

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.315 of 2021 & 914 of 2013

MACA No.315 of 2021

**Divisional Manager, M/s.
New India Assurance Co.,
Ltd.**

Appellant

-versus-

Rupei Behera & Others

Respondents

-AND-

MACA No. 914 of 2013

**Divisional Manager, M/s.
New India Assurance Co.,
Ltd.**

Appellant

-versus-

Rupei Behera & Others

Respondents

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

15.07.2022

Order No

- 07.** 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. G.P. Dutta, learned counsel for the Appellant, Mr. S.K.Pradhan-3, learned counsel for the Respondent in both the appeals.
3. At the outset, it is submitted by the learned counsel for the Appellant that the Claimant-Respondent initially filed MAC Case No.79 of 2006 in the court of learned District Judge-cum-1st, M.A.C.T., Nayagarh claiming compensation due to the

death of the deceased in an accident which took place on 10.05.1997.

4. Learned Tribunal vide its judgment dated 07.08.2013 held the Claimant-Respondent entitled to get compensation of Rs.2,40,000/- with interest @ 6 % per annum payable from the date of application till its realization. The Appellant-Company challenging the said judgment has filed MAC No.914 of 2013.

5. Mr. Dutta, further submitted that the self-same claimants with regard to the self-same incident approached learned 3rd M.A.C.T., Bhubaneswar in MAC Case No.366 of 1997.

6. Learned Tribunal vide its judgment dated 18.09.2014 disposed of the matter with a direction on the Appellant-Company to pay compensation amount of Rs.2,39,640/- along with interest @ 7 % per annum payable from the date of application till its payment.

7. The said judgment is under challenge by the Appellant-Company in MACA No.315 of 2021.

8. Mr. Dutta accordingly submitted that since for the self-same incident, the Claimants have approached two different forums, the award passed by two different Courts is not legally tenable and accordingly prayed for interference of this Court.

9. It is submitted that even though in MAC Case NO.79 of 2006 dealt with by learned District Judge-cum-1st M.A.C.T., Nayagarh, the Appellant-Company took a specific plea regarding non-possession of valid D.L by the accused driver, learned Tribunal while allowing the claim never allowed right of recovery as against the owner.

10. Accordingly, Mr. Dutta prayed for interference of this Court in the matter.

11. On being confronted with the stand taken by the learned counsel for the Appellant, Mr. S.K. Pradhan-3, learned counsel appearing for the Claimant-Respondents submitted that the claimant-respondent initially moved the learned District Judge-cum-1st M.A.C.T., Nayagarh in MAC Case No.79 of 2006 and learned Tribunal vide judgment dated 7.8.2013 allowed the claim with a direction on the Appellant-Company to pay compensation at Res.2,40,000/- along with interest @ 6 % per annum payable from the date of application till its recovery.

12. It is submitted that the Claimant-Respondent being uneducated person and without knowing the implication, filed the other claim before the learned 3rd M.A.C.T., Bhubaneswar in MAC Case No.366 of 1997.

13. Mr. S.K. Pradhan-3 accordingly submitted the award passed in MAC Case No.366 of 1997 by the learned 3rd M.A.C.T., Bhubaneswar be treated as not pressed.

14. It is also submitted that the award passed by the learned District Judge-cum-1st M.A.C.T., Nayagarh be taken into consideration by this Court.

15. Having heard learned counsel for the Parties and after going through the materials available on record as well as the submission made by Mr. S.K.Pradhan-3 that the Claimants will not press the claim awarded by the learned 3rd MACT, Bhubaneswar in MAC Case No.366 of 1997, this Court set aside the said award as not pressed.

16. This Court after going through the award passed by the learned District Judge-cum-1st M.A.C.T., Nayagarh in MAC Case No.79 of 2006 finds that the said award has been rightly passed and no interference is called for by this Court. But learned Tribunal in the said award while allowing the compensation since has not allowed right of recovery as against the Owner, this Court deems it fit and proper to allow such right as against the Owner-Respondent.

17. Accordingly, this Court while confirming the award passed by the learned District Judge-cum-1st M.A.C.T., Nayagarh in MAC Case No.79 of 2006 observed that the Appellant-Company will be entitled to recover the amount from the owner-respondent. While holding so, this Court directs the Appellant-Company to deposit the entire compensation amount along with interest so assessed by the learned Tribunal in MAC Case No.79/2006 before the learned Tribunal within a period of eight weeks from the date of receipt of this order.

18. It is observed that on such deposit of the amount, learned Tribunal shall disburse the same in favour of the Claimant-Respondent in terms of its order passed on 07.08.2013.

19. It is however, observed that if the Appellant-Company fails to deposit the amount within the time stipulated by this Court, the compensation amount of Rs.2,40,000/- so awarded by the learned Tribunal will carry interest @ 7 % per annum for the period starting from the expiry of the period of eight weeks till its payment.

20. Since this Court is allowing right of recovery as against the Owner-Respondent and it is submitted that the said Owner-Respondent has died in the meantime, if any such application for recovery of the amount is filed by the Appellant, learned Tribunal shall proceed with the same strictly in accordance with law and by giving reasonable opportunity of hearing to the legal heirs of the deceased Owner-Respondent.

21. It is lastly observed that after payment of compensation amount along with interest so assessed by this Court within the time indicated hereinabove, the Appellant-Company shall be permitted to take refund of the statutory deposit along with accrued interest thereon from the Registry of this court, so deposited in both the appeals on proper identification.

22. With the aforesaid observations and directions, both the MACAs stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat