IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.757 of 2016

National Insurance Company Ltd. represented through its Officer-in-Charge, Orissa Legal Cell .... ***Appellant***

Mr. J.R. Deo on behalf of Mr. G.Mishra, Sr. Advocate

-versus-

Rabiranjan Banchhor and Others .... ***Respondents***

Mr. P.K. Nayak, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
12.10.2022

Order No.

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

2. Heard Mr. J.R. Deo on behalf of Mr. G. Mishra, learned senior counsel for the insurer – Appellant and Mr. P.K. Nayak, learned counsel for claimant-Respondent No.1.

3. Present appeal by the insurer is against the impugned judgment dated 29th February, 2016 of the learned 2nd MACT, Sambalpur passed in MAC Case No.161 of 2012 (Sambalpur) wherein compensation to the tune of Rs.3,41,760/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 7th November, 2012 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 19th February, 2011.

4. The entire challenge of the insurer is on the question of liability. Mr. Deo contends on behalf of the insurer that since the disability is temporary to the extent of 40% as per the disability certificate under Ext.12, the insurer in terms of its guideline is not liable to indemnify the compensation. Mr. Deo refers to the terms of Motor Guidelines, 2007 marked under Ext.B and Ext.B/1.

5. Mr. Nayak, learned counsel for the claimant – Respondent on the other hand submits that the permanent disability of the claimant to the extent of 40% is admitted and therefore the liability on the part of the insurer cannot be denied in terms of the conditions of the policy.

6. It is seen that the accident took place involving the Jeep bearing registration number OIU 1531, i.e. the offending vehicle. The accident took place due to collusion of the offending jeep with another jeep. However, no claim is raised against the other jeep. It is admitted that the claimant was an occupant of the offending vehicle.

7. The tribunal upon adjudication has concluded that the injured cannot be treated as a gratuitous passenger for the reason that he was traveling in the offending vehicle on hire basis. But on examination of the oral evidence as well as documents produced in course of hearing by the parties, no such material is seen in support of such conclusion arrived by the tribunal that the injured – claimant was travelling in the offending vehicle on hire basis. The offending vehicle was a private jeep as agreed by the parties at the Bar and special premium has been paid for covering the occupants. The copy of the insurance police under Ext.A is clearly depicting so. Therefore, the finding of the tribunal to say that the offending vehicle was used on hire basis at the time of accident is set aside being unfounded with material evidence.

The injured – claimant is treated as an occupant of the offending vehicle.

8. In view of the special premium admittedly paid in respect of the occupants of the vehicle, no doubt remains for entertaining the claim of the injured against the insurer. In other words, the insurer is held liable for that limited amount in terms of the insurance policy as per the special premium paid. Here it is submitted by Mr. Deo by relying to the guidelines that, the insurer is not liable to indemnify the compensation for any such disablement, which is temporary or less than 100%. This contention of the insurer is not found conceivable upon perusal of copy of Ext.B and Ext.B/1. As per the conditions stated in Ext.B/1, the insurer is liable for death or loss of limbs or loss of sight in respect of the occupants, besides such permanent total disablement other than the disability (stated in Ext.B/1). It is said in the guidelines (as per Ext.B/1) that, in case of permanent total disablement from the injuries, the scale of compensation would be 100%. It is seen from the disability certificate under Ext.12 that the injured sustained 40% disability, which is temporary in nature. But on interpretation of the contents of said disability certificate, it does not satisfy that the disability mentioned therein is temporary. It is for the reason that only a tick mark has been put on the word 'temporary' and there is no mention of the period of such temporary disablement. This means that such temporary disablement may continue for indefinite period and therefore is a permanent disablement, despite being stated as temporary. So what is mentioned in Ext.B/1 and argued by the insurer that it is not permanent total disablement, is not found correct. Because a permanent disability to whatever extent, is a total

disablement. Therefore, the defence of the insurer under the cover of such statement mentioned under Ext.B/1 is not found justified, particularly when the payment of special premium in respect of the occupants is not disputed.

9. Moreover, the tribunal has directed for indemnification of the compensation amount by the insurer to the extent of Rs.1 lakh only as per the prescription made in the insurance policy. As observed earlier, since the conclusion arrived by the tribunal that the offending vehicle was used for hire purpose has been set aside, no further impediment is seen to prevent the insurer from indemnifying its liability upto such limited extent.

10. The tribunal has granted total compensation of Rs.3,41,760/- along with 6% interest and out of the same the insurer – appellant has been directed to indemnify only rupees one lakh commensurate to its limitation as per the policy condition. Therefore no illegality is seen in such direction of the tribunal and no merit is found in the contention of the Appellant.

11. In the result, the appeal is dismissed being without merit and the insurer – Appellant is directed to deposit its liability in terms of the direction of the tribunal along with interest within a period of two months from today.

12. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

13. The copies of depositions and exhibits as produced by the parties are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda