IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.348 of 2013

Divisional Manager, M/s. Oriental Insurance Company Ltd. .... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Sujata Behera and Others .... ***Respondents***

Mr. T.C. Mohanty, Sr. Counsel for Respondents 1-6

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
25.11.2022

Order No.

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

2. Heard Mr. G.P. Dutta, learned counsel for the insurer - Appellant and Mr. T.C. Mohanty, learned counsel for claimant – Respondents 1-6.

3. Present appeal by the insurer is against impugned judgment dated 6th September, 2012 of learned 1st MACT, Cuttack passed in MAC No.817 of 1999, wherein compensation to the tune of Rs.2,95,100/- along with interest @ 6.5% per annum from the date of filing of the claim application, i.e. 20th September, 1999 has been granted on account of death of the deceased Golakha Chandra Behera in the motor vehicular accident dated 14th April, 1999.

4. Mr. Dutta contends on behalf of the Appellant that the offending vehicle, i.e. truck bearing registration number CIB 8228 did

not have a valid policy on the date of accident. The cover note mentioned in the police seizure list is not corresponding to any policy taken in respect of the present offending vehicle.

5. In course of hearing Mr. Dutta produces the office copy of the cover note no.15961, valid from 28th February, 1999 to 27th February, 2000 in respect of the truck bearing registration number OAO 6177 (TATA 1210 make), registered in the name of one Suresh Kumar Agarwal.

6. However, it is seen that no evidence has been led before the tribunal with regard to absence of insurance policy in respect of the offending vehicle. No positive evidence has been led to deny existence of any policy as claimed nor even any specific pleading to that effect has been taken in the WS. The owner did not come to contest the claim application. The accident is dated 14th April, 1999 and therefore, after lapse of 23 years it is difficult on the part of the court to give any conclusive opinion on the validity of the insurance policy on the date of accident. The owner being the best person to speak about the policy, it is felt apposite to direct the present Appellant to make payment of compensation to the poor victims – claimants and proceed for recovery of the compensation amount against the owner in accordance with law.

7. It needs to be mentioned here that the owner also did not appear before this court despite notices were issued by Registered Post as well as through paper publication.

8. Mr. Mohanty, learned Senior Counsel does not press his cross-objection for enhancement of the compensation amount.

9. In the result, the appeal is disposed of with a direction to the insurer – Appellant to deposit the total compensation amount of Rs.2,95,100/- (two lakh ninety-five thousand one hundred) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 20th September, 1999, 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.

10. 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.

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

(B.P. Routray)
Judge

M.K.Panda