

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.701 of 2015

***The Divisional Manager,
Oriental Insurance Company Ltd.*** ***Appellant***

Mr.Subrat Satpathy, Advocate

-versus-

Bimala Muduli and others ***Respondents***

Mr.A.K.Tandi, Advocate for Respondent Nos.1 to 3

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

06.01.2022

Order No.

11.

1. It is submitted by Mr.Satpathy, learned counsel for the Appellant that he has already paid the cost to the High Court Bar Association on 13th December, 2021 and filed the receipt.

2. Heard Mr.Satpathy, learned counsel for the Appellant and Mr.Tandi, learned counsel for Claimants-Respondents No.1 to 3.

3. The present appeal by the Insurer is directed against the judgment dated 19th May, 2015 passed by the learned District Judge-cum-MACT(I), Bolangir in M.A.C.No.70 of 2013, wherein the learned Tribunal has directed for payment of compensation to the tune of Rs.6,83,000/- along with interest @7% per annum from the date of filing of the claim application i.e., 5th August, 2013 on account of death of the deceased in the motor vehicular accident dated 19th April, 2013.

4. The case of the Claimants is that while the deceased was coming to his house in the motorcycle, the offending vehicle i.e., tanker truck bearing Registration No.OR-03D-9128 dashed it

from behind being driven in a rash and negligent manner as a result of which the deceased fell on the road and the wheel of the offending truck crushed over the body.

5. Learned counsel for the Appellant contends that the accident was caused due to negligence on the part of the deceased since he was trying to overtake the offending vehicle in the wrong side. It is further contended that the driver of the offending vehicle having not authorized to drive a dangerous and hazardous vehicle, the Insurer has no liability to indemnify the owner for violation of the conditions.

6. On the other hand, it is submitted by Shri Tandi that the contention with regard to negligence on the part of the deceased is not correct since the evidence produced on record is to the effect that the offending vehicle dashed behind the motorcycle of the deceased. Secondly, it is submitted that since the driver of the vehicle had the license and the vehicle was having valid permit as well as insurance policy, the Insurer is liable to indemnify the owner. Nonetheless, the Court in appropriate cases can direct for recovery of the same from the owner under the principles of pay and recover.

7. Having heard both parties and upon perusal of the impugned judgment, it is seen that the offending vehicle is undoubtedly having valid permit and insurance policy on the date of accident. The driver was having the license to drive goods carriage vehicle. Though no material is there to show that the driver is authorized to drive dangerous and hazardous goods carriage vehicle, but for the said reason, it may not be appropriate to grant the right of

recovery in favour of the insurer in the given facts of the present case. Accordingly, the prayer in this regard by the Insurer-Appellant is rejected.

8. It is also seen that the Insurer has not adduced any evidence to attribute negligence on the part of the deceased in the cause of accident though the claimant has brought sufficient evidence on record to justify the claim that the offending vehicle dashed the motorcycle of the deceased from behind. In absence of any material evidence to substantiate the contention of the Appellant, their submissions that the deceased was trying to overtake the vehicle in the wrong side and thereby contributed negligence for the accident is seen without substance and rejected.

9. With regard to the quantum of compensation, no fault is seen in the approach of the learned Tribunal determining the compensation the tune of Rs.6,83,000/-. So no reason is found to interfere with the same. But the rate of interest is reduced to 6%.

10. Accordingly, the Insurer-Appellant is directed to deposit the entire award amount of Rs.6,83,000/- (Six lakhs eight three thousand) along with interest @6% per annum from the date of filing of the claim application i.e., 5th August, 2013 within a period of eight weeks from today; where-after the same shall be disbursed in favour of the Claimants in the same proportion and terms as directed by the learned Tribunal in its order.

11. The statutory deposit made by the Appellant be refunded to him on proper application and on production of proof of deposit of the awarded amount before the learned Tribunal.

12. The appeal is disposed of.

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

(B.P. Routray)
Judge

C.R.Biswal

