

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.227 of 2018

Divisional Manager, ***Appellant***
M/s. National Insurance Company Ltd.
Mr.B.N.Udgata, Advocate

-versus-

Nihar Kumar Chatterjee and others ***Respondents***
Mr.K.C.Nayak Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
08.09.2022

Order No.

9.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Udgata, learned counsel for the Appellant and Mr.Nayak, learned counsel for the claimant-Respondent No.1.
3. It is submitted that Respondent No.1, Nihar Kumar Chatterjee died in the meantime and Respondent No.3, Bikash Rout, owner of the offending vehicle was already dead prior to filing of the claim application.
4. Mr.Nayak submits that Respondent No.2 being the sole legal heir of Respondent No.1 and the deceased, no further substitution is required.
5. Present appeal by the Insurer-Appellant is directed against the judgment dated 20th November, 2017 passed by learned 1st Addl. District Judge-cum-1st M.A.C.T., Cuttack in

M.A.C. Case No.997 of 2004, wherein compensation to the tune of Rs.4,27,000/- has been granted along with interest @ 6% per annum with effect from the date of filing of the claim application on account of death of deceased-Sanjib Chatterjee in the motor vehicular accident dated 14th February, 2004.

6. The main contention of Mr.Udgata, learned counsel for the Appellant is that two motor cycles bearing registration no.OR-05-Q-1923 (Yammaha) and OR-05-M-5503(Hero Honda) were involved in the accident. The deceased was the pillion rider of the Hero Honda Motorcycle, which was driven by other injured namely, Ajoya Kumar Ojha. The police filed F.R.T. closing investigation due to death of the drivers of both the motorcycles and therefore, it is established that the present deceased Sanjib Chatterjee was driving the Hero Honda Motorcycle and Bikash Rout, the other deceased was driving the Yamaha Motorcycle. Therefore, the negligence on the part of the driver of the Yamaha motorcycle is not established. As such, the Appellant being Insurer of the Yamaha Motorcycle is not liable to indemnify the compensation amount.

7. Admittedly, the insurer did not examine any witness on its' behalf and only relies on the copies of the police papers like, F.I.R., Final Form etc to substantiate his contentions. On the other hand, the claimants examined two witnesses who are the mother of the deceased and the other injured eyewitness as P.Ws.1 & 4 respectively.

8. P.W.2 – the injured eyewitness has categorically stated that he was driving the motorcycle while the deceased was the pillion rider of the Hero Honda Motorcycle. Such assertions of P.W.2 are not rebutted in his cross-examination nor could any such statement be elicited from him to disbelieve his evidence.

9. As seen from the copy of the Final Form, F.R.T. was submitted stating the drivers of both the motorcycles died in the accident. This does not imply that both the drivers were negligent in causing the accident equally or any one of the drivers alone. Secondly, it is consistent evidence of the claimant that the injured Ajoya Kumar Ojha (P.W.2) was driving the Hero Honda Motorcycle and not Sanjib Chatterjee, the deceased. Neither party did choose to examine the informant. The informant was also not an eyewitness to the accident as evident from recitals of the F.I.R. Therefore the evidence of P.W.2, who admittedly is the eyewitness, cannot be brushed aside without any rebuttal material and his evidence cannot be disbelieved. Moreover, any opinion mentioned in the Final Form submitted by the police has no evidentiary value.

10. In such circumstances, the conclusion establishing the negligence on the part of the driver of the Yamaha Motorcycle cannot be faulted with. As such, the contention of the Insurer-Appellant is rejected to that effect.

11. No serious dispute is raised regarding quantum of compensation. The deceased was an unmarried boy aged about 26 years and admittedly no particular source of his income could be

established through evidence. The Tribunal has thus assessed his income at Rs.2,500/- per month notionally. This is not questioned by the claimants. As such, no reason is seen to interfere with the quantum of compensation.

12. Resultantly, the appeal is dismissed with a direction to the Appellant to deposit the entire compensation amount including interest within a period of two months from today; where-after the same shall be disbursed in favour of the claimant-Respondent No.2 – Tandra Rani Chatterjee on such terms and proportion to be fixed by the Tribunal. However, penal interest of 12% as directed by the Tribunal is waived.

13. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

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

(B.P. Routray)
Judge