

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.67 of 2022

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

Mr. M. Sinha, Advocate

-versus-

Smitarani Khuntia and others ***Respondents***

Mr. B.N. Rath, Advocate for Respondent Nos.1 to 3

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
28.07.2022

Order No.

03.

1. Heard Mr. M. Sinha, learned counsel for the Appellant-Insurance Company as well as Mr. B.N. Rath, learned counsel for the Respondent Nos.1 to 3-claimants.

2. Present appeal by the insurer is directed against the judgment dated 08.11.2021 of the learned 1st MACT, Cuttack in MAC Case No.669 of 2015 wherein compensation to the tune of Rs.5,00,000/- along with simple interest @6% per annum from the date of filing of the claim application, i.e.,19.09.2015 was granted by the learned Tribunal to the claimants on account of death of the deceased in a motor vehicular accident dated 29.07.2015.

3. Mr. M. Sinha, learned counsel contends for the Appellant-Insurance Company submits that for violation of the route permit

in respect of the offending vehicle, the insurer should be granted the right of recovery of the compensation amount from the owner of the offending truck.

4. After hearing Mr. B.N. Rath, learned counsel for the claimants- Respondent Nos.1 to 3 and upon perusal of the impugned judgment, it reveals that the entire contention regarding absence of route permit is based solely upon non-seizure of any permit by the Police while investigating the criminal case. In other words, the submission of the Appellant-Insurance Company is based on the presumption that the offending truck had no valid permit at the time of accident. As such, the contention is not accepted without any evidence. However, it is left open for the insurer to seek for recovery of compensation amount from the owner of the offending truck as per law and upon proof of his contention that the truck was not having any permit.

5. Further, the contention of Mr. Sinha that part negligence should also be contributed to the driver of the Scotty in which the deceased was riding since the accident is a head on collision. I do not see any logic in such submission advanced by Mr. Sinha which is based solely on the presumption that since the accident is a head on collision, therefore contributory negligence should be fixed on the part of both the drivers, even in absence of any evidence to that effect.

6. It needs to be stated here that such contention is rejected outright in absence of any evidence brought on record to reveal any negligence attributable on the driver of the Scotty for causing

the accident and admittedly without any evidence such presumption cannot be taken.

7. The MACA is dismissed.

8. The Appellant-Insurance Company is directed to deposit the compensation amount of Rs.5,00,000/- (Rupees Five Lakhs) along with interest @6% per annum from the date of filing of the claim application i.e.19.09.2015 before the learned Tribunal 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.

9. 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.

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