on record. It is further submitted that there being no other LRs except Respondent No.1, no further substitution is required. Accordingly, the name of Respondent No.2 is deleted.

10. In the result, the appeal is dismissed and the insurer - Appellant is directed to deposit the awarded compensation amount along with interest before the tribunal within a period of two months from today, where-after the same shall be disbursed in favour of the claimant – Respondent No.1, namely Susanta Bhoi on such terms and proportion to be decided by the learned tribunal.

11. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

12. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge