

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.211 of 2017**

***The Divisional Manager, M/s.United India Insurance Company Ltd.*** .... ***Appellant***

Mr. B. Dasmohapatra, Advocate

*-versus-*

***Jamuna Dhal and others*** .... ***Respondents***

Mr. A.K. Sahoo, Advocate for Respondent Nos.1 & 2

**CORAM:**

**JUSTICE B. P. ROUTRAY**

**ORDER**  
**24.11.2022**

**Order No.**

11.

1. Heard Mr. B. Dasmohapatra, learned counsel for the Appellant-Insurance Company as well as Mr. A.K. Sahoo, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 23.08.2016 of learned 1<sup>st</sup> M.A.C.T., Deogarh in M.A.C. Case No.20/2014, wherein compensation to the tune of Rs.12,72,000/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e. 10.07.2014 on account of death of the deceased in the motor vehicular accident dated 14.10.2013.

3. Mr. B. Dasmohapatra, learned counsel for the Appellant-Insurance Company seriously challenges the income aspect of the deceased. He disputes employment of the deceased as a security guard at Bangalore and in this regard files Misc. Case No.357 of

2017, praying for additional evidence, along with letter dated 20.02.2017 issued by the alleged employer.

4. It is seen from the impugned judgment that the learned Tribunal by relying on the documents under Exts.11 to 18 have accepted the employment of the deceased as the security guard in '24/7 Customer Pvt. Ltd., Embassy Golfink Business Part, Bangalore' and his monthly remuneration of Rs.12000/-. The Appellant-insurer now producing the letter of said '24/7 Customer Pvt. Ltd' dated 20.02.2017 denies employment of the deceased in such capacity. In the said letter dated 20.02.2017, it is clearly mentioned that no such person, namely, Tapan Kumar Dhal(17909) (the deceased) was ever in employment from 27<sup>th</sup> June, 2012 till 14<sup>th</sup> October, 2013.

5. The claimants have filed their objection disputing the authenticity of such document, i.e. the letter dated 20.02.2017 produced by the insurer by way of additional evidence.

Mr. A.K. Sahoo, learned counsel for the Respondent Nos.1 and 2-claimants submits that as per Ext.18, a copy of which is appended to the objection, the same is completely different from the purported document produced by the insurer before this Court and according to him, those documents marked under Exts.11 to 18 before the learned Tribunal are authenticated and genuine documents and their genuineness has not been questioned or disproved by rebuttal evidence.

6. In view of the dispute raised by both the parties with regard to the employment of the deceased as security guard in 24/7

Customer Pvt. Ltd and receipt of his monthly remuneration of Rs.12,000/-, this Court initially was in favour of remanding the matter back to the learned Tribunal for adducing respective evidence by both sides on the issue. But keeping in view the prevalent rate of minimum wages on the date of accident as well as the age of the deceased and the amount computed towards loss of dependency, this Court instead of sending back the matter for fresh adjudication proposes a modified compensation of Rs.10,00,000/- along with 6% interest to the parties. Mr. A.K. Sahoo, learned counsel for the claimants-Respondent Nos.1 & 2 agrees to the same and Mr. B. Dasmohapatra, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court.

7. So considering the status of the poor claimants, who are the parents of the deceased and the date of accident, this Court fixes the aforesaid amount of compensation.

8. Mr. Dasmohapatra, learned counsel for the Appellant at this stage submits that the accused-driver of the offending motorcycle was admittedly not having a valid driving license in respect of two-wheeler though he had driving license in respect of a light motor vehicle. As such, he seeks right of recovery from the owner.

9. It is seen that the learned Tribunal in the impugned judgment has held that the license to drive a light motor vehicle includes driving of a two-wheeler. This proposition arrived by the learned Tribunal is incorrect. Since the accused-driver apparently did not

have a valid license to drive the offending motorcycle on the date of accident, the right of recovery of compensation amount from the owner is granted in favour of the Appellant-insurer.

10. In the result, the appeal is disposed of with a direction to the Appellant – Insurance Company to deposit the modified compensation of Rs.10,00,000/- (rupees ten lakhs) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.10.07.2014 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 fixed by the Tribunal. However, the penal rate of interest of further 6% is waived.

11. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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

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