**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.239 of 2003**

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| ***Branch Manager, now represented by duly constituted Attorney, Oriental Insurance Company Ltd.*** | .... | ***Appellant*** |

Mr. P. Sinha, Advocate

*-versus-*

| | | |
|---|---|---|
| ***Haribala Hontal and Another*** | .... | ***Respondents*** |

Mr. K.K. Das, Additional Standing Counsel

**CORAM:**
**SHRI JUSTICE B. P. ROUTRAY**

**ORDER**
**8.9.2022**

**Order No.**

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

2. Heard Mr. P. Sinha, learned counsel for the insurer-Appellant and Mr. K.K. Das, learned Additional Standing Counsel.

3. Despite service of notice was made sufficient on Respondent No.1, she did not enter appearance in the present appeal. This court, by order dated 7th July, 2022 has further directed to serve another set of notice on Respondent No.1-claimant through I.I.C., Orkel P.S.

4. Mr. Das, learned ASC submits upon instructions that notice has been served through police on Respondent No.1, namely Haribala Hantal on 10th August, 2022.

5. No one has entered appearance for said Respondent No.1 till date.

6. Present appeal by the insurer is against the impugned judgment dated 23rd December, 2002 of the learned 4th MACT, Malkangiri passed in MJC No.41 of 1999 wherein compensation to the tune of Rs.1,11,100/- along with interest @ 9% per annum from the date of filing of the claim application, i.e. 5th January, 1998 has been granted on account of death of deceased Arjuna Honta in the motor vehicular accident dated 25th March, 1997.

7. Mr. Sinha contends on behalf of the Appellant that the offending vehicle, i.e. Trax bearing registration number AP 31 G 9973 was not having valid insurance policy covering the risk on the date of accident on 25th March, 1997. As per him the policy was 'Act-Only' policy covering limited liability.

8. As seen from the impugned judgment, the limited liability of the policy to cover third parties only being it an "Act-only" policy is not disputed. It is also admitted case of the claimant that the deceased was moving as an occupant in the offending vehicle at the time of accident which dashed against a road side tree. The status of the offending vehicle as a private vehicle is also not disputed. The law has been well settled on this point in the case of ***Oriental Insurance Co. Ltd. vs. Sudhakaran K.V. & Ors., AIR 2008 SC 2729***, ***New India Assurance Company Ltd. vs. Sadanand Mukhi and others, 2009 (2) SCC 417*** and ***National Insurance Company Limited vs. Balakrishnan and another, (2013) 1 SCC 731.***

9. In view of the discussions made above and for such limited nature of liability of the insurance policy, the insurer is bound to be exempted from the liability and the finding as well as direction of the tribunal to the contrary is set aside. However, the claimant is at liberty

to realize the compensation amount from the owner in accordance with law.

10. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application.

11. With aforesaid observation and direction, the appeal is disposed of as allowed.

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

*( B.P. Routray)*
*Judge*

M.K.Panda