IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.491 of 2014 & MACA No.490 of 2014

In MACA No.491 of 2014

Branch Manager, Bajaj Allianz General Insurance Company Limited .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Amulya Dehury and others .... ***Respondents***

Mr. B. Singh, Advocate for Respondent Nos.1 to 6

In MACA No.490 of 2014

Branch Manager, Bajaj Allianz General Insurance Company Limited .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Kumudini Naik and others .... ***Respondents***

Mr. B. Singh, Advocate for Respondent Nos.1 to 4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
12.10.2022

Order No.

MACA No.491 of 2014 & MACA No.490 of 2014

08. **1.** Heard Mr. A.A. Khan, learned counsel for the Insurance Company and Mr. B. Singh, learned counsel for the claimants in both the appeals.

2. Both the appeals being arise out of the common judgment dated 27.12.2013 passed in M.A.C. Case No.170/72 of 2011-19 and M.A.C. Case No.348/71 of 2011-19, are heard together and disposed of by this common order.

3. MACA No.491 of 2014 is in respect of M.A.C. Case No.170/72 of 2011-19 and MACA No.490 of 2014 is in respect of M.A.C. Case No.348/71 of 2011-19.

4. Both the claim applications are in respect of the claims for two deceased persons died in the same accident that happened on 23.12.2008. Learned Tribunal has directed for payment of compensation of Rs.12,38,040/- and Rs.5,76,000/- respectively in both the applications payable along with interest @6% from the date of filing of the claim applications.

5. The insurer in both the appeals challenges the award on the common ground that it is not liable to indemnify the compensation for want of validity of the policy in respect of the offending vehicle on the date of accident.

6. Mr. Khan, learned counsel for the insurer submits that the Cover Note No.BZ0800163951 allegedly issued in respect of the offending vehicle bearing Registration No.OR-09-J-2675 is not correct and in fact the same was issued in respect of the another vehicle bearing Registration No.MH-03-V-3323. The policy issued in favour of the offending vehicle was subsequent to the date of accident and valid from 12.2.2009 to 11.2.2010. Therefore, the insurer is not liable to be saddled with the compensation amount.

7. Admittedly the accident took place on 23.12.2008 involving the offending vehicle bearing Registration No.OR-09-J-2675. The entire dispute is regarding validity of the insurance policy in respect of the offending vehicle. The claimants have examined five witnesses on their behalf to support their claim and the insurer examined one witness, viz. OPW-1, who is their legal officer. Both the parties also adduced respective documentary evidences.

8. OPW-1 examined on behalf of the insurer has said that the Cover Note No.BZ0800163951 was issued in respect of another vehicle and in support of his contention, Exts.D and D/1 was produced. But it is the further case of the claimants that Cheque No.019711 dated 19.12.2008 issued by S.P. Mineral (the owner of the offending vehicle) for Rs.22,348/- was for the premium of insurance policy in respect of the offending vehicle. This aspect was not answered by the insurance company. It's witness, viz., OPW-1 though has emphasized upon issuance of cover note mentioned by the claimants in the claim application to have issued in respect of the another vehicle, but remains silent on en-cashing of the aforesaid cheque amount by the insurance company. In his cross-examination, he has simply conveyed his ignorance about receipt and encashment of said cheque of S.P. Mineral. He says that he has no knowledge whether such amount of premium through the cheque bearing No.019711 of Central Bank, Keonjhar was en-cashed in favour of the insurance company, i.e. Bajaj Allianz General Insurance Co. Ltd., Bhubaneswar.

9. In the instant case, it is the specific contention of the claimants that cheque bearing No.019711, dated 19.12.2008 for Rs.22,348/- was issued by S.P. Mineral in respect of the premium for insurance policy of the offending vehicle and en-cashed by the insurance company. To substantiate such contention, the claimants have examined one officer of the Central Bank as P.W.5, who was the Branch Manager of Central Bank, Keonjhar and has stated specifically about such encashment of the cheque in favour of Bajaj Allianz General Insurance Co. Ltd. Therefore, the onus is shifted on the insurance company to answer this specific contention of the claimants and at this stage the insurer remains silent. When the encashment of the cheque is established in favour of the insurance company, then the purpose of such encashment is within the specific knowledge of the insurer and therefore, failure on the part of the insurer to disclose the same would attract adverse inference against him in terms of the principle enumerated under Section 114(g) and Section 106 of the Indian Evidence Act. Accordingly no fault is seen on the part of the Tribunal in saddling the liability on the insurer accepting the validity of the claim of issuance of valid insurance policy in respect of the offending vehicle by Bajaj Allianz General Insurance Co. Ltd. As such all such contentions regarding challenge to the liability for indemnification on behalf of the owner by the insurer is rejected. There being no further challenge advanced with regard to quantum of compensation, no point is seen to entertain the appeal.

10. In the result, both the appeals are dismissed and the insurer-Appellant in both the appeals is directed to deposit the respective amounts of compensation before the Tribunal along with interest from the date of filing of the claim application within a period of three months from today, where-after the same shall be disbursed in favour of the respective claimants on such terms and proportion contained in the impugned judgment.

11. It needs to be mentioned here that the name of Respondent No.7-Jhadeswar Dehury has been deleted in respect of MACA No.491 of 2014.

12. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court in both the appeals with accrued interest thereon shall be refunded to the Insurance Company.

13. The copies of the depositions and Ext.D/1 as produced by both the parties in course of hearing are kept on record.

14. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik