IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.839 of 2019

MACA Nos.839 & 240 of 2019

National Insurance Company Ltd.
Represented by its D.M. ***(in MACA No.839/2019)***

Buti Nayak and Others ***(in MACA No.240/2019)***

.... ***Appellants***

Mr. P.K. Mahali, Advocate (in MACA No.839/2019)
Mr. Kalpataru Panigrahi, Advocate (in MACA No.240/2019)

-versus-

Buti Nayak and Others ***(In MACA No.839/2019)***

Sunyabasi Nanda and Another ***(In MACA No.240/2019)***

.... ***Respondents***

Mr. K. Panigrahi, counsel for Respondents 1-3
(in MACA No.839/2019)

Mr. P.K. Mahali, counsel for RespondentNo.2
(in MACA No.240/2019)

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
25.8.2022

Order No.

13. 1. The matters are taken up through hybrid mode.

2. Heard Mr. P.K. Mahali, learned counsel for the insurer and Mr. K. Panigrahi, learned counsel for the claimants.

3. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.

4. Both the appeals are directed against the impugned judgment dated 8th January, 2019 of learned 1st MACT, Cuttack passed in MAC Case No.29 of 2014 wherein compensation to the tune of Rs.5,60,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 17th January, 2014 has been awarded on account of death of deceased Pradip Nayak in the motor vehicular accident dated 26th September, 2013.

5. MACA No.839 of 2019 has been filed by the insurance company challenging negligence fastened on the driver of the offending pick-up van bearing registration number OR 09 J 1183. On the other hand MACA No.240 of 2019 has been filed by the claimants praying for enhancement of the compensation amount on the ground that the income of the deceased has been erroneously fixed below the rate of minimum wages and further compensation to the children for loss of parental consortium has not been granted.

6. Upon hearing both parties and perusal of the impugned judgment reveals that as per case of the claimants the deceased was going in the offending pick-up van as the owner of goods which dashed against the tractor bearing registration number OR 11 G 1911. The tribunal has fixed the negligence on the part of the driver of the pick-up van and accordingly directed its insurer to indemnify the compensation amount. This is challenged by Mr. Mahali by submitting that as per the contents of the F.I.R. the driver of the tractor was negligent in causing the accident and as such upon completion of police investigation charge-sheet was submitted against the driver of the tractor for commission of offence under Sections 279/304-A of I.P.C. to face the criminal prosecution. So taking

advantage of the findings given in the police investigation report, the insurer contends that entire negligence is on the part of the driver of the tractor. But for non-availability of valid insurance policy in respect of the same, present offending pick-up van has been shown negligent by the claimants.

7. It is seen that the claimants have examined three witnesses on their behalf to prove their case. Among them P.W.2 is the informant and P.W.3 is the eye witness to the accident. Admittedly P.W.2 is not an eye witness to the accident. He has clarified in his evidence that knowing about the accident from other villagers he lodged the F.I.R. which was scribed by one unknown person. He further clarified that later on he came to know that the offending pick-up van in which the deceased was travelling was negligent for the accident and the alleged tractor was not moving in speed at the time of accident. P.W.3, the eye-witness has stated that the accident took place due to rash and negligent driving of the driver of the offending pick-up van bearing registration number OR 09 J 1183. In his cross-examination he has confirmed his stand to this effect by answering to the questions of the insurer that the pick-up van dashed with the tractor on its right side and he has stated said fact before police. Therefore, what is contended by the insurer that since police has submitted charge-sheet against the driver of the tractor, the negligence should be fixed on him and not on the driver of the offending pick-up van is not found meritorious. It is for the reason that the eye-witness, who was examined in the claim case, has categorically attributed negligence on the part of the driver of the offending pick-up van. It needs to be stated here that what is stated in the investigation report is the opinion of the investigating

officer and cannot be treated as evidence. When the eye-witness as well as the informant coming to the witness box attributed negligence on the part of the driver of the pick-up van, no merit is seen in the contention based on the police papers.

8. Next coming to the quantum of compensation it is seen that the tribunal has accepted income of the deceased at Rs.3,500/- per month notionally against the claim of the applicants to the tune of Rs.15,000/- per month. However, the rate of minimum wages prevalent for unskilled labourers on the date of accident was Rs.150/- per day. Therefore, no logic is seen behind the principle adopted by the tribunal to fix notional income of the deceased at Rs.3500/-. Considering the rate of minimum wages prevalent on the date of accident it should at least be fixed at Rs.4500/- per month. Besides this, it is the undisputed case of the parties that the deceased was moving in the offending pick-up van as owner of goods and returning from daily market. It is further seen that no amount towards loss of parental consortium has been granted in respect of claimant No.2 and 3, who are minor children of the deceased.

9. Considering all such factors, in the opinion of this court a further sum of Rs.1,40,000/- should be added to the compensation, which then comes to Rs.7,00,000/-, payable along with interest @ 6% per annum.

10. In the result, both the appeals are disposed of with a direction to the insurer, i.e. National Insurance Co. Ltd. to deposit the enhanced compensation amount of Rs.7,00,000/- (seven lakhs) before the tribunal along with interest @ 6% per annum from the date of filing of

the claim application (17th January, 2014) within a period of ten weeks from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal.

11. However, the penal interest of 12% is waived.

12. The entire deposit made by the insurer - Appellant in MACA No.839 of 2019 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.

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

(B.P. Routray)
Judge

M.K.Panda