IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.992 of 2013

The Branch Manager, IFFCO-TOKIO General Insurance Co. Ltd.	....	***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Jayanti Sahoo and others	....	***Respondents***

Mr. S.K. Panda, Advocate for Respondent Nos.1 to 4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
19.07.2022

Order No.
11.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. S.K. Panda, learned counsel for Respondent Nos.1 to 4, the claimants.

2. Present appeal by the insurer is directed against judgment dated 31.08.2013 of learned 3rd M.A.C.T., Talcher in M.A.C. Case No.70 of 2011 wherein compensation to the tune of Rs.6,06,000/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 26.11.2009.

3. Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company contends that the involvement of the offending motorcycle bearing Registration No.OR-19-G-6582 is though not established on record and appearing doubtful, but the learned Tribunal has fixed the negligence on the part of the driver of the

said offending motorcycle. As per Mr. Dutta, without lodging any FIR a complaint case was filed around 3 months after the accident and there is also discrepancy in the injury report about the date of accident.

4. In order to examine the submissions put forth by Mr. Dutta, perusal of the impugned judgment as well as the lower court records reveals that, the date of accident is 26.11.2009. When the deceased was coming as a pillion rider along with one Dhruba Charan Sahoo, at that time, the offending motorcycle being driven in a rash and negligent manner with a high speed dashed against the motorcycle where the deceased was the pillion rider. The complaint case was filed on 2.2.2010 and as per the direction of the learned Magistrate; Kaniha P.S. Case No.15 dated 26.2.2010 for commission of offences under Sections 279/304-A, I.P.C has been registered.

5. Perusal of the complaint petition clearly reveals that it was appended with a copy of the alleged First Information Report lodged by Dhruba Charan Sahoo which as per the contention of the complainant was not acted upon by the Police compelling the filing of the complaint case. This being the factual position non-conduct of post mortem examination is obvious and therefore, has no impact on the contention of the claimants to disbelieve their case. Furthermore, the death of the deceased in the road traffic accident is fortified from the injury report under Ext.B filed from the side of the insurer.

6. Mr. Dutta, here points out the discrepancy noticed in the requisition of Police for getting the said injury report, where it is mentioned that the deceased was treated in Subhalaxmi Nursing Home, Talcher on 28.11.2009. By referring to the said date 28.11.2009 and the age of injury mentioned 'within three hours' as per the injury report, it is contended that the date of accident on 26.11.2009 is a false fact.

7. But upon perusal of the complaint petition as well as the injury report and such requisition made by the Police on the reverse side of Ext.B, I do not find any material irregularity to disbelieve the case of the claimants. It is for the reason that the injury requisition has been made to the Medical Officer of Subhalaxmi Nursing Home and the date put in the requisition is by the Police Officer. For any wrong date mentioned in the requisition for getting the injury report by the Police Officer, the claimants cannot be held responsible and for that reason only the case of the claimants cannot be disbelieved.

8. Conversely, the consistent case of the claimants is that the date of accident is 26.11.2009. All such informations received under the RTI Act from the NTPC hospital by the insurer cannot be held as truthful against the contention of the claimants in view of their consistent and categorical case that the accident happened on 26.11.2009 and the injured died on the same day as per the death certificate. As it appears, all the discrepancies apparently resulted due to delayed registration of the Police case and for such inaction of police the claimants cannot be held responsible and should not be deprived of their legitimate claim.

9. It is further noticed that the owner of the offending vehicle has admitted the accident and involvement of his vehicle causing the injuries to the deceased on 26.11.2009 and the Police has confirmed the same in his investigation report.

10. A thorough perusal of the impugned judgment and the exhibits brought on record thereto before the learned Tribunal, no grave suspicious is noticed to disbelieve the case of the claimants as contended by the insurer. Such contention of the insurer is thus rejected.

11. The learned Tribunal upon adjudication has directed for payment of compensation by taking monthly income of the deceased at Rs.4500/- and apparently no illegality is seen there in such assessment made by the learned Tribunal, particularly when no evidence has been adduced in rebuttal from the side of the insurer. It is further noticed that though the age of the deceased was 35 years on the date of death, but no future prospects has been granted to him so also no amount towards consortium has been granted. However, in absence of any challenge from the side of the claimants to that effect, this Court is not inclined to enter into that dispute.

12. However, the rate of interest is reduced to 6% per annum against the direction of the learned Tribunal for 7.5%.

13. In the result, the total compensation amount granted by the learned Tribunal is confirmed which is payable to the claimants-

Respondent Nos.1 to 4 along with interest @6% per annum from the date of filing of the claim application.

14. The Appellant-Insurance Company is directed to deposit the entire award amount of Rs.6,06,000/- as per the direction of the learned Tribunal along with interest @6% per annum within a period of two months from today before the learned Tribunal which shall be disbursed in favour of the claimants in terms of its direction.

15. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

16. The appeal is disposed of in the above terms.

(B.P. Routray)
Judge

B.K. Barik