

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.390 of 2020

(From the judgment dated 14th January, 2020 passed by learned 4th M.A.C.T., Cuttack in M.A.C. Case No.552 of 2013/110 of 2016.)

***M/s.Bajaj Allianz General
Insurance Company Limited***

....

Appellant

-versus-

***Smt. Samita Maharana@Samita
Rani Maharana and others***

....

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. A.A. Khan, Advocate

For Respondents : Mr. S. Kar, Advocate
For Respondent Nos.1, 2, 4 & 5
Mr. B.K Behera-1, Advocate
For Respondent No.6

CORAM: JUSTICE B.P. ROUTRAY

**JUDGMENT
20th June, 2022**

B.P. Routray, J.

1. Present appeal by M/s Bajaj Allianz General Insurance Company Limited (the insurer) is directed against the judgment dated 14th January, 2020 of learned 4th M.A.C.T., Cuttack passed in M.A.C. Case No.552 of 2013/110 of 2016 (Computer No.6105 of 2014), wherein learned Tribunal has granted compensation to the tune of Rs.40,33,250/- along with interest @ 6% per annum to the claimants from the date of filing of the claim application, i.e.31.08.2013 on

account of death of the deceased in the motor vehicular accident dated 24.6.2013.

2. The case of the claimants is that on 24.6.2013, the deceased, who was serving as an Asst. Teacher in the Government School when was going in his motorcycle, the offending motorcycle i.e. Yamaha FZS motorcycle bearing Registration No.OD-07-A-8120 coming in high speed dashed against the motorcycle of the deceased in a rash and negligent manner. As a result of the accident, the deceased was severely injured and died while undergoing treatment in the hospital.

3. The learned Tribunal upon adjudication of the dispute directed for payment of compensation to the above extent.

4. The Insurance Company challenges its liability to pay the compensation on behalf of the owner mainly on the ground of violation of conditions of policy. It is submitted that the owner-driver of the offending vehicle, i.e. Yamaha FZS motorcycle did not have a driving licence.

5. The owner though did not contest the claim before the learned Tribunal, but appeared before this Court in the appeal by engaging his lawyer. It is submitted on behalf of the owner that since the insurance policy was valid and premium has been paid, the Insurance Company is therefore liable to indemnify the compensation amount on behalf of the owner.

6. Learned counsel for the claimants-Respondent Nos.1, 2, 4 & 5 supports such contention made by the owner that when the validity of the insurance policy is not doubted and the Insurance Company has accepted the premium, then the liability is shifted to the Insurance Company to pay the compensation and it cannot escape from the same.

7. The Supreme Court in the case of *National Insurance Co. Ltd. vs. Swaran Singh and others*, (2004) 3 S.C.C. 297 has settled the law in this regard. It has been held as follows:

“84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it all e.g. a case where an accident takes place owing to a mechanical fault or *vis major*. (See Jitendra Kumar.)”

8. It is true that in the instant case, the driver is not a person other than the owner. The driver being the owner of the offending vehicle at

the time of accident has been charge-sheeted by the Police to face criminal prosecution for commission of offences under Sections 279/337/304(A) of the Indian Penal Code. The owner, who is the present Respondent No.6, though has entered appearance did not disown such fact that he was not the driver at the time of accident. Therefore, this is not a case where the owner can take plea of absence of his knowledge about competency of the driver. When the owner is the driver, who admittedly has no driving licence and drives the vehicle knowingly that he did not have the licence to drive, the clear breach of policy conditions is visible. In such a situation, the insurer cannot be held liable to indemnify the owner since the owner has deliberately and knowingly violated the conditions of the policy. Therefore, as laid down in the case of *Swaran Singh* (supra) and many other subsequent decisions, the insurer cannot be saddled with the liability of payment of compensation for the owner.

9. The further case of the insurer that the claimants are not entitled to for addition of 15% of the income towards future prospects and multiplier should be reduced instead of '11', has no merit for consideration for the reason that the deceased was in a permanent job of Assistant Teacher in a Government School whose salary and service prospects has been well proved on record through P.Ws.1, 3 & 4. The other contention that split multiplier would be applicable keeping in view the age of the deceased as 54 years who has to retire after 6 years is also rejected in view of the law settled on the point that split multiplier method is not acceptable. This Court in the case of *The Manager, M/s.Bajaj Allianz General Insurance Co. Ltd. vs. Santilata*

Satapathy and others (MACA No.171 of 2021 disposed of on 29.03.2022) while discussing this issue in detail and relying the decision of the Supreme Court in the case of *N. Jayasree vs. Choramandalam MS General Insurance Company Limited*, AIR 2021 SC 5218 has held that split multiplier method is not a justified approach.

10. Thus in view of the discussions made above, the owner is held liable to pay the compensation and the insurer is discharged of its liability to indemnify the owner.

11. The appeal is allowed and the impugned judgment is modified to the extent that the owner-Respondent No.6 is liable to pay the compensation amount along with interest in terms of the direction of the learned Tribunal.

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

(B.P. Routray)
Judge

B.K. Barik/Secretary