

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**MACA No.259 of 2008**

*National Insurance Company Ltd.,  
represented through its Officer-in-  
Charge, Orissa Legal Cell, Cuttack*

.... *Appellant*

Mr. A.P. Das, Advocate

-versus-

*Rahas Kumari Nayak and Another*

.... *Respondents*

Mr. S. Mohanty, counsel for Respondent No.1

**CORAM:**  
**SHRI JUSTICE B. P. ROUTRAY**

**ORDER**  
**22.11.2022**

**Order No.**

10.        1.        The matter is taken up through hybrid mode.
2.        Heard Mr. A.P. Das, learned counsel for the insurer -Appellant  
             and Mr. S. Mohanty, learned counsel for claimant – Respondent No.1.
3.        Present appeal by the insurer is against impugned judgment  
dated 4<sup>th</sup> February, 2008 of the learned 2<sup>nd</sup> MACT, Sambalpur passed  
in Misc. (A) Case No.133 of 1997 (K), wherein compensation to the  
tune of Rs.1,12,000/- along with interest @ 6% per annum from the  
date of filing of the claim application, i.e. 9<sup>th</sup> May, 1997 has been  
granted on account of death of the deceased Umakanta Nayak in the  
motor vehicular accident dated 16<sup>th</sup> February, 1997.
4.        Mr. Das, learned counsel submits on behalf of the Appellant  
that the deceased namely Umakanta Nayak was a gratuitous passenger  
in the offending vehicle, i.e. truck bearing registration number OR 09

6341, at the time of accident and therefore, the insurer is not liable to indemnify the compensation amount.

5. On the other hand the claimant – Respondent has filed her cross-objection praying to enhance the compensation amount, mainly on the ground that no future prospect has been added to the income of the deceased.

6. Admittedly, no oral evidence has been adduced by either party before the tribunal. The police papers, i.e. copy of the F.I.R., charge-sheet, etc. have been relied on by the claimant in support of their case. The insurance company did not adduce any evidence on their behalf.

7. The contention raised by the insurer that the deceased was a gratuitous passenger was not accepted by the tribunal keeping in view the contents of police papers filed on behalf of the claimants and particularly in absence of any evidence adduced by the insurance company. In respect of another deceased, who died in the same accident and also an occupant in the same offending vehicle, this court in MACA No.686 and 685 of 2008 have concluded, based on the evidence adduced in that record, that the deceased, namely Kirtan Behera was a labourer of the offending vehicle. In the instant case the same stand has been taken by the claimants that their deceased son was engaged as a Cooli in the same offending vehicle. Therefore, in absence of any evidence in support of the contention of the insurance company, this court concludes in favour of the claimants that the deceased Umakanta Nayak was a Cooli in the offending vehicle at the time of accident, as concluded by the tribunal. At the same time, keeping in view the date of accident and age of the present claimant –

Respondent No.1, the amount granted by the tribunal is confirmed without any enhancement.

8. In the result the appeal is disposed of with a direction to the insurer – Appellant to deposit the entire compensation amount along with interest before the tribunal as per it's direction, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1, namely Rahas Kumari Nayak on such terms and proportion to be decided by the tribunal.

9. It goes without saying that this court has not disturbed the direction of learned tribunal regarding right of recovery granted in favour of the insurance – company.

10. 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.

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

**( B.P. Routray )**  
**Judge**