

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.375 of 2003

Sabitri Behera

....

Appellant

-versus-

**Anjan Kumar Mohanty &
Another**

....

Respondents

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
13.07.2022**

Order No

16.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D.C. Swain, learned counsel appearing on behalf of Mr. A. Dash, learned counsel for the Appellant and Mr. B. Dasmohapatra, learned counsel for the Respondent-Company.
3. The Petitioner is aggrieved by the award dated 08.11.2002 passed by the learned 2nd M.A.C.T., Cuttack in Misc. Case No.275/1989.
4. The claim raised by the present Appellant and her late husband was rejected with passing of nil award.
5. It is submitted that the minor daughter of the Appellant died in a motor accident on 01.02.1989 and F.I.R was lodged by late father of the deceased on 06.02.1989 by making averment that while the deceased was passing the road due to the rash and negligent driving, the vehicle dashed her from behind and accordingly she succumbed to the injury.
6. Mr. Swain, learned counsel submitted that though in support of her claim, the Claimants examined two witnesses, but learned

Tribunal only on the ground that the evidence lead by P.W.2 has not been corroborated by any independent witnesses, rejected the claim by passing nil award.

7. Accordingly, Mr. Swain submitted that the matter be remanded to the learned Tribunal for fresh adjudication by giving opportunity of hearing to both the Parties.

8. Mr. Mohapatra, learned counsel for the Respondent on the other hand submitted that since the claimants never indicated in their claim petition, the policy so issued by the Company covering the claim, learned Tribunal has rightly rejected the claim.

9. Mr. Mohapatra also submitted that after receipt of the F.I.R, the concerned I.O. conducted the enquiry and submitted the final report indicating therein that during course of enquiry nothing was found about the vehicle involved in the accident.

10. Accordingly, Mr. Mohapatra submitted that since the claimants never indicated the policy of the vehicle covering the date of accident, the claim has been rightly rejected by the learned Tribunal and no interference is called for.

11. Heard learned counsel for the Parties.

12. Perused the materials available on record. This Court after going through the same find that because of the accident caused on 01.02.1989 the late husband of the claimant submitted the claim application by indicating that the vehicle in question dashed the victim from behind, and in the said claim it was also indicated that the vehicle was insured with the Respondent-Company. The Claimant also lead evidence through two witnesses and it is submitted that learned Tribunal without proper appreciation of the said evidence rejected the claim. On being asked by this Court, learned counsel for the Appellant submitted that if the matter will be remanded by this Court, then the claimant will provide the policy

issued in favour of the offending vehicle in question issued by the Respondent-Company covering the date of accident.

13. In view of such undertaking given by the learned counsel for the Appellant, this Court while setting aside the impugned order remand the same for fresh adjudication by the learned 2nd M.A.C.T., Cuttack.

14. Since this case is of the year 1989, this Court directs the learned Tribunal to make all endeavor and dispose of the matter within a period of six months from the date of receipt of this order.

15. This Court further observed that the learned Tribunal shall give reasonable opportunity to all the parties concerned. But It is observed that prior to proceeding further, the Appellant must produce the policy of the vehicle in question before the learned Tribunal covering the period of accident.

16. With the aforesaid observations and directions, the MACA stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat