IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.994 of 2015

Chinmaya Kumar Panigrahi	....	***Appellant***

Mr. Pabitra Kumar Nayak, Advocate

-versus-

Proprietor, M/s. Venkatesh Logistics (P) Ltd. and Another	....	***Respondents***

Mr. A.A. Khan, Counsel for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
27.7.2022

Order No.

11. 1. The matter is taken up through hybrid mode.

2. Heard Mr. P.K. Nayak, learned counsel for the Appellant and Mr. A.A. Khan, learned counsel for claimant – Respondent No.2.

3. The notice issued to Respondent No.1 – owner has returned un-served with postal noting that such company has stopped operating from the given address.

4. Considering the fact that the accident is of the year 2011 and the Appellant is the poor injured claimant, issuance of further notice to Respondent No.1 in the present appeal is dispensed with.

5. Present appeal by the claimant is directed against impugned judgment dated 24th July, 2015 of learned MACT, Jharsuguda passed in MACT Case No.37 of 2011 wherein compensation to the tune of Rs.7,22,488/- along with interest @ 7.5% per annum from the date of

filing of the claim application, i.e. 9th May, 20211 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 3rd January, 2011 and the owner – Respondent No.1 has been directed to pay the same.

6. The insurer – Respondent No.2 has been exempted from their liability from payment of compensation despite the validity of the insurance policy, which is admitted, on the ground that the driver of the offending vehicle i.e. Trailer bearing registration number CG-13-D-1560 was having fake driving licence.

7. As it is seen from the impugned judgment the learned tribunal by distinguishing the decision of Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. through its Divisional Manager v. Sujata Arora and Others, 2013(3) T.A.C. 29 (SC)*** and other cases cited by the claimants, has exempted the liability of the insurer by observing that in the present case the owner did not appear and failed to produce any material that he had verified competency of the driver to drive the vehicle before his employment.

8. Admittedly, the owner did not appear in the claim application and remained absent. As such, the observation of the tribunal that the owner failed to produce any material to prove his bona fide knowledge is inconsequential.

9. On the other hand, the insurer who had the benefit of Section 170 of the M.V. Act, would have adduced rebuttal evidence, if any, they had. This has not been done in the present case. Rather the tribunal has fixed the burden on the claimant who is the injured himself, to prove the bona fide knowledge of the owner in absence of

his appearance. Thus, the approach of the tribunal is not appropriate in exonerating the insurer from the liability despite the validity of the insurance policy is undisputed.

10. Thus, it is found to be a fit case where the insurer should be directed to pay the compensation with liberty to exercise the right of recovery of the same from the owner, keeping in view the beneficial intention of the M.V. Act.

11. Resultantly, the appeal is disposed of with a direction to Respondent No.2 to pay the compensation amount along with interest in terms of the direction of the tribunal dated 24th July, 2015 by depositing the same before the tribunal within a period of two months from today, where-after the same shall be disbursed in favour of the claimant – Appellant on such terms and proportion as contained in the impugned judgment.

12. It is further observed that the insurer – Respondent No.2 has the liberty to recover the entire compensation amount from the owner – Respondent No.1 as per law.

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

(B.P. Routray)
Judge

M.K.Panda