

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.779 of 2015

MACA Nos.779 & 780 of 2015

***Divisional Manager, New India
Assurance Company Ltd.***

***Appellant
.... in both the cases***

Mr. G.C. Samantaray, Advocate

-versus-

Sulochan Pradhan and Another (in MACA No.779/2015)

Pitambar Pradhan and Others (in MACA No.780/2015)

.... Respondents

Mr. A.S. Nandy, counsel for Claimant - Respondents

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

**ORDER
05.01.2022**

Order No.

- 08.
1. Heard Mr. G.C. Samantaray, learned counsel for the insurer – Appellant and Mr. A.S. Nandy, learned counsel for the claimant – Respondents.
 2. It is submitted by both parties that Respondent No.2 in MACA No.780 of 2015 died on 19th August, 2012 and all his LR's. being on record, no further substitution is required.
 3. By the common judgment dated 31st December, 2014 in MAC Case Nos.155 and 157 of 2002, the learned 2nd MACT, Sambalpur has directed for payment of compensation to the tune of Rs.5,48,800/- and Rs.2,45,000/- to the respective claimants along with 6% interest from the date of filing of the claim applications. MACA No.779 of 2015 is in respect of MAC Case No.157 of 2002 and MACA No.780

of 2015 is in respect of MAC Case No.155 of 2002. Both the appeals being arising out of the common judgment are heard together and disposed of by this common order.

4. The insurer has filed both these appeals being aggrieved with the common judgment. It is contended on behalf of the Appellant that the learned Tribunal has committed error on record by not attributing contributory negligence to the driver of the truck.

5. The facts as reveal from the impugned judgment are that, the deceased persons namely Muliram Pradhan and Tuku Pradhan who were father and son, were traveling in the offending Tempo bearing registration No.OR 06 D 2140 carrying their goods from village Balugaon to Brajnathpur on hire basis on NH 23 on 6th May, 2001. On the way, due to rash and negligent driving of the driver of the Tempo, it dashed against the truck bearing Registration No.OR 05 E 6595 coming from the front. As a result of the accident both the deceased died.

6. It is contended by Mr. Samantaray, learned counsel for the Appellant that in the charge-sheet filed by police the drivers of the Tempo as well as of the truck have been indicted for criminal prosecution and as such the contributory negligence on the part of the driver of the truck is prima facie established. But the claimants even did not implead the owner of the truck and consequently the Tribunal has also failed to appreciate the negligence on the part of the driver of the truck.

7. Conversely, it is submitted by Mr. Nandy, learned counsel for the claimant – Respondents that, it is the choice of the claimants to implead either of the offenders to claim compensation and it is not

mandatory to implead both of them as parties in the claim application. In this regard he relies on the decision of Hon'ble Apex Court in the case of *Khenyei v. New India Assurance Company Ltd. & Ors.*, (2015) 9 SCC 273.

8. Having heard both parties and upon perusal of the impugned judgment it is seen that the learned Tribunal has discussed the issue at paragraph 4. It is observed by the learned Tribunal that P.W.2 who was the eye witness of the accident has categorically stated that the driver of the Tempo was responsible for causing the accident due to his rash and negligent driving. As such, it was concluded by the learned Tribunal to fix the negligence on the part of the driver of the Tempo only.

9. Having analyzed the evidence of P.W.2, the approach of the learned Tribunal to fix the negligence on the part of the driver of the Tempo cannot be faulted with. It needs to be mentioned here that no evidence on behalf of the insurer was adduced to suggest any contributory negligence on the part of the driver of the truck. Merely because the charge-sheet has been filed indicting the driver of the truck also for criminal prosecution, cannot itself satisfy the fact that the driver of the truck had contributed negligence in causing the accident. What to be seen is, the nature of evidence brought on record on the given facts of the case. So, in absence of any evidence from the side of the insurer, the approach of the learned Tribunal in fixing the negligence on the part of the driver of the Tempo cannot be said unjustified. Accordingly the contention of the insurer in this regard is rejected.

10. No dispute has been raised with regard to quantum of compensation. Thus, the amount of compensation so granted in favour of the respective claimants in both the claim applications as directed by the learned Tribunal is confirmed.

11. Both the appeals are dismissed being devoid of merit.

12. The insurer – Appellant is directed to deposit the entire awarded amount with interest in both the cases before the tribunal within eight weeks from today; where-after the same shall be disbursed in favour of the respective claimants as directed by the tribunal.

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

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

(B.P. Routray)
Judge