

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.546 OF 2012

From the Judgment / Order dated 10.04.2012 passed by the learned 2nd M.A.C.T (N.D.), Sambalpur in M.A.C. Case No.159 / 2009 (SBP).

Divisional Manager, M/s.Oriental Insurance Co., Ltd.

::: Appellant.

-:: VERSUS ::-

Ahalya Jamdulia & Others

::: Respondents.

Appeared in this case by Video Conferencing Mode /

Hybrid Mode.

For Appellant ::: Mr. M.Sinha, Advocate

For Respondents::: Mr.L.N.Patel & Associates,
Adv. for Respondent No.1-
Claimant & Mr.
K.Panigrahi, Adv. for
Respondent No.5-Owner.

PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing- 07.04.2022::Date of Judgment-19.04.2022

B.P.Satapathy, J. Mr. Sinha, learned counsel appearing for the Appellant while challenging the impugned judgment passed on 10.04.2012 by the learned 2nd M.A.C.T (N.D.), Sambalpur in M.A.C. Case No.159 / 2009 (SBP) argued that learned Tribunal vide the impugned judgment allowed compensation of Rs.3,80,000/- with interest @ 6 % per

annum from the date of the filing of the petition till its realization in favour of the Claimant/Respondent.

2. It is argued by Mr. Sinha, learned counsel for the Appellant that the learned Tribunal while deciding Issue Nos.3 and 4 held that there is no violation of any policy condition and accordingly held the claim petition maintainable.

3. It is also argued that the learned Tribunal without taking note of the fact that the deceased was a gratuitous passenger allowed the compensation at the higher side.

4. Mr. Patel, learned counsel appearing for the Claimant-Respondent while supporting the impugned judgment argued that even if the deceased is treated as a gratuitous passenger, but he is also eligible and entitled to get the compensation and the learned Tribunal rightly passed the same in his favour.

5. Mr. Patel, in support of his aforesaid stand relied on the decision of the Hon'ble Apex Court in the case of **Manager, National Insurance Co., Ltd. vs. Saju P.Paul and Another** reported in **2013 (1) T.A.C 414 (S.C.)** and in the case of **Manuara Khatun and Others vs. Rajesh Kumar Singh and Others** reported in **2017 (2) T.A.C. 5 (S.C.)**. Hon'ble Apex Court in Para-11 of Saju P.Paul's case held as follows:-

"11. In New India Assurance Company v. Satpal Singh and others (2000) 1 S.C.C. 237 : 2000 (1) T.A.C 403, this Court with reference to the provisions in the Motor Vehicles Act, 1939 and the provisions in 1988 Act, particularly Section 147, held

that under the 1988 Act an insurance policy covering third party risk was not required to exclude gratuitous passengers in a vehicle no matter that the vehicle is of any type or class. It was also held that the earlier decisions of this Court rendered under the 1939 Act vis-à-vis gratuitous passengers were of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the 1988 Act came into force.”

Similarly, Hon’ble Apex Court relying on the decision in Saju P. Paul’s case, held as follows in Para-16 of Rajesh Kumar Singh’s case.

“16) This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

6. Mr. Patel, learned counsel for the Claimant-Respondent accordingly argued that learned Tribunal rightly passed the award and it needs no interference.

7. Per contra, Mr. Panigrahi, appearing for Respondent No.5-insured argued that the deceased was working as a Collie in the offending vehicle and accordingly the owner cannot be saddled with the liability with right of recovery in favour of the insurer.

8. Mr. Panigrahi accordingly argued that the learned Tribunal has rightly passed the impugned judgment with a direction on the appellant-company to pay the entire compensation amount to the Claimant-Respondent.

9. Having heard learned counsel for the Parties and in view of the decisions as cited (supra), this Court is of the opinion that on the relevant date, the deceased along with his all family members were travelling in the offending vehicle and due to the accident, the deceased died. It is also reflected in the LCR which was duly perused by this Court. Accordingly, in view of the decision relied on by Mr. Patel and taking into the fact that the deceased was a gratuitous passenger, the Respondent No.1 is eligible and entitled to get the compensation for the untimely death of the deceased.

10. At this time, Mr. Sinha, learned counsel for the Appellant argued that even though the learned Tribunal allowed the compensation in favour of the Claimant-Respondent No.1, but while doing so the learned Tribunal has erred in calculating the income of the deceased at Rs.90/- per day.

11. It is submitted by Mr. Sinha, learned counsel for the Appellant that during the relevant time the minimum wages of an unskilled worker was Rs.70/- per day and the learned Tribunal should not have taken the same at Rs.90/-.

12. Accordingly, Mr. Sinha prayed for interference of this Court with regard to the quantum of compensation awarded by the learned Tribunal.

13. Having heard learned counsel appearing for the respective Parties and taking into account such submission of Mr. Sinha, this Court when came to a conclusion that the appellant is eligible to get compensation of Rs.3,00,000/- with interest @ 6% per annum from the date of the filing of the application till its realization, with right of recovery against the owner-Respondent No.5, Mr. Patel, learned counsel for the Claimant-Respondent supported the said view of this Court.

14. Mr. Sinha learned counsel appearing for the appellant-company left the said view to the discretion of this Court. But Mr. Panigrahi, learned counsel appearing for Respondent No.5 insisted that no right of recovery be allowed in favour of the Insurer.

15. Taking into account the respective stand of the Parties hereto and the decisions as cited (supra), this Court while interfering with the impugned judgment direct the appellant-company to pay compensation of Rs.3,00,000/- along with interest @ 6 % per annum from the date of the filing of the petition i.e. from 09.12.2009 till its realization.

This Court directs the appellant-company to pay the aforesaid amount along with interest so assessed by this Court within a period of eight weeks from today.

16. Since the offending vehicle was carrying passengers and that amounts to violation of the policy condition, while directing the appellant-company to pay the compensation as assessed by this Court, this Court further held that the appellant-company shall have the right to recover the compensation amount from the Respondent No.5-owner of the offending vehicle by following due procedure of law.

17. It is observed that only after payment of the compensation amount along with interest so assessed by this Court within the time stipulated hereinabove, the appellant-company shall be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on proper identification.

18. With the aforesaid observations and directions, the MACA stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 19th April, 2022/Subrat