IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.171 of 2012 & MACA No.695 of 2012

In MACA No.171 of 2012

New India Assurance Co. Ltd. .... ***Appellants***

Mr. S. Satapathy, Advocate

-versus-

Smt. Chhita Hembram and others .... ***Respondents***

Mr. B.N. Rath, Advocate for Respondent Nos.1 to 4

In MACA No.695 of 2012

Smt. Chhita Hembram and others .... ***Appellants***

Mr. B.N. Rath, Advocate

-versus-

Naba Durga Construction (Pvt.) Ltd. and another .... ***Respondents***

Mr. S. Satapathy, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
15.11.2022

Order No.

MACA No.171 of 2012 and MACA No.695 of 2012

09. **1.** Heard Mr. S. Satapathy, learned counsel for the Insurance Company and Mr. B.N. Rath, learned counsel for the claimants.

2. Both the appeals being arise out of the same judgment dated 01.12.2011 of the learned 4th MACT, Baripada in M.A.C. Case No.246/109 of 2011-06, wherein compensation to the tune of Rs.2,57,000/- has been granted along with interest @6% per annum to the claimants from the date of settlement of issues, i.e. 04.11.2009 on account of death of the deceased in a motor vehicular accident dated 23.07.2006, are heard together and disposed of by this common order.

3. MACA No.171 of 2012 has been filed by the Insurance Company challenging the award mainly on the ground that the accident took place within the premises of B.C. Dogra Mines and as such does not come within the definition of 'public place'. Secondly, it is submitted that the driver of the offending vehicle possessed a fake driving license. Therefore, the right of recovery should be granted in favour of the insurer.

4. MACA No.695 of 2012 has been preferred by the claimants praying for enhancement of the compensation amount mainly on the ground that only Rs.10,000/- has been granted towards consortium and interest has been granted from the date of settlement of issues instead of the date of application, without any reason.

5. First dealing with the challenge advanced by the insurer, the contention of Mr. Satapathy that the place of accident is within the premises of the Mines Office and as such not a public place, is without merit. The undisputed facts, in the instant case, are that, while the deceased along with other workmen were demonstrating agitation in front of the Mines Office, the accident took place causing his death. The definition of 'public place' as mentioned in the M.V. Act does not preclude the premises of a private company where public carriage vehicles are permitted to operate. In the instant case, as it was a mines area and the offending truck was a public goods carriage vehicle with valid insurance policy in terms of Section 147 of the M.V. Act, the contention advanced by Mr. Satapathy to treat the place of accident as a private place is thus rejected.

6. So far as the other contention advanced by Mr. Satapathy is concerned that the driver possessed a fake driving license, it is seen that the driving license under Ext.A discloses that the same stands in the name of one Kiran Kumar Das. But the present accused-driver is namely, Tapan Kumar Pradhan. The owner did not come to contest and the driving license under Ext.A is having the same number as mentioned in the seizure list in the Police case. Therefore, it is prima facie established that the accused-driver was not having a valid license or he possessed a fake driving license on the date of accident. No material has been brought on record to suggest anything about knowledge of the same by the owner. Thus, in terms of the principles decided in the cases of ***National Insurance Co. Ltd. vs. Swaran Singh and others, (2004) 3 SCC 297*** and ***Nirmala Kothari vs. United India Insurance Company Limited, (2020) 4 SCC 49,*** the insurer is granted right of recovery of the compensation amount from the owner.

7. With regard to the contention raised by the claimants for enhancement of the compensation amount, it is seen from the impugned judgment that, admittedly only Rs.23,000/- has been granted towards loss of consortium and general damages and interest on the compensation amount has been granted from 4.11.2009, i.e. the date of settlement of issues. The learned Tribunal has not assigned any reason for not granting interest from the date of filing of the claim application. Sec.171 of the M.V. Act authorizes the Tribunal to grant interest on the compensation amount from such date not earlier than the filing of the claim application. In absence of any assigned reason, the Tribunal should not depart from the general rule to grant interest from the date of filing of the claim application. Thus, the claimants are held entitled for interest from the date of filing of the claim application and not from any other later date.

8. Keeping in view the settled principle of law that the wife and children are entitled for consortium and further taking the note of the date of accident, i.e. 23rd July 2006, an amount of Rs.1,00,000/- is granted towards consortium to all the claimants and an amount of Rs.30,000/- is granted towards general damages. Therefore, the total compensation amount is enhanced to Rs.3,87,000/-, payable along with interest @6% per annum.

9. In the result, both the appeals are disposed of with a direction to the Insurance Company-New India Assurance Co. Ltd. to deposit the entire modified compensation of Rs.3,87,000/- (rupees three lakhs eighty-seven thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal. As observed earlier, the right of recovery of the compensation amount is granted in favour of the Insurance Company.

10. On deposit of the award amount by the insurer before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made in MACA No.171 of 2012 before this Court with accrued interest thereon shall be refunded to the insurer.

11. The copy of Ext.A as produced by Mr. S. Satapathy, learned counsel for the Insurance Company in course of hearing is kept on record.

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

(B.P. Routray)
Judge

B.K. Barik