

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.44 of 2020

The New India Assurance Company Limited ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Mr. Manoranjan Jena and another ***Respondents***
Mr. P.K. Mishra, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
26.08.2022

Order No.

04.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 17.10.2019 of learned 5th M.A.C.T., Khurda in M.A.C.T. Case No.53 of 2014 wherein compensation to the tune of Rs.9,85,872/- has been granted along with interest @6% per annum to the claimant from the date of filing of the claim application, i.e.11.11.2014 on account of death of the deceased in the motor vehicular accident dated 06.02.2013.

3. It is submitted by Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company that the alleged offending vehicle, i.e. motorcycle bearing Registration No.OR-05-AA-1008 was never involved in the accident, but has been subsequently implanted to manage the compensation. It is also submitted that

there is delay of four months in lodging the FIR and as per the bed head ticket, the accident happened as deceased himself dashed his motorcycle against a tree being intoxicated. In this regard the evidence of the claimant is also relied upon.

4. After hearing Mr. P.K. Mishra, learned counsel for the claimant-Respondent No.1 and perusal of the impugned judgment reveals that the learned Tribunal under Issue No.2 has come to the finding that the death of the deceased was caused due to rash and negligent driving of the driver, namely Dibakar Nayak of the offending motorcycle bearing Registration No.OR-05-AA-1008. A copy of the evidence adduced by P.Ws.1 and 2 from the side of the claimant as well as the copy of the bed head ticket under Ext.A reveals that P.W.1 is the claimant himself and P.W.2 is an alleged eye-witness to the accident. Ext.A has been relied upon from the side of the insurer.

5. It is seen from the cross-examination of P.W.1, who is none other than the claimant himself that he has specifically admitted that his brother dashed his bike being in intoxicated state. The relevant statement of said P.W.1 is as follows:

“My brother in intoxicated state of mind was driving the bike, which hit to a tree at roadside causing injuries on his portion. After four months of incident, the FIR has been lodged. It is not a fact that for the purpose of this case, we have implanted the number of bike (offending bike) to extract public money from O.P. No.2.”

6. Admittedly said P.W.1 is the claimant as well as the informant. Such admission of him is supported by the statement of doctor

endorsed in the bed head ticket under Ext.A that the head injury to the deceased is due to road traffic accident as the bike hit to the tree under alcoholic influence.

7. It is submitted by Mr. P.K. Mishra, learned counsel for Respondent No.1-claimant that when P.W.2, the eye-witness of the accident says that the accident happened due to rash and negligent driving of the offending motorcycle, such statement made by P.W.1, who is not an eye-witness, is irrelevant. Such submission as advanced by Mr. Mishra is not found convincing for the reason that P.W.1 is none other than the claimant. Admission does not require proof. So the admission of the claimant himself shall prevail over all such evidences of other witnesses because he is the plaintiff and sole beneficiary of compensation.

8. So keeping in view such admission of the claimant, I do not find any case in his favour to get the compensation as no negligence can be said to have been attributed on the part of the driver of the offending motorcycle. It needs to be reiterated here that it is the consistent case of the insurance company that the offending vehicle has been implanted to manage the compensation amount.

9. In view of the discussions made above, the appeal is allowed and it is held that the claimant is not entitled for any compensation amount. The impugned award is set aside.

10. The copies of depositions of P.Ws.1 & 2, and Ext.A as produced by the Appellant in course of hearing are kept on record.

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

(B.P. Routray)
Judge

