

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.185 OF 2020

From the Judgment/Order dated 05.07.2019 passed by the learned 3rd MACT, Balasore in MAC Case No.271/2017.

M/s. New India Assurance Co. Ltd. :::: Appellant

-:: VERSUS ::-

Pratima Adhikari & Ors. :::: Respondents

Appeared in this case by Video Conferencing Mode / Hybrid Mode.

**For Appellant :::: Mr. N.B. Das, Advocate
(for Appellant)**

**For Respondent :::: Mr. B. Singh, Advocate
(for Claimants-Respondents)**

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PRESENT :

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

Date of Hearing- 04.07.2022:: Date of Order- 12.07.2022

B.P.Satapathy, J. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. N.B, Das, learned counsel appearing for the Appellant-Company and Mr. B. Singh, learned counsel appearing for the Claimants-Respondents.

3. This appeal has been filed by the Appellant-Company challenging the Judgment dated 05.07.2019 passed in MAC No. 271/2017 by the learned 3rd MACT, Balasore.

4. Mr. Das, learned counsel appearing for the Appellant-Company submitted that learned Tribunal without proper appreciation of the grounds taken by the Appellant, held the Appellant liable to pay the compensation amount of Rs.7,72,000/- (Rs. Seven lakh seventy two thousand) along with interest @ 7.5% per annum payable from the date of application till its payment. It is also submitted that learned Tribunal while holding the Appellant-Company liable to pay the compensation amount did not take into consideration the stand taken by the Appellant that the insured vehicle was not at all negligent and accordingly holding the Appellant-company liable to the extent of 2/3rd is not sustainable in the eye of law. It is also submitted that rate of interest allowed @ 7.5% per annum on the higher side as at the relevant time the rate of interest cannot be held at 7.5% per annum. Accordingly, Mr. Das prayed for interference of this Court in the impugned Judgment.

5. Mr. Singh, learned counsel appearing for the Claimants-Respondents on the other hand while supported the impugned Judgment, submitted that learned Tribunal relying on a decision of the Hon'ble apex Court reported in the case of *Khenyei Vs. New*

India Assurance Co. Ltd. & Ors. reported in 2015 (2) T.A.C. 677 (SC), rightly saddled the Appellant to pay compensation to the extent of $2/3^{\text{rd}}$ in favour of the Claimant and right of recovery has also been allowed to the extent of $1/3^{\text{rd}}$ from the owner and the insurer of the other vehicle. Accordingly, it is submitted that no interference is called for by this Court.

6. Heard, learned counsel for the Parties. Perused the materials available on record. This Court after going through the materials available on record and the decision of the Hon'ble Apex court so relied on by Mr. Singh, when came to a conclusion that the Claimants-Respondents will be entitled to get compensation amount of Rs. 7,20,000/- (Rs. Seven lakh twenty thousand) along with interest @ 6% per annum payable from the date of application i.e. 20.06.2017 till its payment, Mr. Singh, learned counsel for the Claimants-Respondents supported the said view of this Court. Mr. Das, learned counsel appearing for the Appellant-Company left the same to the discretion of this Court.

7. In view of such stand taken by the learned counsel appearing for both the Parties, this Court while interfering with the impugned judgment held that the Claimants-Respondents will be entitled to get compensation amount of Rs. 7,20,000/- (Rs. Seven lakh twenty thousand) along with interest @ 6% per annum payable from the date of application i.e. 20.06.2017 till its payment with right of recovery to the extent of $1/3^{\text{rd}}$ as against the Owner-Respondent and the insurer of the other vehicle involved in the accident.

8. While holding so this Court directs the Appellant-Company to deposit the aforesaid compensation amount of Rs. 7,20,000/- (Rs. Seven lakh twenty thousand) along with interest so directed by the learned Tribunal before the Tribunal within a period of eight (8) weeks from the date of receipt of this order. It is directed that on such deposit of the amount by the Appellant-Company learned Tribunal shall do well to disburse the same in favour of the Claimants-Respondents proportionately and in terms of its order dated 05.07.2019.

9. However, it is observed that if the Appellant-Company will fail to deposit the aforesaid compensation amount so assessed by this Court within the period indicating hereinabove, the Claimants-Respondents will be entitled to get interest @ 7% per annum on the said compensation amount of Rs. Rs. 7,20,000/- (Rs. Seven lakh twenty thousand) along with interest for the period starting from the expiry of the period of eight (8) weeks from the receipt of this order.

10. It is further observed that since this Court upholds the right of recovery to the extent of 1/3rd as against the Owner/Respondent & the insurer of the other vehicle, if any application for recovery is made by the Appellant, then learned Tribunal shall proceed with the same strictly in accordance with law and by affording reasonable opportunity of hearing to both the Owner/Respondent & the insurer of the other vehicle.

11. It is further observed that only after deposit of the entire amount along with interest before the learned Tribunal as directed

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. This appeal is accordingly disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 12th July, 2022/Sneha

