IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.11 of 2020

The Manager (Legal), IFFCO-TOKIO General Insurance Company Ltd. .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Sumanta Nayak @ Sumant Kumar Nayak and Another .... ***Respondents***

Mr. P.K. Mishra, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
4.8.2022

Order No.

07. 1. The matter is taken up through hybrid mode.

2. Heard Mr. A.A. Khan, learned counsel for the insurer – Appellant and Mr. P.K. Mishra, learned counsel for claimant – Respondent No.1.

3. Present appeal by the insurer is against the impugned judgment dated 28th June, 2019 of the learned Member, 2nd MACT (Southern Division), Berhampur, Ganjam passed in MAC Case No.3 of 2018 (140/2016-GDC) wherein compensation to the tune of Rs.3,30,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 3rd May, 2016 has been granted on account of injuries sustained by the injured-claimant in the motor vehicular accident dated 11th April, 2016.

4. The challenges advanced on behalf of insurer are mainly on two-folds. First, regarding contributory negligence on the part of the injured - claimant who was riding the motor cycle bearing registration number OD-07-6353, and Secondly, the driving licence of the accused driver of the offending truck was under suspension on the date of accident.

5. Before proceeding further it needs to be mentioned at the outset that date of accident is 11th April, 2016 and it was the result of front collusion between two motor cycles with the offending truck bearing registration number ORG-6865. In the accident one person died and two persons injured including the present claimant – Respondent No.1. Further, the validity of the insurance policy on the date of accident in respect of the offending truck is not disputed.

6. Now coming to the first challenge as advanced by Mr. Khan for the insurer, the same is not found with substance. It is for the reason that for the mere reason that the accident was the result of front collusion between the vehicles, it cannot be accepted that the drivers of both the vehicles had contributed negligence. Rather it is brought on evidence as per Ext.G, the certified copy of the spot map prepared by police, adduced from the side of the insurer that the truck was moving in the middle of the road and therefore the negligence is entirely on the part of its driver. No flaw is seen in such conclusion arrived by the tribunal since Ext.G is the sole basis of raising such contention to contribute negligence on the part of the rider of the motor cycle. Therefore, the contention as raised on behalf of the

insurer that the rider of the motor cycle was equally negligent in causing the accident is rejected being without merit.

7. Next coming to the other contention that the driver of the offending truck had no valid driving licence on the date of accident is also not found sustainable in view of the detailed discussions made by the tribunal at page 22 of the impugned judgment. Mr. Khan, learned counsel emphasizes on Ext.B which is the certified copy of the D.L. of the accused driver. Admittedly, it has been written at the foot of said Ext.B that the licence was valid throughout the period except from 25th June, 2015 to 4th April, 2016, which otherwise means that the same is valid with effect from 11th February, 2011 till date except that period from 25th June, 2015 to 4th April, 2016. Taking the date of accident on 11th April, 2016, the D.L. of the accused driver is thus treated valid on the date of accident. This has been discussed in detail by the tribunal at page 21 and 22 of the impugned judgment. This court confirms said finding of the tribunal in respect of validity of the D.L. of the accused driver by rejecting the contentions raised by Mr. Khan for the Appellant.

8. No dispute is raised with regard to quantum of compensation as granted by the tribunal in the impugned judgment. Therefore, no need is there to interfere with the same.

9. In the result the appeal is dismissed and the Appellant – insurer is directed to deposit the awarded compensation amount of Rs.3,30,000/- (three lakh thirty thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 3rd May, 2016 within a period of two months from

today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1 as per the terms and proportions mentioned in the impugned judgment.

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

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

(B.P. Routray)
Judge

M.K.Panda