

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.187 of 2003

Divisional Manager, Oriental Insurance Co. Ltd. ***Appellant***

Mrs.R. Pati, Advocate

-versus-

Lachhman Harijan and others ***Respondents***

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

ORDER
06.12.2022

Order No.

M.C. No.280 of 2003 and MACA No.187 of 2003

12. 1. Heard Mrs. R. Pati, learned counsel for the Appellant-Insurance Company. Despite service of notice by speed post as well as through paper publication, no one appears for the injured-claimant-Respondent No.1. The notice is treated sufficient against him.
2. Upon hearing Mrs. Pati, learned counsel for the Appellant and considering the grounds mentioned in the limitation petition, the delay in filing the appeal is condoned.
3. The M.C. No.280 of 2003 is disposed of.
4. Present appeal by the insurer is directed against the judgment dated 25.03.2002 of learned M.A.C.T., Kalahandi-Nuapada, Bhawanipatna in M.J.C. No.116/1994, wherein compensation to the tune of Rs.29,000/- has been granted along with interest @9%

per annum to the claimants from the date of filing of the claim application, i.e. 27.8.1994 on account of injury sustained by Respondent No.1 in the motor vehicular accident dated 26.7.1994.

5. Mrs. R. Pati, learned counsel for the Appellant-Insurance Company contends that the Insurance Policy in respect of the offending vehicle was not valid on the date of accident and therefore, the insurer is not liable to indemnify the compensation amount.

6. None appears on call for the injured-claimant-Respondent No.1. His case is that on the date of accident, i.e. 26.7.1994, when he was a minor boy aged about 10 years, the offending Jeep bearing Registration No.OR-08-3511 dashed against him coming with high speed in a negligent manner. Due to the accident, he sustained seven simple injuries and two grievous injuries including depression fracture over right occipital region. Learned Tribunal considering the nature of injuries as mentioned in the police papers has directed for payment of the aforesaid amount.

7. No evidence was adduced from the side of the insurer. On the other hand, the claimants produced Photostat copy of the Insurance Policy bearing No.43223/7/0/MV/5200/94 valid upto 8.2.1995. In course of trial, the validity of the said Insurance Policy was never questioned by the insurer. Therefore, what is submitted by Mrs. Pati at this stage that such policy did not exist on the date of accident is hard to conceive and the same is rejected.

8. No further ground is seen to interfere with the impugned judgment and as such, the same is confirmed. However, the direction for payment of penal interest @12% per annum is waived.

9. In the result, the appeal is dismissed and the Appellant is directed to deposit the entire compensation amount along with interest before the learned Tribunal as per its direction within a period of two months from today; where-after the same shall be disbursed in favour of the injured-claimant-Respondent No.1 on such terms and proportion to be decided by the learned Tribunal.

10. It is submitted by Mrs. Pati that the entire compensation amount has already been deposited before this Court on 14.12.2011 pursuant to the order dated 30.11.2011 of this Court.

11. 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 along with the amount deposited pursuant to the order dated 30.11.2011 of this Court with accrued interest thereon shall be refunded to the Appellant.

12. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge