

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.333 of 2020

***Branch Manager, Bajaj Allianz
General Insurance Company Ltd.***

....

Appellant

Mr. A.A. Khan, Advocate

-versus-

Anita Banchhor and Others

....

Respondents

Mr. P.K. Nayak, counsel for Respondents 1-4

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
15.11.2022

Order No.

- 09.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. A.A. Khan, learned counsel for the insurer - Appellant and Mr. P.K. Nayak, learned counsel for the claimant – Respondents 1 to 4.
 3. Present appeal by the insurer is against the impugned judgment dated 29th January, 2020 of the learned 3rd MACT, Rourkela passed in MAC Case No.59 of 2016, wherein compensation to the tune of Rs.13,55,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 2nd February, 2016 has been granted on account of death of deceased Sanjay Banchhor in the motor vehicular accident dated 14th January, 2016.
 4. Mr. Khan submits on behalf of the insurer that the deceased was a gratuitous passenger travelling in the offending vehicle at the time

of accident and thus, the insurer is not liable to indemnify the compensation amount.

5. Such contention made on behalf of the insurer – Appellant is not found sustainable since according to the evidence it has been established that the deceased was a labourer in the offending tractor – trolley at the time of accident. The tribunal in its discussion has approached in the right way to saddle the liability on the insurer by discarding their contention to treat the deceased as a gratuitous passenger. No flaw is seen in the approach of the tribunal keeping in view the specific evidence adduced by the owner as well as claimants. Accordingly the contention of the Appellant to treat the deceased as a gratuitous passenger is rejected.

6. With regard to quantum of compensation, considering all such grounds advanced, a reduced compensation of Rs.11,80,000/- with 6% interest is proposed to the parties. This is agreed by Mr. Nayak, learned counsel for the claimant – Respondents and Mr. Khan, learned counsel for the Appellant leaves it to the discretion of the court. Accordingly the compensation amount is fixed to the said extent.

7. In the result the appeal is disposed of with a direction to the Appellant – insurer to deposit a reduced compensation of Rs.11,80,000/- (eleven lakhs eighty thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 2nd February 2016, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents on such terms and proportion to be decided by the learned tribunal.

8. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda

