IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.778 of 2015

Pramila Pradhan and Others .... ***Appellants***

Mr. P.K. Mishra, Advocate

-versus-

Anil Kumar Jena and Another .... ***Respondents***

Mr. S.S. Ray, Advocate for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
25.7.2022

Order No.

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

2. Heard Mr. P.K. Mishra, learned counsel for the claimant – Appellants and Mr. S.S. Ray, learned counsel for insurer – Respondent No.2.

3. In view of the provisions contained under Order V, Rule 9, C.P.C., the notice on Respondent No.1 – owner is treated sufficient basing on the office report dated 25th March, 2019.

4. Present appeal by the claimants is directed against the impugned judgment dated 27th April, 2015 of learned 1st MACT, Keonjhar passed in MAC Case No.204 of 2010 wherein compensation to the tune of Rs.7,05,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th October, 2010 has been granted on account of death of the deceased in the motor vehicular accident dated 6th July, 2010, payable by the owner of the

offending vehicle, i.e. Tipper bearing registration number OR-09-J-5266.

5. The learned tribunal has exonerated the insurer despite valid coverage of insurance policy of the vehicle on the date of accident, i.e. 6th July, 2010 on the ground that the police has submitted charge-sheet against the driver of the offending vehicle for commission of offence under Section 181 of the M.V. Act which suggests that the driver had no driving licence.

6. The claimants have come up in the appeal challenging on the limited aspect that such conclusion by the tribunal about absence of driving licence on the part of the driver of the offending vehicle is erroneous in absence of any rebuttal evidence adduced from the side of the insurer.

7. Perusal of the impugned judgment reveals that the tribunal has discussed about non-availability of DL on the part of the driver at paragraph 8 under issue Nos.I and II. The relevant observations made by the tribunal are that, "*relying upon the fact of submission of charge sheet under Ext.2 for offence u/s.181 M.V. Act besides Section 279/304-A I.P.C., it is vehemently argued by the learned counsel for the O.P. No.2 that when admittedly the accused – driver was driving the offending vehicle without any D.L. it amounts to violation of policy condition and hence O.P.2 cannot be held liable to pay compensation in such case. The Section 181 of the M.V. Act prescribes for punishment in respect of violation of the provisions of Section3 or 4 of the Act and in the present case, it is alleged that there*

is violation of the provision of Sec.3 of the Act as the vehicle was being driven by a driver without any effective D.L."

8. It is thus become clear that the tribunal has too much relied on the charge-sheet submitted by police and only considering the fact that the offence under Section 181 of the M.V. Act has been alleged, the same establishes about non-availability of driving licence on the part of the accused driver. In other words, the tribunal in absence of any rebuttal evidence has relied on the charge-sheet submitted by police to conclude to the above effect. Here it needs to be stated that charge-sheet submitted by police is the mere opinion of the investigating officer and the same has no evidentiary value. In the case at hand admittedly the owner did not come to contest and has been set ex-parte. Therefore, it is not felt apposite on the part of the tribunal to come to the conclusion that the driver had no valid licence, based only on the contents of the charge-sheet. In terms of various decisions of Hon'ble Supreme Court including ***National Insurance Co. Ltd. v. Swaran Singh and Others, (2004) 3 SCC 297*** there are several contingencies relating to absence of driving licence on the part of the driver. In such situation, the direction of the learned tribunal is modified to the effect that the insurer should pay the compensation amount to the claimants with liberty to recover the same from the owner.

9. In the result, the appeal is allowed and the insurer – Respondent No.2 is directed to pay the compensation amount with liberty to recover the same from the owner, if the same is recoverable, as per law.

10. The insurer – Respondent No.2 is further directed to deposit the entire award amount including interest before the tribunal within two months from today in terms of its direction which shall be disbursed in favour of the claimants on such terms and proportion contained in the direction of the tribunal.

11. However, the further direction of the tribunal to make the fixed deposit for a period of 10 years is reduced to 6 years.

12. The appeal is disposed of.

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

(B.P. Routray)
Judge

M.K.Panda