

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.647 of 2017

MACA No.647 of 2017 & 575 of 2018

***M/s. United India Insurance Co. Ltd.
Represented through the Divisional
Manager***

(In MACA No.647/2017)

Prafulla Kumar Behera

(In MACA No.575/2018)

.... Appellants

Mr. B. Dasmohapatra, Advocate (in MACA No.647/2017)

Mr. D.C. Swain, Advocate (in MACA No.575/2018)

-versus-

Prafulla Kumar Behera and Another (In MACA No.647/2017)

Pramod Kumar Behera and Another (In MACA No.575/2018)

.... Respondents

**Mr. D.C. Swain, counsel for Respondent No.1
(in MACA No.647/2017)**

**Mr. B. Dasmohapatra, counsel for Respondent No.2
(in MACA No.575/2018)**

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

**ORDER
11.10.2022**

Order No.

- 09.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. B. Dasmohapatra, learned counsel for the insurer and Mr. D.C. Swain, learned counsel for the claimant.
 3. Both the appeals being arise out of same judgment, are heard together and disposed of by this common order.

4. Both the appeals are against the same impugned judgment dated 20th February, 2017 of learned 4th MACT, Cuttack passed in MAC Case No.1046 of 2011 / 20 of 2014 wherein compensation to the tune of Rs.2,43,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2011 has been granted on account of death of deceased Ramamani Behera in the motor vehicular accident dated 15th November, 2008.

5. MACA No.575 of 2018 filed by the claimant is suffering from delay of 358 days. Since the connected appeal filed by the insurer is tagged to this appeal and is heard on merit, the delay in filing appeal by the claimant is condoned and the matter is heard on merit along with the appeal filed by the insurer.

6. In MACA No.575 of 2018, the claimant has prayed for enhancement of the compensation amount on the grounds of non-addition of future prospects and consortium.

7. In MACA No.647 of 2017, the insurer has questioned the award on the ground that, one of the son was the owner-cum-driver of the motor cycle where the deceased was the pillion rider, and the other son of the deceased is the claimant. The further contention of the insurer is that without registration of any police case regarding the accident and post mortem examination conducted, the death of the deceased in the accident is doubtful.

8. Upon hearing both parties, it is seen from the record that admittedly no police case has been registered relating to the accident. As per the claimant, the accident took place on 15th November, 2008

and the deceased died on 16th November, 2008 while undergoing treatment at Shanti Hospital, Cuttack. It is stated by the claimant that though he lodged the F.I.R. at Khurda P.S., but the police did not register his complaint nor took up investigation. But no document or evidence in support of such statement is adduced by the claimant.

9. Four witnesses have been examined from the side of the claimant. Amongst them, P.W.2 and P.W.3 are stated to be the eye-witnesses to the accident. P.W.1 is the claimant and P.W.4 is the treating doctor. P.Ws.2 and 3 denied to have lodged any complaint before police regarding the accident. Though P.W.1, the claimant, who is the son of the deceased, has stated in his evidence that he lodged the F.I.R. in Khurda P.S., but he did not say when the report was lodged in the police station. He also does not produce any copy of the F.I.R. lodged by him. It is not understood as to why he did not take any further step regarding non-registration of the police case and did not avail other remedies provided under the Cr.P.C.

10. Shanti Hospital, Cuttack is a private hospital and P.W.4 is stated to be a doctor working there. The evidence of P.W.4 goes to show that, though it was the usual practice of their hospital to intimate police in such cases of unnatural death, but no intimation in the present case was sent to police regarding death of the deceased on the ground that same was not found necessary. Said P.W.4 further says that no post mortem examination over the dead body of the deceased was conducted since the cause of death was clear to be in accident. Such statement made by P.W.4 appears inadmissible in evidence, because it is well known that matters which are to be proved through

documentary evidence cannot be proved by oral evidence. When the death is unnatural, it requires that the cause of death must be proved through post mortem examination. Such requirement of proof of cause of death cannot be established by mere statement of the treating doctor only.

11. A further suspicion is raised due to non registration of the police case. The explanation offered by the claimant for non-registration of police case seems inconceivable. It is seen that adequate steps were not taken on his part to register the police case.

12. The circumstances discussed above, coupled with the fact that one of the sons is raising the claim for compensation for death of the mother due to negligence of another son, cast doubt over credibility of their claim. In such circumstances, the probability of death of the deceased in a motor vehicular accident is reduced. It is thus concluded that, the death of deceased in motor vehicular accident is not established on record for want of adequate proof and as such, no compensation can be granted for the death of the deceased.

13. The claimant is not entitled for any compensation. Accordingly, the appeal filed by the insurer, i.e. MACA No.647 of 2017 is allowed and the impugned award is set aside. Resultantly, MACA No.575 of 2018 filed by the claimant is dismissed.

14. The statutory deposit made by the insurer in MACA No.647 of 2017 before this court along with accrued interest be refunded on proper application.

15. The copies of depositions of P.Ws.1 to 4 and other exhibits produced by Mr. Dasmohapatra are kept on record.

16. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

