IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.273 of 2020

(From the judgment dated 25th July, 2019 passed by learned 1st M.A.C.T., Angul in M.A.C. No.65 of 2018)

Divisional Manager, M/s. Oriental Insurance Company Ltd. .... ***Appellant***

-versus-

Dinabandhu Sahu and others .... ***Respondents***

Advocate(s) appeared in this case:-

For Appellant	:	Mr. G.P. Dutta, Advocate
For Respondents	:	Mr. S.B. Das, counsel for Respondents 1, 2 & 3

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

22nd December, 2022

B.P. Routray, J.

1. Present appeal by the insurer is against the impugned judgment dated 25th July, 2019 passed by learned 1st M.A.C.T., Angul in M.A.C. No.65 of 2018, wherein compensation to the tune of Rs.25,67,046/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 30th April, 2018 has been passed on account of death of the deceased Prabin Sahu in the motor vehicular accident dated 20th April, 2018.

2. According to the insurer – Appellant the deceased was an insured person under the Employee's State Insurance Act (hereinafter referred as 'the ESI Act) so the claim for compensation under the Motor Vehicles Act (hereinafter referred as 'the MV Act) is not maintainable.

3. The facts of the case as per the claimants are to the effect that, on 20th April, 2018 while the deceased was returning from Athamalik to Angul in the offending Indigo car bearing registration number OD 19D 2807, it was capsized on the way near Dhandatopa bridge due to rash and negligent driving of the driver. As a result of the accident the deceased sustained grievous injuries and was declared dead being brought to the hospital. The deceased was working as Sr. DRS in JIO company at the time of accident.

4. Either in the claim application or in the written statements or in evidence, nothing has come out to disclose anything regarding journey of the deceased at the relevant time in relation to his employment. Neither the insurer nor the owner of the offending vehicle had pleaded anything to relate the accident in connection with employment of the deceased. Nothing was also pleaded or brought on record before the tribunal to disclose that the deceased was an insured person under ESI Act. But in the present appeal a petition praying to adduce additional evidence has been filed by the insurer-Appellant stating that the claimants are getting ESI death benefit pension @ Rs.58.65 paise per day on account of death of the deceased. This information sought to be brought on record by way of addition evidence does not suggest the accident or relevant journey of the deceased at the time of accident is

connected to his employment either directly or incidentally. As seen from the pleadings and evidence the accident is completely independent and unconnected to his nature of employment.

5. This court in a recent decision dated 16th September, 2022 passed in MACA No.75 of 2021 have observed that, when the accident is purely a motor vehicular accident arose by use of a motor vehicle and is completely unconnected to the nature of employment of the injured, the claim for compensation under Section 166 of the MV Act is maintainable and in such case, the bar prescribed under the ESI Act is not attracted.

It is further observed that the statutes like the ESI Act, EC Act and MV Act, which are containing beneficial provisions for the poor victim, are to be interpreted for the benefit of the victim and it would be harsh to send the victim of a motor vehicular accident or his dependents to the ESI Court only for the reason that he was an insured person under the ESI Act even if the cause of injury is completely unconnected to the nature of employment.

6. Therefore, what is contended by the insurer – Appellant that the claim of the dependents of deceased under the provisions of MV Act is barred by the provisions of the ESI Act, is rejected. As stated earlier, in absence of any material to suggest any connection of the accident to the nature of employment of the deceased, the claim application filed by the present claimants is maintainable.

7. So far as the quantification of compensation amount is concerned, no serious dispute is raised. It is also seen from the

impugned judgment that the tribunal has reasonably computed the same considering the payments made under Ext.17, the salary slip, granting future prospects as well as deducting 50% towards personal expenses. Accordingly, no reason is seen for interference in the impugned award.

8. Resultantly the appeal is dismissed and the insurer – Appellant is directed to deposit before the tribunal the entire compensation amount along with interest as per direction of the learned tribunal, within a period of three months from today, where-after the same shall be disbursed in favour of the claimants on same terms and proportion as contained in the impugned judgment.

9. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made by the insurer – Appellant in the present appeal before this Court with accrued interest thereon shall be refunded to the Insurance Company.

(B.P. Routray)
Judge

M.K. Panda/Sr. Steno