

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.123 of 2021

***ICICI Lombard General Insurance
Company Ltd.***

.... Appellant

Mr. G.P. Dutta, Advocate

-versus-

Smt. Puspanjali Nath and Others

.... Respondents

Mr. P.K. Mishra, counsel for Respondents 1-4

Mr. P.K. Behera, counsel for Respondent No.5

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

**ORDER
25.4.2022**

Order No.

- 04.
1. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant, Mr. P.K. Mishra, learned counsel for claimant – Respondent Nos.1-4 and Mr. P.K. Behera, learned counsel for owner – Respondent No.5.
 2. Present appeal by the insurer has been filed challenging the judgment dated 24th March, 2020 of learned 1st MACT, Angul passed in MAC No.169 of 2015 wherein compensation to the tune of Rs.47,95,000/- along with interest @ 7% per annum from the date of filing of the claim application has been granted on account of death of the deceased in the motor vehicular accident dated 27th November, 2015.

3. Mr. Dutta submits on behalf of Appellant that the alleged vehicle, i.e. motor cycle bearing registration number OD-19-D-8526 though was not involved in the accident but has subsequently been implanted to manage compensation.

4. In response it is submitted by Mr. Mishra, learned counsel for the claimants that in fact another person was injured in the accident in question involving the same offending vehicle who was the driver of the motor cycle where the deceased in the present case was the pillion rider. The insurer had settled the amount of compensation for sustaining injury of that injured rider in MAC No.67 of 2016 as reflected at paragraph 4(c) of the impugned judgment without raising any such objection.

5. Upon hearing all the parties, as it reveals from the impugned judgment, the admitted fact remains that the insurer while setting the claim amount in respect of injuries sustained by the rider of the motor cycle, did not question about the involvement of the present offending vehicle in the accident. The death of the deceased in the accident involving the offending motorcycle is also supported by the police investigation report in Banharpal P.S. Case No.200 dated 28th November, 2015 and the charge-sheet has been submitted against the offending driver also. However, a news item published in the daily 'Dharitri' dated 28th November, 2015 has been much relied upon by the insurer to support their contention for disproving the involvement of the offending vehicle in the accident. Admittedly, O.P.W.1, the News Reporter is not an eye witness of the accident who prepared the report of the news item hearing it from others. This has been

elaborately discussed at para 4(d) of the impugned judgment. Since O.P.W.1 is not an eye witness to the accident and his statement is based on hearsay evidence, the Tribunal has rightly discarded the same to arrive at the conclusion about the involvement of the offending vehicle. The said finding of the learned Tribunal based on reasons is confirmed.

6. Next coming to the challenge on quantum of compensation, considering the submissions advanced by the parties, a reduced compensation of Rs.45,00,000/- along with interest @ 6% per annum is proposed to the parties in course of hearing. This is agreed by Mr. Mishra, learned counsel for the claimant-Respondents as well as Mr. Behera, learned counsel appearing for owner – Respondent No.5 and Mr. Khan, learned counsel for the insurer leaves it to the discretion of the Court. As such, the amount is fixed to the above extent.

7. In the result the appeal is disposed of with a direction to the insurer - Appellant to deposit the reduced compensation of Rs.45,00,000/- (forty-five lakhs) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents 1 to 4 on such terms and proportion to be decided by learned Tribunal.

8. The statutory deposit made by the appellant 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.

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

(B.P. Routray)
Judge

M.K.Panda

