IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.140 of 2019

The Divisional Manager, Oriental Insurance Company Ltd. .... ***Appellant***

Mr. P.K. Mahali, Advocate

-versus-

Smt. N. Sailama and Others .... ***Respondents***

Mr. S.B. Das, counsel for Respondents 1&2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
27.10.2022

Order No.

06. 1. The matter is taken up through hybrid mode.

2. Heard Mr. P.K. Mahali, learned counsel for the insurer - Appellant and Mr. S.B. Das, learned counsel for the claimant – Respondents 1&2.

3. Present appeal by the insurer is against the impugned judgment dated 20th November, 2018 of the learned Member, 2nd MACT (Southern Division), Berhampur, Ganjam passed in MAC Case No.118 of 2013 (43/2011-GDC) wherein compensation to the tune of Rs.5,05,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 3rd February, 2011 has been granted on account of death of deceased Rushia Patra @ N. Rushia in the motor vehicular accident dated 21st August, 2010.

4. Mr. Mahali contends on behalf of the insurer that the owner of the offending motor cycle was the driver and despite having learner's

licence he did not take with him a regular driver and as such violated the policy condition. Therefore, the insurer is not liable to indemnify the compensation amount.

5. The accident took place when the deceased was crossing the road on Zebra Crossing. The owner-cum-driver of the offending motor cycle, which dashed the deceased, was having learner's licence at the time of accident. What is contended by Mr. Mahali that the driver was not accompanied with a regular driver in the motor cycle is not found established on record. No evidence except a copy of the DL of the owner has been adduced from the side of the insurer. The insurer also did not ask anything during cross examination of P.W.1 and P.W.2 to satisfy his contention that no other person was accompanying the driver.

6. Admittedly, the driver having a learner's licence is neither unauthorized nor incompetent to drive the motor cycle on public road. Therefore, in absence of any material to show that he was not accompanied with a regular driver in the motor cycle, the liability of the insurer cannot be denied in terms of the policy condition. As such, no fault is seen in the approach of the tribunal in saddling the liability on the insurer to indemnify the compensation amount.

7. In the result the appeal is dismissed with a direction to the insurer – Appellant to deposit the entire compensation amount with interest before the tribunal within a period of two months from today where-after the same shall be disbursed in favour of the claimant – Respondents on the same terms and condition as directed by the

Tribunal. However, the direction regarding payment of default interest @ 8% is waived.

8. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda