

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.452 of 2012 & MACA No.619 of 2012

In MACA No.452 of 2012

Ranga Naik

....

Appellant

Mr. S.C. Pradhan, Advocate

-versus-

Harebananda Bhatra and another

....

Respondents

Mr. A.A. Khan, Advocate for Respondent No.2

In MACA No.619 of 2012

Divisional Manager, M/s.ICICI

....

Appellant

Lombard General Insurance Company

Ltd.

Mr. A.A. Khan, Advocate

-versus-

Ranga Naik and another

....

Respondents

Mr. S.C. Pradhan, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

20.09.2022

Order No.

MACA No.452 of 2012 & MACA No.619 of 2012

13. 1. Heard Mr. S.C. Pradhan, learned counsel for the claimant and Mr. A.A. Khan, learned counsel for the Insurance Company.
2. Both the appeals being arise out of the same judgment dated 29.11.2011 of the learned MACT, Rayagada wherein compensation to the tune of Rs.3,78,887/- has been granted along with interest @9% per annum to the claimant from the date of filing of the claim application on account of injury sustained by

her in the motor vehicular accident dated 27.01.2009, are heard together and disposed of by this common order.

3. MACA No.619 of 2012 has been filed by the insurer challenging the award and MACA No.452 of 2012 has been filed by the claimant praying for enhancement of the compensation amount.

4. Mr. Khan, learned counsel for the Insurance Company contends that, admittedly the trolley attached to the tractor in which the injured was moving as a passenger was not insured and therefore, the Insurance Company is not liable to indemnify the compensation amount.

5. On the other hand, the injured-claimant has come up for enhancement on the ground that neither any future prospects have been added to her income nor loss of amenities of life etc. has been quantified.

6. First coming to the challenge advanced by the Insurance Company with regard to their liability, the admitted case of the claimant is that she along with other persons were moving in the trolley at the time of accident. Undisputedly the trolley was uninsured though the tractor was validly insured. It is the consistent case of the injured that she was a labourer. But the nature of work either under the same owner or elsewhere has not been brought on record in evidence or through pleadings.

7. Mr. Khan submits that the tractor was registered for agricultural purpose only and it was not registered as a transport vehicle.

8. The learned Tribunal upon discussion on the question of liability held that the owner by violating conditions of the Insurance Policy allowed the injured and others to travel in the trolley and therefore the Insurance Company is not liable to pay the compensation. But the Tribunal further held that, as per the decision of the apex Court, the Insurance Company is to indemnify the compensation amount at first and then will recover the same from the owner. This direction of the learned Tribunal is found illegal and erroneous. It is for the reason that the trolley was not insured and the tractor was registered for agricultural purpose only. Secondly, the evidence brought on record does not reveal anything that the injured was employed under the owner of the vehicle or engaged by him as a labourer. The case of ***Oriental Insurance Co. Ltd. vs. Brij Mohan and others, 2007(3) TAC 20 (SC)***, as relied on by the learned Tribunal to direct the Insurance Company to pay the compensation and then recover it from the owner, does not approve such principle adopted by the learned Tribunal. In the case of ***Brij Mohan and others*** (supra), the Supreme Court has clearly held that in such cases the Insurance Company is not liable for payment of compensation. But in exercise of extra ordinary jurisdiction under Article 142 of the Constitution of India, the Supreme Court has directed payment of compensation amount by the Insurance Company and to realize the same from the owner. The Tribunal is a statutory body and

thus it cannot make such direction. Accordingly, the Insurance Company is exempted from its liability.

9. Next coming to the quantum of compensation, it is seen that admittedly the Tribunal did not add any future prospects nor consider the aspects of loss of amenities, pleasure, happiness and marriage prospects of life.

10. Considering all such factors and the age of the injured on the date of accident as well as nature of injury resulting amputation of her right leg, this Court thinks it fit to enhance the compensation amount to Rs.10,00,000/- payable along with interest @6% per annum.

11. In the result, MACA No.619 of 2012 is allowed and the Insurance Company is exempted from the liability. MACA No.452 of 2012 is disposed of by enhancing the compensation amount to Rs.10,00,000/- which is payable along with interest @6% per annum. The owner-Respondent No.1 is directed to pay the aforesaid amount of compensation along with interest @6% per annum from the date of filing of the claim application by depositing the same before the learned Tribunal within a period of two months from today, failing which the claimant is at liberty to realize the same in accordance with law.

12. The statutory deposit made before this Court in MACA No.619 of 2012 with accrued interest thereon shall be refunded to the Insurance Company.

13. With the aforesaid observations and directions, both the appeals are disposed of.

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

(B.P. Routray)
Judge

B.K. Barik

