

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.509 of 2018

(From the judgment dated 27th November, 2017 passed by Sri S.K. Sahoo, learned 1st M.A.C.T., Cuttack in M.A.C. No.192 of 2012)

Divisional Manager, M/s.National Insurance Company Limited ***Appellant***

-versus-

Sailabala Sasmal@Pattnaik and others ***Respondents***

Advocate(s) appeared in this case:-

For Appellant : Mr. P.K. Mahali, Advocate

For Respondents : Mr. P.K. Mishra, Advocate
For Respondent Nos.1 to 3

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. Present appeal by the insurer, i.e., M/s.National Insurance Company Limited is directed against the judgment dated 27th November, 2017 passed by the learned 1st M.A.C.T., Cuttack in M.A.C. No.192 of 2012.

2. The claimants are the wife and children of the deceased. The accident took place on 01.08.2008 and the deceased was taken to S.C.B. Medical College & Hospital, Cuttack immediately. He underwent treatment in the Hospital and discharged from the Hospital

on 01.09.2008. On the next date, i.e. on 02.09.2008, the deceased died at his house. On 10.09.2009, a complaint case was filed regarding the accident and pursuant to the directions of the learned court, FIR was registered on 08.02.2010. The claim application was filed on 03.04.2012.

3. The learned Tribunal upon adjudication of the claim directed for payment of compensation to the tune of Rs.4,90,000/- along with 6% interest per annum from the date of filing of the claim application.

4. The insurer has come up in appeal seriously disputing death of the deceased in the accident as well as involvement of the offending vehicle i.e. Maruti Car bearing Registration No.OR-05-T-8929 in the accident. It is contended on behalf of the insurer that the vehicle in question has been implanted to make out a case in favour of the claimants to manage the compensation. It is further contended that neither any inquest nor any *post-mortem* examination was conducted over the dead body to establish the cause of death. But the learned Tribunal has committed error by observing that *post-mortem* examination has been conducted.

5. The case of the claimants is that while the deceased was going by walk, the offending vehicle dashed him from behind resulting multiple injuries. On the date of accident, the deceased was the Sarpanch of Jagannathpur Gram Panchayat and also was doing transport business. It is submitted on behalf of the claimants- Respondent Nos.1 to 3 that for the only reason of non-lodging of F.I.R. immediately after the accident, the same does not rule out their case for

compensation as the police report very well speaks about involvement of the offending vehicle in the accident as well as the death of the deceased was due to injuries in the accident. In this regard, the claimants take support of the copy of the final form submitted under Ext.3 and the discharge certificate under Ext.14.

6. Perusal of the record does not reveal any evidence adduced from the side of the insurer. The owner also did not adduce any evidence though contested the case by denying involvement of the vehicle in the accident.

7. It is seen that P.Ws.2 & 3 are the occurrence witnesses, who have categorically deposed before the Tribunal about the accident that took place on 01.08.2008 in front of EAST College when the deceased was walking in the extreme left side of the road. The offending vehicle dashed him from behind. This evidence of the eye-witnesses is supported by the police report where charge-sheet has been submitted against the driver of the offending vehicle under Sections 279/304-A of the Indian Penal Code. The discharge certificate under Ext.14 filed from the side of the claimants reveal that the deceased was admitted to S.C.B. Medical College & Hospital, Cuttack on 01.08.2008 with head injury and other injuries due to road traffic accident. The authenticity of Ext.14 which is issued by a well reputed Government Hospital of the State is never questioned by the insurer. The contents thereof though have not been proved by examining competent person to that effect but the oral evidence adduced by the claimants completely support the same. Such oral evidence adduced from the side of the claimants coupled with the documents like police papers and discharge

certificate do clearly establish the fact of sustaining injuries by the deceased in the road traffic accident on 01.08.2008.

8. The next question remains to be examined is about involvement of present offending vehicle in the accident. Of course the owner of the vehicle has denied the involvement of the vehicle in the accident, but simultaneously it has been pleaded by the owner that his vehicle being validly insured on the date of accident, the insurer is liable to indemnify the compensation amount. The owner did not adduce any evidence to rebut the oral evidence as well as the documents cited by the claimants regarding involvement of the offending vehicle in the accident. Undoubtedly the vehicle has been seized in course of police investigation and the seizure list has been marked in evidence. Charge-sheet has been filed against the driver, namely, Jagabandhu Das for his criminal prosecution. It is true that the FIR was not lodged immediately after the accident, but has been registered on 08.02.2010 based on the directions passed in the complaint case as earlier stated. Therefore, for the only reason of delay in lodging the FIR, the entire contention of the claimants cannot be disputed. When there is clear evidence with regard to the accident as well as involvement of the offending vehicle and the injuries sustained by the deceased, his treatment and death, this delay in lodging the FIR has no bearing to the case of the claimants. The learned Tribunal has thus rightly decided in favour of the claimants to award compensation and the story of non-involvement of the offending vehicle in the accident or the death of the deceased happened otherwise than the accident as contended by the Appellant is rejected being without merit.

9. No serious challenge is advanced with regard to quantum of compensation by the Appellant-insurer. Furthermore, upon going through the impugned judgment, I do not see any illegality in the assessment of different heads for computing just compensation by the Tribunal and no reason is found to interfere with the same.

10. In the result, the directions of the learned Tribunal are confirmed and the appeal is dismissed.

11. The Appellant-Insurance Company is directed to deposit the entire compensation of Rs.4,90,000/- (rupees four lakhs ninety thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.04.04.2012 within a period of two months from today as per its directions; where-after the same shall be disbursed in favour of the claimants.

12. 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.

(B.P. Routray)
Judge

B.K. Barik/Secretary