IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.1288 of 2015

The Divisional Manager, Oriental Insurance Company Ltd. .... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Sradhanjali Mohapatra and Others .... ***Respondents***

Mr. Manas Pati, Advocate for Respondents 1-3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
25.7.2022

Order No.

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

2. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant and Mr. M. Pati, learned counsel for claimant – Respondents.

3. Present appeal by the insurer is directed against impugned judgment dated 20th April, 2015 of learned 4th MACT, Puri passed in MAC No.154 of 2000 wherein compensation to the tune of Rs.4,34,000/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 4th April, 2000 has been granted on account of death of the deceased in the motor vehicular accident dated 19th February, 2000.

4. Mr. Dutta, learned counsel submits on behalf of the insurer that the learned tribunal ignoring all such facts regarding non-availability of the insurance policy and valid driving licence of the driver, has

directed present Appellant – insurer to indemnify the compensation amount on behalf of the owner. It is further submitted that despite the affidavit of the Deputy Manager dated 17th April, 2015 filed in the claim application and the copy of driving licence revealing validity of the same till 11th March, 1999, and the concerned seizure lists which were marked as Ext.A and Ext.B by subsequent order of the tribunal dated 21st September, 2015, those were not taken into consideration by the tribunal.

5. Upon hearing Mr. Pati, learned counsel for the claimant – Respondents and perusal of the impugned judgment reveals that under Issue No.IV at paragraph 7 of the impugned judgment, the learned tribunal, without any discussion, has held that so far liability is concerned there is no violation of policy and then straightway fixed the liability on the insurer. Admittedly, it is the specific case of the insurer that the cover note seized by police in respect of the offending vehicle, i.e. NL-05-A-7671 is a fake one and the certificate of insurance bearing number 324297564 as mentioned in the seizure list is also fake. Besides the same, the specific averment made in the affidavit dated 17th April, 2015 is also to the effect that the driver had no valid driving licence on the date of accident and the DL lapsed on 11th March, 1999. Despite all such averments made by the insurer it is seen that the tribunal without making any discussions specifically on the validity and genuineness of the alleged insurance policy, has in a cryptic manner said that there is no violation of policy and in the ordering portion fixed the liability on the insurer.

6. As per copy of affidavit dated 17th April, 2015 and the certified copy of order dated 21st September, 2015, furnished by Mr. Dutta in court which are kept on record, this court is satisfied that the offending vehicle was not having a valid insurance policy on the date of accident. Accordingly, it is concluded that in absence of a valid policy, no liability can be saddled on the insurer.

7. In the result, the appeal is allowed and the insurer – Appellant is exonerated from its liability. However, it is open for the claimants to realize the compensation amount from the owner.

8. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application.

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

(B.P. Routray)
Judge

M.K.Panda