IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.464 of 2014

The Divisional Manager, ***Appellant***
New Indian Assurance Co. Ltd.

Mr.B.K.Mohanty, Advocate

-versus-

Meenadei Behera and others .... ***Respondents***

Mr.B.K.Behera-1, Advocate for Respondent Nos.1 to 4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
08.8.2022

Order No.

12. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.Mohanty, learned counsel for the Appellant and Mr.Behera-1, learned counsel for the claimants-Respondent Nos.1 to 4.

3. Present appeal by the Appellant is against the judgment dated 16th November, 2013 of the Member, 2nd M.A.C.T.(SD), Berhampur in MAC Case No.188 of 2003 (121/2002-GDC), wherein compensation to the tune of Rs.3,26,000/- has been granted along with interest @6% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident on 7th April, 2001.

4. Mr.Mohanty, learned counsel for the Appellant submits that despite the offending vehicle was not having insurance policy, the

learned Tribunal without any material has erroneously concluded that the same i.e., Tata Van bearing Registration No.MH-12-R-9419 was having a valid insurance policy. It is further submitted that despite the discrepancy in the contention of the claimants with regard to the accident and involvement of the offending vehicle, the Tribunal has erroneously concluded that the accident took place involving the Tata Van bearing Registration No.MH-12-R-9419.

5. On the other hand, Mr.Behera-1, learned counsel for the claimants submits that the Insurer did not either deny about involvement of the offending Tata Van or plead anything before the Tribunal regarding validity of its Insurance Policy.

6. Upon hearing both parties and perusal of the impugned judgment, it reveals that in Issue No.1 the Tribunal upon discussion of the contents of the police report as well as the evidence of P.W.2 has come to the finding that it is the Tata Van bearing Registration No.MH-12-R-9419 involved in the accident wherein the deceased was travelling as a gratuitous passenger and disbelieved the contentions of the claimants that the deceased at that time was walking as a pedestrian on the left side of the road. Then the Tribunal came to the conclusion that however, the fact remains that the deceased died at the relevant date, time and place in a motor vehicular accident and so fixed the negligence on the part of the driver of the Tata Van bearing Registration No.MH-12-R-9419 contrary to the case of the claimants that the Truck bearing Registration No.MH-12-A-9491 was involved in the accident. The said approach of the Tribunal in concluding for

fixing the negligence on the part of the driver of the Tata Van ignoring the facts mentioned in the police report is not found proper. It needs to be stated here that when the Tribunal based on the documents has disbelieved the case of the claimants and concluded accordingly that the deceased died while travelling as a gratuitous passenger in the Tata Van, it is not found appropriate on the part of the Tribunal to fix liability on the Insurer.

7. Secondly, with regard to the contention of non-availability of any Insurance Policy in respect of the offending vehicle i.e., Tata Van bearing Registration No.MH-12-R-9419, the Tribunal has ignored the said fact by saying that the accident report was submitted by the police that the offending vehicle was insured with the New India Assurance Co. Ltd.

8. It is true that neither any seizure report with regard to seizure of insurance policy nor any copy of the insurance policy has been produced before the Tribunal to support the contention of the claimants that the offending vehicle was having a valid insurance policy at the time of accident. No prima facie material is brought on record before the Tribunal to reveal that the offending vehicle was having valid insurance policy. On the other hand, it is found the Insurer has specifically pleaded that the vehicle was never insured with it on the date of accident. As such, the conclusion of the Tribunal that the offending vehicle was having a valid policy is unsustainable in absence of any material and thus, is set aside.

9. In the result, the Appellant-Insurer is discharged from its liability to indemnify the compensation amount. However, the

claimants are at liberty to realize the compensation amount from the owner (present Respondent No.5).

10. The appeal is disposed of in terms of the above direction.

(B.P. Routray)
Judge

C.R.Biswal