

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.977 of 2017 & MACA No.391 of 2018

In MACA No.977 of 2017

Rajiba Lochan Pallai and another ***Appellants***
Mr. S.B. Das, Advocate

-versus-

Dillip Kumar Rath and another ***Respondents***
Mr. P.K. Mahali, Advocate for Respondent No.2

In MACA No.391 of 2018

The Divisional Manager, National Insurance Co. Ltd. ***Appellant***
Mr. P.K. Mahali, Advocate

-versus-

Rajibaloachan Pallai and others ***Respondents***
Mr. S.B. Das, Advocate for Respondent Nos.1 & 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
28.10.2022

Order No.

I.A. No. 740 of 2018 arising out of MACA No.391 of 2018

- 06.
1. Heard Mr. P.K. Mahali, learned counsel for the Insurance Company and Mr. S.B. Das, learned counsel for the claimants.
 2. Upon hearing both the parties and considering the grounds mentioned in the petition, the delay in filing the appeal is condoned.
 3. The I.A. is disposed of.

MACA No.977 of 2017 & MACA No.391 of 2018

4. Heard Mr. S.B. Das, learned counsel for the claimants and Mr. P.K. Mahali, learned counsel for the Insurance Company in both the appeals.

5. Both the appeals being arise out of the common judgment dated 28.08.2017 passed in Misc. Case No.253 of 1999 by the learned 2nd M.A.C.T., Cuttack, wherein compensation to the tune of Rs.1,61,200/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e. 9.4.1999 on account of death of the deceased in the motor vehicular accident dated 15.2.1999, are heard together and disposed of by this common order.

6. MACA No.391 of 2018 has been filed by the Insurance Company challenging the award and MACA No.977 of 2017 has been filed by the claimants praying for enhancement of the compensation amount.

7. Mr. P.K.Mahali, learned counsel submits for the insurer that, it is their specific case that the driver of the offending motorcycle bearing Registration No.OR-05-G-1747 was not authorized to drive the motorcycle on the date of accident and thus the insurer is not liable to indemnify the compensation amount.

8. On the other hand, Mr. S.B. Das, learned counsel contends for the claimants that in case of non-availability of the driving license, the insurer is liable to indemnify the owner with right of recovery. He further submits that the learned Tribunal has failed

to grant any amount towards consortium and as such the amount needs to be enhanced.

9. First coming to the challenge advanced by the insurer, it is seen that the offending motorcycle was driven by one Mr. Dillip Kumar Rath, who is Opposite Party No.1 before the Tribunal. He did not come to contest the case and there is no dispute about his ownership of the offending motorcycle. As per the claimants, said Dillip Kumar Rath was driving the offending motorcycle at the time of accident. Ext.B is the certified copy of the driving license of said Dillip Kumar Rath and as per Ext.B, though he was authorized to drive the light motor vehicle and light passenger motor vehicle, but he was not authorized to drive two wheeler (motorcycle). As such, it is established that the driver-cum-owner of the offending motorcycle was not having a valid driving license on the date of accident. Since the owner is the driver, the negligence and lack of reasonable care on his part to drive the motorcycle without a valid driving license is clearly established and therefore, in terms of the principle decided in the case of *National Insurance Co. Ltd. vs. Swaran Singh and others, (2004) 3 SCC 297*, the insurer is not liable to indemnify the owner. As such the insurer is exempted from its liability to indemnify the compensation amount on behalf of the owner.

10. So far as the submissions regarding enhancement of the compensation amount are concerned, it is seen that the learned Tribunal has failed to grant adequate amount towards consortium as per the principles rendered in the case of *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram*

and others, (2018) 18 SCC 130. The claimants being the sons of the deceased are entitled for parental consortium. Considering the date of accident, i.e. 15.2.1999, the amount of compensation is enhanced to Rs.2,00,000/- payable along with interest @6% per annum from the date of filing of the claim application.

11. In the result, both the appeals are disposed of and the insurer, i.e. M/s. National Insurance Company Limited is exempted from its liability. The amount of compensation is enhanced to the amount stated above. It is needless to say that the claimants are at liberty to realize the amount from the owner.

12. The statutory deposit made before this Court in MACA No.391 of 2018 with accrued interest thereon shall be refunded to the Insurance Company.

13. Copies of Ext.B as produced by Mr. P.K. Mahali, learned counsel for the insurer is kept on record.

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

(B.P. Routray)
Judge