

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.514 of 2018

***Authorized Signatory, Bajaj Allianz* *Appellant*
General Insurance Company Limited**

Mr. A.A. Khan, Advocate

-versus-

Bishnu Priya Sahoo and others* *Respondents

Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 3

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
12.10.2022

Order No.

10.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for the Respondent Nos.1 to 3-claimants.

2. Present appeal by the insurer is directed against the judgment dated 11.12.2017 of learned 1st M.A.C.T., Jajpur in M.A.C. No.43 of 2009 wherein compensation to the tune of Rs.14,91,199/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application, i.e.23.06.2009 on account of death of the deceased in the motor vehicular accident dated 25.11.2008.

3. Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company contends that the offending vehicle, i.e. Tata Pick-up Van bearing Registration No.OR-04-F-7067 is not involved in the accident and secondly, the death of the deceased is not established arising out of the injuries sustained in the accident.

4. In this regard, Mr. Khan relies on Ext. B/2 and B/3. He further submits that since the deceased died after more than one and half years of the alleged accident, the cause of death cannot be attributed to the injuries sustained.

5. Coming to deal with first contention regarding non-involvement of the offending vehicle, it is seen that the contents of Ext. B/2 & B/3 have been discarded by learned Tribunal for want of proof. Those documents were neither true copies nor certified copies, and the authors of those documents were not examined on behalf of the insurer. So what is suggested from contents of such documents that another motorcycle dashed against the motorcycle of the deceased has been correctly discarded by learned Tribunal. It is needless to observe that a record keeper is not the authorized person to prove the contents of the documents and he cannot be substituted for the author. The standard of proof in respect of documentary evidence as enumerated in the Indian Evidence Act being not satisfied, no fault can be found in the approach of the Tribunal rejecting the contention of the insurer. For the same reasons, this Court also rejects the contention of Mr. Khan to disbelieve the claim of the claimants.

6. Coming next contention that the death of the deceased is not connected to the nature of injuries sustained in the accident, the same has also been elaborately dealt by the Tribunal in the impugned judgment. The findings given the post mortem report (Ext.9) towards cause of death of the deceased are due to comma for removal of right temporal lobe and parietal lobe of the brain.

The nature of injury as evinced from Ext.3, the injury report, undisputedly suggests about injury to the head in the accident. Considering the gravity of said injury and the finding in the post mortem examination and continuous treatment of the deceased till his death as seen from the treatment papers supported with oral evidence, justifies the conclusion of the Tribunal to opine that the death is due to the injuries sustained in the accident. Therefore no merit is seen in the contention of the insurer to disbelieve the same.

7. Next coming to the quantum of compensation, considering all such grounds, a modified compensation of Rs.14,00,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 to 3 agrees to the same and Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

8. In the result, the Appellant – Insurance Company is directed to deposit the modified compensation of Rs.14,00,000/- (rupees fourteen lakhs) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 23.06.2009 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

9. 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.

10. The MACA is disposed of with aforesaid directions.

11. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik

