# IN THE HIGH COURT OF ORISSA AT CUTTACK

**MACA No.79 of 2019 & MACA No.284 of 2019**

**MACA No.79 of 2019**
**Rabindra Mohanty** …. **Appellant**
Mr.B.P.Das, Advocate

-versus-

**Shashadhar Mishra and another** …. **Respondents**
Mr.S.Roy, Advocate for Respondent No.2
Mr.G.P.Dutta, Advocate for Respondent No.4

**AND**

**MACA No.284 of 2019**
**Manager Legal,** …. **Appellant**
**The Oriental Insurance Co. Ltd.**
Mr.S.Roy, Advocate

-versus-

**Rabindra Mohanty and others** …. **Respondents**
Mr.B.P.Das, Advocate for Respondent No.2
Mr.G.P.Dutta, Advocate for Respondent No.4

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

**ORDER**
**28.11.2022**

**Order No.**
06.

1. The matter is taken up through Hybrid mode.

2. Heard Mr.Das, learned counsel for the claimant and Mr.Dutta, learned counsel for the Insurer-Oriental Insurance Co. Ltd. as well as Mr.Roy, learned counsel for the Insurer-Reliance Insurance Co. Ltd.

3. Both the appeals arise out of the same judgment dated 1st December, 2018 passed by the learned 3rd M.A.C.T., Bhubaneswar, in M.A.C. Case No.335/166 of 2012, wherein compensation to the tune of Rs.5,95,000/- along with interest @7% per annum has been granted from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident dated 9th June, 2021.

4. Mr.Roy submits for Oriental Insurance Co. Ltd., the Insurer of the offending Pick up van, that, the injured claimant was a gratuitous passenger in the Pick up van and therefore, the Insurer is not liable to indemnify the compensation amount. He further contends that the driver of the Pick up van is not at all negligent for the accident and thus the direction of the Tribunal to present Oriental Insurance Co. Ltd. for payment of compensation on behalf of the owner is liable to be set aside.

5. Mr.Dutta, learned counsel for the Reliance General Insurance Company Ltd., the Insurer of the offending truck, submits that, the finding of the Tribunal with regard to negligence aspect is justified and does not require any interference since the accident is a head on collusion and both the drivers have been charge-sheeted in the police case.

6. Mr.Das, learned counsel for the injured-claimant in MACA No.79 of 2019 has prayed for enhancement of the compensation amount, mainly on the ground that treatment expenses has been counted on lesser side by the Tribunal.

7. Upon hearing all the parties, it is seen that the accident is the result of head on collision between the offending Pick up

van bearing Registration No.OR-02-AZ-2348 and the truck bearing Registration No.GJ-IBV-1620. The injured was moving as an occupant of the offending Pick up van. In the accident, the driver of the Pick up van died and the present claimant was injured.

8. Being asked, neither Mr.Roy nor Mr.Dutta, learned counsels for respective Insurance Companies are able to reply anything regarding any compensation claimed for the death of the driver of the offending Pick up van.

9. In respect of present deceased, so far as the contention regarding gratuitous passenger is concerned, it is the specific case of the claimant that he was an employee of the Company, namely, Perfax Cargo and Logistic Courier and at the time of accident, he was moving in the Pick up van along with courier parcels and the delivery was destined at Sambalpur. The injured claimant has examined himself as P.W.1 and categorically stated so. Though no documentary proof has been adduced by P.W.1 in support of his contention, but it is seen that no evidence was also adduced by either of the Insurers to rebut said contention of the injured. O.P.W. 1 is an official witness working in Oriental Insurance Company. He has only stated about the terms and conditions of the insurance policy. Therefore, looking at the statement of PW 1 as well as OPW 1 and specific assertion of the injured claimant to the effect that he was an employee of the Courier Company and the offending Pick up van was loaded with courier parcels at the time of accident, no merit is seen in the contention of Mr.Roy to

treat the injured as a gratuitous passenger. Accordingly, the same is rejected.

10. With regard to quantum of compensation, it is seen that the Tribunal has accepted the monthly income of the Injured at Rs.9,000/- and his functional disability to the extent of 20%. These aspects are not challenged by any of the parties.

11. What is contended on behalf of the claimant to add more amounts towards his medical expenses, the same are not found acceptable in absence of any specific evidence with regard to medical expenses.

12. It needs to be mentioned here that contribution of negligence arrived by the Tribunal amongst both the drivers is found justified in view of police inquiry report and submission of charge-sheet against both the drivers as well as the fact that the accident was the result of head on collision between two vehicles. So no merit is seen in such contention of Mr.Roy to conclude in other way.

13. In the result, both the appeals are dismissed and Oriental Insurance Company, the Appellant (in MACA No.284 of 2019), who is stated to have not deposited its share of compensation amount, is directed to deposit the amount fall due to his share in terms of the direction of the learned Tribunal along with interest within a period of two months from today, which shall be disbursed in favour of the claimant on same terms and conditions as directed in the impugned judgment. However, the penal interest @8% is waived.

14. Copies of the depositions and exhibits filed by Mr.Das in course of hearing are kept on record.

15. The statutory deposit made by the Insurer in MACA No.284 of 2019 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.

***( B.P. Routray)***
***Judge***

C.R.Biswal