

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.1387 OF 2015

From the Judgment / Order dated 06.07.2015 passed by the learned District Judge-cum-1st M.A.C.T, Keonjhar in M.A.C Case No.48 of 2010.

ICICI Lombard G.I.Co. Ltd. ::: **Appellant.**

-:: VERSUS ::-

Gitanjali @ Gita Nayak & Others :::: Respondents.

Appeared in this case by Video Conferencing Mode /
Hybrid Mode.

For Appellant :::: Mr. Jayasankar Mishra,
Advocate

For Respondents::: Mr. L.B. Bhuyan, Advocate
(for Respondent No.1)

PRESENT :
THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing- 11.04.2022:: Date of Judgment-. 20.04.2022

B.P.Satapathy, J. Heard Mr. Jayashankar Mishra, learned counsel for the appellant and Mr. L. Bhuyan, learned counsel appearing for Respondent No.1.

2. This appeal has been filed by the appellant-company challenging the award dated 6.7.2015 passed by the learned District Judge-cum- 1st MACT, Keonjhar in MAC Case No.48 of 2010.

3. Learned Tribunal after hearing the matter allowed the petition by directing the appellant-company to pay compensation of Rs.2,88,000/- along with interest @6% per annum payable from the date of application till its payment.

4. Mr. Mishra, learned counsel appearing for the appellant-company brought to the notice of this Court that even though by the time the accident took place on 2.9.2009, the vehicle in question belonging to Respondent No.4 was transferred in favour of Respondent No.3, but the said fact was never intimated to the appellant-company. Accordingly, Mr. Mishra argued that in view of such transfer of the vehicle without prior notice to the company, direction of the learned Tribunal to pay the compensation is illegal.

5. Mr. Bhuyan, learned counsel appearing for the claimant-respondent while supporting the award argued that even if the vehicle in question, as alleged, was transferred in favour of Respondent No.3 by the insurer Respondent No.4, but the appellant-company is liable to pay the compensation and the same is settled as per the decision of the Hon'ble Apex Court in the case of ***Firdus Vs. Oriental Insurance Company Ltd. And Others*** reported in **2017(4) TAC 698 S.C.**

6. In the aforesaid decision, Hon'ble Apex Court held that the insurer is liable to pay the compensation, even though the vehicle in question has already been sold out, by the time the accident took place.

Accordingly, Mr. Bhuyan, learned counsel for the Respondent prayed for dismissal of the appeal.

7. Having heard learned counsel for the parties, this Court is of the considered opinion that by the time the accident took place on 2.9.2009, the vehicle in question was duly insured with the appellant-company and the policy was in force. Even if the vehicle was transferred by Respondent No.4 to Respondent No.3, but in view of the decision relied upon by Mr. Bhuyan, the Appellant-company is liable to pay the award.

8. Since the factum of transfer was not intimated to the appellant-company, Mr. Mishra, learned counsel for the appellant-company further argued that learned Tribunal while passing the impugned award has not granted the right of recovery as against the owner. In view of such submission of the learned counsel appearing for the parties and the ground taken by the appellant-company in the present appeal, this Court when came to a conclusion that the appellant-company will be liable to pay compensation amount of Rs.2,60,000/- along with interest @ 6% per annum payable from the date of application i.e. 7.4.2010 till its realization. Mr. Bhuyan, learned counsel for the Respondent No.1 supported the said view of this Court.

Mr. Mishra, learned counsel for the appellant-company left the aforesaid view to the discretion of this Court.

10. In view of such submission of the respective counsel, this Court while disposing the appeal, directs the appellant company to pay compensation amount of Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousand) only along with interest @6% per annum payable from the date of application i.e. 7.4.2010 till its realization within a period of eight weeks from today.

11. Since the vehicle in question was transferred by the insurer Respondent No.4 in favour of Respondent No.3 without any intimation, this Court while directing the appellant-company to pay the compensation amount along with interest so assessed by this Court, grant the right of recovery against Respondent Nos.3 & 4.

12. Since Respondent Nos.3 & 4 are not appeared before this Court, this Court observe that if any such application is filed by the appellant-company for recovery of the compensation so paid in terms of the order passed by this court, learned Tribunal while deciding such application shall give reasonable opportunity of hearing to Respondent Nos.3 & 4 and proceed with the same in accordance with law.

13. It is further observed that only after payment of the compensation amount along with interest so assessed by this Court, within the time stipulated, the appellant-company shall be permitted to take refund of the statutory deposit along with accrued interest

thereon from the Registry of this Court on proper identification.

14. The MACA is accordingly disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 20th April, 2022/sangita

