

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.507 OF 2017

From the Judgment / Order dated 27.02.2017 passed by the learned 3rd Motor Accident Claims Tribunal, Balasore in M.A.C Case No.98/308 of 2012/2010.

Divisional Manager, M/s. Oriental Insurance Co., Ltd.

:::: Appellant.

-:: VERSUS ::-

Ratnakar Sahu & Others

:::: Respondents.

Appeared in this case by Video Conferencing Mode /

Hybrid Mode.

For Appellant :::: Mr. Subrat Satapathy,
Advocate

For Respondents:::: Mr. B.Singh &
Associates, Advocate

PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing-04.04.2022:: Date of Judgment-.19.04.2022

B.P.Satapathy, J. This appeal has been filed by the Appellant-Company challenging the judgment dated 27.02.2017 passed in M.A.C. Case No.98 / 308 of 2012 / 2010 by the learned 3rd Motor Accident Claims Tribunal, Balasore.

2. The learned Tribunal vide the aforesaid judgment while allowing the claim directed the appellant-company to pay compensation amount of Rs.3,48,040/- along with interest @

7.5 % per annum from the date of filing of the claim petition till its realization.

3. It is the submission of Mr. Satapathy, learned counsel for the Appellant that even though the vehicle in question bearing Registration No.OR-01-P-5315 was insured with the appellant-company and the accident occurred during subsistence of the policy, but the appellant –company is not liable to pay the compensation so directed by the learned Tribunal, in view of the agreement executed by the registered owner of the vehicle on 25.10.2010. As per the said agreement, the vehicle in question was taken on hire by the Respondent No.2 for a period of one year with monthly rent of Rs.10,000/-.

4. It is the submission of Mr. Satapathy that as per the said agreement, it is agreed that the driver, helper and labourer will be appointed by the Respondent No.2 and he will pay their wages. It is also agreed that if the driver, helper and labourer received personal injury by any accident arising out of and in course of the agreement, then the Respondent No.1 will not pay the compensation amount.

5. Mr. Satapathy, in view such contention stipulated in the agreement argued that the learned Tribunal committed illegality in directing the appellant-company to pay the compensation amount without taking note of the condition stipulated in the said agreement.

6. Mr. Satapathy, in support of the aforesaid contentions relied on the decision of the Hon'ble Apex Court in the case of

National Insurance Company Limited vs. Deepa Devi and Others reported in **2008(1) T.A.C 214 (S.C.)**. Hon'ble Apex Court in the aforesaid reported decision held the insurer not liable to pay the compensation to the claimant as the offending vehicle was deployed by the State Government for election duty during the Assembly Elections and it was not used for the purpose for which contract of insurance was entered into.

7. Per contra, Mr. Singh learned counsel appearing for the Claimant-Respondent while supporting the award passed by the learned Tribunal vide the impugned judgment, relied on the decision of the Hon'ble Apex Court in the case of **Firdaus vs. Oriental Insurance Co., Ltd and Others** reported in **2017 (4) T.A.C 698 (S.C.)**. In the said reported decision, Hon'ble Apex Court held the insurer liable to pay the compensation, even though the vehicle in question was already sold out by the time the incident occurred.

8. Having heard learned counsel for the Parties this Court is of the considered view that the vehicle in question was duly insured with the appellant-company and the alleged incident occurred during subsistence of the policy. The contention raised by Mr. Satapathy that in view of the agreement executed in between the registered owner on 25.10.2010, the appellant-company is not liable to pay the compensation is not acceptable. The said agreement was also not duly registered before the competent authority. The decision relied on by Mr. Satapathy in Deepa Devi's cases cannot be made applicable to the facts of the present case as in the said decision the insurer was held not liable as the offending vehicle was deployed by the State Government for election duty. In the said reported

decision, it was also held that the vehicle in question was not used for the purpose contract of insurance was entered into. But in the instance case, there is no allegation of any violation of the policy condition by the appellant-company and the stipulation contained in the agreement dated 25.10.2010 cannot come to the rescue of the appellant-company. In the alternate the decision relied on Mr. Singh, learned counsel for the Claimant-Respondent is applicable to the facts of the present case. In the said reported decision the insurer was held liable in spite of the fact that the vehicle in question was already sold out by the time the alleged incident occurred. Since the offending vehicle was duly insured with the appellant-company and there is no violation of any policy condition, learned Tribunal rightly held the appellant liable to pay the compensation.

9. At this point of time, Mr. Satapathy, learned counsel for the Appellant argued that while directing for payment of the compensation, learned Tribunal has directed for payment of interest @ 7.5% per annum and the same is on the higher side and not in accordance with the rate of interest prevalent at that point of time.

10. Having heard learned counsel for the Parties at length, this Court is of the considered opinion that the learned Tribunal has not committed any illegality or irregularity in directing the appellant to pay the compensation. But the submission made by Mr. Satapathy with regard to the rate of interest allowed by the learned Tribunal @ 7.5. % per annum in my considered view is on the higher side. Therefore, while upholding the compensation amount at Rs.3,48,040/-, this

Court deems it fit and proper to reduce the rate of interest from 7.5% per annum to 6% per annum.

10. Accordingly, this Court while disposing the appeal direct the appellant-company to pay the compensation amount of Rs.3,48,040/- along with interest @ 6 % per annum payable from the date of filing of the application i.e. from 26.11.2007 till its realization. This Court directs the appellant-company to pay the amount so assessed by this Court along with interest within a period of eight weeks from today.

11. It is further observed that only after payment of the compensation amount along with interest so assed by this Court within the period stipulated hereinabove, the appellant-company shall be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on proper identification.

12. With the aforesaid observations and directions, the MACA stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 19th April, 2022/Subrat