

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.377 of 2019

The Divisional Manager, ICICI
Lombard General Insurance Co. Ltd. ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Kamala Nath and Others ***Respondents***

Mr. Pabitra Ku. Nayak, counsel for Respondents 1-3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
1.12.2022

Order No.

08. 1. The matter is taken up through hybrid mode.
2. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant and Mr. P.K. Nayak, learned counsel for claimant – Respondents.
3. Present appeal by the insurer is against the impugned judgment dated 28th February, 2019 of the learned 3rd MACT, Talcher passed in MAC Case No.134 of 2016, wherein compensation to the tune of Rs.12,12,400/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 9th November, 2016 has been granted on account of death of deceased Pranati Nath in the motor vehicular accident dated 26th April, 2016.
4. Mr. Dutta, learned counsel for the Appellant mainly disputes his liability by questioning negligence of the driver of the offending vehicle, i.e. motor cycle bearing registration number OR 19D 9071.

According to Mr. Dutta, initially the F.I.R. was lodged alleging involvement of a four wheeler vehicle and subsequently the claimants developed their case regarding negligence of the motor cycle driver.

5. The claimants' case is that the deceased while going as a pillion rider in the offending motor cycle fell down due to rash and negligent driving of the driver of the motor cycle (offending vehicle) and sustained injuries. The F.I.R. under Ext.1 speaks that due to dashing of an unknown vehicle to the back of the offending motor cycle, both the riders fell down including the deceased. P.W.2, an eye witness to the occurrence, examined on behalf of the claimants said in his evidence in chief that, one truck coming from the back side has dashed the motor cycle resulting fall of both the riders. In his cross-examination, said P.W.2 has said that, *"there was a humps and the rider of the motor cycle applied sudden brake due to which both of them fell down and sustained injuries"*. On the other hand, police upon completion of investigation has submitted charge-sheet stating that one Scorpio vehicle, whose details cannot be ascertained and no clue is available for the same, dashed the offending motor cycle from behind resulting the fall of both the riders to sustain injuries. Therefore, taking advantage of such discrepancies in the evidence of P.W.2, the eye witness and the police investigation report, Mr. Dutta contends that the negligence on the part of the driver of the motor cycle is not established. I fail to concede such contention of Mr. Dutta. It is for the reason that, though it is true that the evidence of P.W.2 and the police investigation report are found discrepant but one thing found common between all such discrepancies that the deceased was going in the motor cycle and she fell down from the motor cycle

on road. So, whatever may discrepancy be in the involvement of other vehicle, either Truck or Scorpio, the involvement of the motor cycle and negligent driving of the driver of the motor cycle is not denied. Therefore, when the involvement of the motor cycle is not denied, keeping in view these circumstances stated above, the negligence attributed to the driver of the motor cycle for the cause of accident cannot be faulted with. As such, this Court confirms the finding of the tribunal regarding negligence on the part of the driver of the motor cycle.

6. With regard to the quantum of compensation, it is seen that the computation of income has been made taking into account the rate of minimum wages prevalent on the date of accident. The tribunal after adding future prospects has determined the loss of dependency. Therefore, no reason is found to interfere with the same. However, the rate of interest is reduced to 6% from 7% and the penal interest to the extent of additional 2% interest, as directed by the tribunal, is waived.

7. In the result the appeal is disposed of with a direction to the insurer – Appellant to deposit the entire compensation of Rs.12,12,400/- (twelve lakhs twelve thousand four hundred) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 9th November, 2016, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents on same terms and proportion as contained in the impugned judgment.

8. 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.

9. The copies of depositions and exhibits, as produced by Mr. Dutta in course of hearing, are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda

