

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.243 of 2017

**New India Assurance Co.
Ltd.**

Appellant

Rebati Nayak & Ors.

Respondents

MACA Nos.514 of 2017

Rabati Naik & Ors.

Appellants

Nimal Charan Pandey & Anr.

Respondents

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

31.03.2022

Order No

08. 1. This matter is taken up through Hybrid Mode.

2. Since both the appeals involve common question of facts and law, both the appeals are heard analogously and being taken up together for disposal by this common order.

3. Heard Mr. Sushant Kumar Dash, learned counsel for the Appellant and Mr. B.N. Rath, learned counsel appearing for the Claimants-Respondents.

4. While MACA No.243 of 2017 has been filed by the Appellant-Company challenging the judgment dated 05.01.2017 passed in MAC Case No.114 of 2015 by the learned Addl. District Judge –cum- P.O. 3rd MACT, Jharsuguda. MACA No.514 of 2017 has been filed by the Claimant-Respondents seeking enhancement of the compensation so awarded by the learned Tribunal vide the said judgment dated 05.01.2017.

5. Mr. Dash, learned counsel appearing for the Appellant-Company in support of the appeal argued that learned Tribunal while assessing the compensation did not take into consideration the stand taken by the Appellant-Company with regard to the fact that the driver of the offending vehicle was not having valid driving license and the offending vehicle at the time of accident was not having a valid permit.

6. Accordingly, Mr. Dash, learned counsel for the Appellant argued that in view of such non-compliance of the policy, learned Tribunal should not have passed the impugned judgment by assessing the compensation at Rs.5,50,000/- (Rupees five lakhs fifty thousand) with interest @ 6.5% per annum payable from the date of application till its payment.

7. Mr. Rath, learned counsel appearing for the Claimants-Respondents, in support of his claim for enhancement of the compensation as made in MACA No.514 of 2017 argued that learned Tribunal while assessing the compensation has not awarded any compensation towards future prospect and loss of consortium.

8. Mr. Rath, learned counsel appearing for the Claimants-Respondents in support of his aforesaid compensation brought to the notice of this court the judgment of the Hon'ble Apex court reported in **2018 (4) TAC 32 (SC) Hemraj Vrs. Oriental Insurance Co. Ltd. & Ors. And 2018 (4) TAC 345 (SC) Magma General Insurance Co. Ltd. Vrs. Nanu Ram alias Chuhru Ram & Ors.**

9. Mr. Rath, learned counsel appearing for the Claimants-Respondents accordingly prayed for interference of this Court in the judgment passed by the learned Tribunal and prayed for grant of compensation towards future prospect and loss of consortium.

10. Having heard learned counsel for the Parties and taking into account the decision relied on by Mr. Rath, learned counsel for the Claimant-Respondents, this Court when came to a conclusion that learned Tribunal has not awarded any compensation towards future prospect and loss of consortium and held the Appellant-company liable to pay a further compensation amount of Rs.2,50,000/-

(Rupees two lakhs fifty thousand) with interest @ 6% per annum payable from the date of filing of application till its payment.

11. Mr. Rath, learned counsel appearing for the Claimants-Respondents supported the view of this court. Mr. Dash, learned counsel appearing for the Appellant-Company left the said view to the discretion of this Court.

12. Having heard learned counsel for the Parties, this Court while interfering with the judgment passed by the learned Tribunal directs the Appellant-Company to pay a further sum of Rs.2,50,000/- (Rupees two lakhs fifty thousand) with interest @ 6% per annum payable from the date of filing of application i.e. 24.02.2015 till its payment within a period of eight weeks from today.

13. Since the Appellant-Company has already deposited the compensation amount with interest so assessed by the learned Tribunal, I direct the Appellant-Company to pay further compensation amount along with interest as assessed by this Court in favour of the Claimants-Respondents. The amount of further compensation along with interest as indicated hereinabove be deposited by the Appellant-Company before the learned Tribunal within 8 (eight) weeks and on such deposit, the learned Tribunal is directed to disburse the amount proportionately and in terms of the earlier order passed on 05.01.2017.

14. It is further observed that since violation of policy condition is raised by the Appellant-Company, right of recovery is allowed in favour of the Appellant-Company.

15. It is observed that only after payment of the amount so assessed by this Court, Appellant-Company in MACA No.243 of 2017 will be permitted to take refund of the statutory deposit from the Registry of this Court along with accrued interest on proper identification.

16. With the aforesaid observations and directions, the writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha

