

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.266 of 2014 & MACA No.125 of 2014

In MACA No.266 of 2014

Sk. Tarun Bibi and others ***Appellants***
Mr. B.N. Samantaray, Advocate
-versus-
Pratap Kishore Nayak and another ***Respondents***
Mr. P.K. Panda, Advocate for Respondent No.2

In MACA No.125 of 2014

Sanjukta Nayak@Sanjulata and others ***Appellants***
Mr. K.C. Nayak, Advocate
-versus-
Pratap Kishore Nayak and another ***Respondents***
Mr. P.K. Panda, Advocate for Respondent No.2

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

**ORDER
07.09.2022**

Order No.

MACA No.266 of 2014 & MACA No.125 of 2014

09. 1. Heard Mr. B.N. Samantaray, learned counsel for the Appellants-claimants in MACA No.266 of 2014, Mr. K. C. Nayak, learned counsel for the Appellants-claimants in MACA No.125 of 2014 and Mr. P.K. Panda, learned counsel for the Respondent No.2-Insurance Company in both the appeals.
2. Both the appeals being arise out of the same judgment dated 20.01.2014 of the learned 1st MACT, Cuttack are heard together and disposed of by this common order.

3. Initially two claim applications were filed by two sets of claimants for the death of the same deceased in the motor vehicular accident dated 19.01.2006 involving the offending mini truck bearing Registration No.OR-04-7251.

4. MAC No.03 of 2007 was filed by Sk. Tarun Bibi and five others (Appellants in MACA No.266 of 2014) before the learned 1st M.A.C.T., Kendrapara which was subsequently transferred to the file of 1st M.A.C.T., Cuttack as per the direction of this Court in TRP(C) No.78 of 2009 and renumbered as MAC No.1102 of 2012 on the file of learned 1st M.A.C.T., Cuttack.

On the other hand, Sanjukta Nayak@Sanjulata and four others (Appellants in MACA No.125 of 2014) filed MAC No.296 of 2006 before the learned 1st M.A.C.T., Cuttack.

5. Sk. Tarun Bibi and others described the deceased as late Chandan Nayak@Alliruddin@Dabiruddin, s/o-Sk. Dabir whereas Sanjukta Nayak@Sanjulata and others described the deceased as late Arakshita Nayak, s/o-Bhikari Nayak. But the common case of both set of claimants is that the deceased died on 19.1.2006 in the motor vehicular accident involving the offending mini truck.

6. The learned Tribunal as per discussion under Issue No.2, rejected the contention of Sk. Tarun Bibi and others that they are not the dependants of the deceased in absence of any material proof adduced from their side to justify their contentions regarding identification of the deceased as Alliruddin @

Dabiruddin, which is the subject matter of challenge in MACA No.266/2014.

7. Mr. B.N. Samantaray, learned counsel for the Appellant-claimants in MACA No.266 of 2014 submits that the learned Tribunal illegally came to such conclusion despite the oral evidence adduced on behalf of Sk. Tarun Bibi and her brother Sk. Mohammad Ali as P.W.1 & 2 respectively in MAC Case No.1102 of 2012.

8. As seen from the impugned judgment, learned Tribunal has discussed the claim of Sk. Tarun Bibi and others in detail and come to the finding that in absence of any documentary proof and in absence of any substantial evidence with regard to identification of the deceased as Alliruddin @ Dabiruddin and in view of the established facts brought in respect of other set of claimants like death certificate, legal heir certificate as well as the police papers, such contention raised by them is not established to accept Sk. Tarun Bibi and others as dependants of the deceased. In the opinion of learned Tribunal, the name of the deceased was Arakshita Nayak, S/o-Bhikari Nayak.

9. Nothing could be produced in course of hearing of the present appeal to justify such contention of Sk. Tarun Bibi and others that they were the dependants of the deceased or they were any way related to him as dependants. The documents like death certificate and legal heir certificate under Exts.8 & 9 proves the contention of Sanjukta Nayak & others to the satisfaction that the deceased was late Arakshita Nayak. Therefore, no merit is seen in the

challenge advanced by the Appellants in MACA No.266/2014 which is accordingly dismissed.

10. Next coming to the challenge advanced in MACA No.125/2014, Mr. K.C. Nayak, learned counsel for the Appellants submits that the Tribunal while granting compensation has directed the same to be paid by the owner by exempting the insurer. Mr. Nayak further submits that learned Tribunal has erroneously exempted the insurer with the opinion that the deceased was a gratuitous passenger despite the case of the claimants that the deceased was moving as the owner of the goods.

11. Mr. P.K. Panda, learned counsel for the Insurance Company on the other hand submits that the deceased was in fact moving in the offending mini truck as a gratuitous passenger and therefore the conclusion of the learned Tribunal is justified and should not be interfered with.

12. It reveals from the discussions made by the Tribunal under Issue No.3 in the impugned judgment that, it accepted the deceased as a gratuitous passenger in absence of evidence from the side of the claimants to show the deceased as the owner of goods since it was admitted by Sanjukta Nayak in her evidence that the deceased had not reserved the mini truck at the time of accident.

13. On perusal of the impugned judgment as well as copy of the police papers, produced in course of hearing, reveal that at the

time of accident only 4 to 5 persons were there in the Dala of the truck along with the ice cubes. The consistent case of the claimants is to the effect that the deceased was moving in the mini truck with fish bags which was capsized causing the accident and resultant death of the deceased. Travelling of the deceased with his fish bags in the offending truck at the time of accident is fortified from the fact of seizure of ice pieces by police. The reasoning assigned by the Tribunal that Sanjukta Nayak (P.W.1) has denied about reservation of the offending truck at the time of accident does not appear rational since the fact of carrying of fish bags by the deceased at the time of accident was not disputed and it is admitted that the offending vehicle was a goods carriage vehicle and ice pieces were there in the truck at the time of accident. The insurer has not brought any separate case that the offending vehicle was carrying anything other than the goods claimed by the applicants. As such, in absence of any rebuttal evidence, the contention of the claimants that the deceased was moving in the offending truck as the owner of the goods is found established. Accordingly, the finding of the learned Tribunal that the deceased was moving as a gratuitous passenger is set aside.

14. The validity of the insurance policy in respect of the offending truck on the date of accident being not disputed, the insurer Respondent No.2-New India Assurance Co. Ltd. is held liable to indemnify the compensation amount on behalf of the owner. It is accordingly ordered.

15. The claimants-Appellants do not raise any dispute with regard to the quantum of compensation.

16. In the result, MACA No.125 of 2014 is allowed and the insurer-Respondent No.2 is directed to deposit the entire compensation amount along with interest in terms of the direction of the Tribunal within a period of two months from today, whereafter the same shall be disbursed among the Appellants-claimants in MACA No.125 of 2014 (claimants in MAC No.296 of 2006 before the learned Tribunal) on such terms and proportion as contained in the impugned judgment.

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

(B.P. Routray)
Judge

