

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.361 of 2020

M/s.New India Assurance Company Limited ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Bali Majhi and others ***Respondents***

Mr. D. Mund, Advocate for Respondent Nos.1 & 2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
17.08.2022

Order No.

06.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company and Mr. D. Mund, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the Appellant-Insurance Company is directed against order dated 29.11.2019 of learned 1st M.A.C.T., Nabarangpur in M.A.C. Case No.2/2018 wherein compensation to the tune of Rs.8,50,000/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application, i.e. 2.1.2018 on account of death of the deceased in the motor vehicular accident dated 14.9.2017.

3. The entire contention of the Appellant is that the driver of the offending motorcycle, i.e. OD-24-C-1541 was not having the driving license on the date of accident and as such the insurer is not liable to indemnify the compensation amount as the driver is the owner of the offending vehicle.

4. After hearing Mr. D. Mund, learned counsel for the claimants and upon perusal of the impugned judgment, it reveals that the Tribunal nowhere has discussed about validity of the driving license of the driver in the impugned judgment. As reveals from the copy of the WS produced in course of hearing that the insurer has taken a specific plea at paragraph 18 of their WS that the driver of the offending motorcycle was not having the driving license. It further reveals from the charge-sheet submitted by the Police that the offence under Section 181 of the M.V. Act has been alleged against the driver. The driver-cum-owner of the offending motorcycle did not choose to appear and contest the case even after valid service of notice on him. All such facts give a strong presumption that the driver of the motorcycle was not having any driving license and the Tribunal has just ignored it despite such specific plea taken in the WS. Under such circumstances, it is felt appropriate to remand the matter back to the learned Tribunal for adjudication on the same.

5. Resultantly, the matter is remanded back to the Tribunal with a direction to decide the issue, *“Whether the driver of the offending motorcycle bearing Registration No.OD-24-C-1541, namely, Hemanta Pujari was having a valid driving license on the date of accident, i.e. on 14.9.2017.”*

The entire process of adjudication and decision be completed within a period of four (4) months from the date of receipt of certified copy of this order. The parties present before this Court are directed to appear before the learned Tribunal on 5th September, 2022.

6. With the aforesaid direction, the appeal is disposed of.

7. The statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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



(B.P. Routray)
Judge