

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.646 of 2016

***Shriram General Insurance Company
Limited.***

.... ***Appellant***
Mr.A.A.Khan, Advocate

-versus-

Smt. Gangi Khara and others ***Respondents***
Mr.G.P.Dutta, Advocate for Respondent No.8
Mr.D.Mund, Advocate for Respondent Nos.1 to 5

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
12.12.2022**

Order No.

13.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Khan, learned counsel for the Appellant-Insurer and Mr.Dutta, learned counsel for Respondent No.8 (Oriental Insurance Company Limited) as well as Mr.Mund, learned counsel for the claimants-Respondents No.1 to 5.
3. Present appeal by the Appellant is against the judgment dated 11th March, 2016 of the District Judge-Cum-1st MACT, Koraput at Jeypore, in M.A.C. Case No.52 of 2013, wherein compensation to the tune of Rs.10,55,000/- has been granted along with interest @7.5% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident on 25th January, 2013.

4. Mr. Khan seriously disputes the negligence on the part of the driver of the offending Tata-407 vehicle bearing Registration No.AP-31-V-6639. According to him, the accident being the result of head on collision between Tata-407 vehicle and the truck bearing Registration No.AP-05-TU-5677, at least 50% negligence should be attributed on the driver of the truck. It is pointed out that the claimants in their claim application have also pleaded against the driver of the truck for he was driving the truck rash and negligently.

5. Upon hearing all the parties, it is seen from the impugned judgment that, the Tribunal has concluded fixing the entire negligence on the driver of Tata-407 vehicle and accordingly saddled the liability of compensation on the present Appellant, the Insurer of the said Tata-407 vehicle.

6. Two witnesses were examined from the side of the claimants including the eyewitness (P.W.2). Besides the oral evidence, all such police papers like copies of the F.I.R., charge-sheet etc. were relied upon by the claimants in support of their case. On the other hand, the Insurance Company did not adduce any evidence. It is seen that, Rambhadrampur P.S.Case No.6 dated 25.1.2013 was registered concerning the accident on the report of the driver of the truck, namely, Sashikanta Behera and in the contents of the said F.I.R., it has been clearly mentioned that the driver of the Tata-407 vehicle was driving rash and negligently to cause the accident. The police upon completion of investigation submitted the charge-sheet under Ext.5 against the driver of said Tata-407 vehicle stating that its driver was completely negligent for the accident. Such finding in the police

investigation was never challenged either from the side of the driver or the owner of Tata-407 vehicle.

It is further seen that P.W.2, the brother of the deceased, who was also an eyewitness to the accident being an occupant of the same Tata 407 vehicle along with the deceased, has stated categorically in his evidence that their driver i.e., the driver of the Tata-407 vehicle was rash and negligent in causing the accident. So, as per the statement of both the eyewitnesses i.e., the informant and P.W.2 the driver of the Tata-407 vehicle was negligent for the cause of accident.

7. It is true that as per the statement made in the claim petition at Column No.23, it is mentioned that the accident took place due to rash and negligent driving of the drivers of both the vehicles. But this has no impact on the finding of the Tribunal which concluded regarding negligence of driver of the Tata-407 vehicle entirely. It is for the reason that none of the claimants, particularly Claimant No.1 (Widow of the deceased) is an eyewitness to the accident. Secondly, the pleadings made in the claim petition do not exclude negligence on the part of the driver of the Tata-407 vehicle. The evidences adduced through the eyewitnesses as well as the documents like police papers when are clear to conclude against the driver of the Tata-407 vehicle regarding his negligence for the cause of accident, no merit is seen in the contention of the present Appellant to contribute 50% negligence on the driver of the other vehicle only based on the pleading taken in the claim application. Moreover, it is well

known that strict principles of pleadings and evidence are not applicable in the case of motor accident compensation claim. Therefore, the submission of Mr.Khan to contribute equal negligence on the part of the driver of the truck is rejected.

8. Mr.Khan further submits that the deceased being admittedly the occupant of Tata-407 vehicle at the time of accident, has to be treated as a gratuitous passenger and therefore the present Insurer is not liable to indemnify the compensation amount on behalf of the owner. This submission of Mr. Khan is also found without merit for the reason that it is the admitted case of the claimants that the deceased and P.W.2 had gone to the market by hiring the said Tata-407 vehicle along with their goods, i.e. cows and they had to return with cattle upon purchase. It is explained P.W.2 in his evidence that due to non-availability of cattle in the Weekly Market, they again returned in the same Tata-407 as the owners of goods to Kunduli market to purchase cattle. Therefore the status of the deceased in the offending Tata-407 vehicle was that of owner of goods and he cannot be treated as a gratuitous passenger as submitted by Mr.Khan. There being no rebuttal evidence to dispute such status of the deceased as owner of goods, no merit is seen in the submission of Mr. Khan and the same is accordingly rejected.

9. Next coming to the quantum of compensation, it is submitted that the Tribunal has erroneously deducted $1/5^{\text{th}}$ in place of $1/4^{\text{th}}$, though the number of dependents are five in total. It is true that there are five claimants in total and therefore, $1/4^{\text{th}}$ of the income, as per the principles rendered in the case of *National Insurance Company Ltd. vrs. Pranay Sethi and others*,

(2017)16 SCC 680, has to be deducted. Thus, the direction of the Tribunal in quantifying the amount of compensation needs to be corrected. Upon doing so and without disturbing any other factor as computed by the Tribunal, a reduced compensation of Rs.10,00,000/- (Ten lakhs) along with interest @6% per annum is proposed to the parties in course of hearing. Mr. Mund, learned counsel for the claimants-Respondent Nos.1 to 5 agrees to the same. Mr. Khan, learned counsel for the Insurer leaves it to the discretion of the Court and Mr. Dutta has no say on the same. As such, the amount is fixed to that extent.

10. In the result, the appeal is disposed of with a direction to the Insurer-Appellant to deposit the reduced compensation of Rs.10,00,000/- (Ten lakhs) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

11. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

12. Urgent certified copy of this order be granted on proper application.

13. Copies of claim petition, depositions and exhibits as produced in course of hearing by Mr. Khan and Mr. Dutta are kept on record.

(B.P. Routray)
Judge

