

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.94 of 2021

The Divisional Manager, Oriental Insurance Company Limited *Appellant*

Mr. A.A.Khan, Advocate

-versus-

Smt. Subarna Hantal@Subha and others *Respondents*

Mr. S.B. Das, Advocate for Respondent Nos.1 & 2

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

**ORDER
13.09.2022**

Order No.

06.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company and Mr. S.B. Das, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 03.01.2020 of learned M.A.C.T., Malkangiri in M.A.C. Case No.01/2018 wherein compensation to the tune of Rs.10,00,000/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e.17.01.2018 on account of death of the deceased in the motor vehicular accident dated 22.02.2017.

3. Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company mainly contends that the learned Tribunal has failed to grant right of recovery in favour of the insurer in absence of valid

driving license of the driver of the offending Bus bearing Registration No.OR-24-4764.

4. Upon perusal of the impugned judgment, it is seen that failure on the part of the driver to possess valid driving license on the date of accident is not disputed. The offending vehicle is a passenger bus. It is further seen that the insurer has not adduced any evidence to reveal any such knowledge of the owner regarding absence of valid driving license by the driver. In other words, no material is there to satisfy willful breach of conditions by the insured. Thus in view of the principles decided in *National Insurance Co. Ltd. vs. Swaran Singh and others*, (2004) 3 SCC 297 and *Nirmala Kothari vs. United India Insurance Company Limited*, (2020) 4 SCC 49, the insurer is granted with right of recovery of compensation amount from the owner.

5. Further perusal of the impugned judgment reveals mathematical error in computation of compensation amount. However in absence of any appeal or challenge advanced by the claimants, this Court is not inclined to interfere in the same to enhance the amount in favour of the claimants (Respondent Nos.1 & 2).

6. In the result, the appeal is disposed of with a direction to the Appellant-Insurance Company to deposit the entire compensation of Rs.10,00,000/- (rupees ten lakhs) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.,17.01.2018 within a period of two months from

today with liberty granted in favour of the insurer to recover the same from the owner in accordance with law after affording opportunity of hearing to him. The amount so deposited by the insurer be disbursed in favour of the claimants-Respondent Nos.1 & 2 on such terms and proportion as contained in the impugned judgment.

7. 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.

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

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