

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.248 of 2022

Divisional Manager, Oriental Insurance Company Limited ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Rebati Sabar and others ***Respondents***

Mr. P.K. Behera, Advocate for Respondent Nos.1 & 2

Mr. D. Mund, Advocate for Respondent No.3

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
16.11.2022

Order No.

02.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company, Mr. P.K. Behera, learned counsel for the Respondent Nos.1 & 2-claimants and Mr. D. Mund, learned counsel for the Respondent No.3-owner.

2. Present appeal by the insurer is directed against the judgment dated 18.01.2022 of learned 1st M.A.C.T., Kalahandi, Bhawanipatna in M.A.C. No.33 of 2018, wherein compensation to the tune of Rs.13,19,600/- has been granted along with simple interest @6% per annum to the claimants from the date of filing of the claim application, i.e. 12.04.2018 on account of death of the deceased in the motor vehicular accident dated 14.12.2017.

3. Mr. A.A. Khan, learned counsel submits for the Appellant that the deceased has contributed negligence to the accident by riding a motorcycle without any helmet and secondly, the driver of the

offending vehicle had no valid driving license. It is further contended that since the accident was head on collision between the motorcycle rode by the deceased and the offending tractor, contributory negligence to the extent of 50% should be attributed to the deceased.

4. The submissions advanced on behalf of the Appellant are rejected out-right for the reason that neither head on collision between the vehicles do itself attribute negligence on both the drivers, specifically on the deceased-driver in absence of any evidence nor any material is produced to reveal any negligence on the part of the deceased. In the instant case, no evidence has been adduced from the side of the insurer except the documents relating to the driving license, permit and policy of the offending tractor. Admittedly the Police have submitted charge-sheet against the driver of the offending tractor and the case of the claimants is supported with the findings in Police investigation. Thus no merit is seen in the contention of Mr. Khan to contribute any negligence on the deceased-driver of the motorcycle.

5. So far as the driving license aspect is concerned, admittedly the driver of the offending tractor was having valid license to drive a light motor vehicle. In view of the definition contained in Sec.2 (21) of the M.V. Act and the offending vehicle being a tractor whose unladen weight is below 7500 kg., no merit is seen there in the contention of Mr. Khan to opine that the driver was not having a valid DL. Learned Tribunal has approached rightly to discard such contention of the insurer.

6. Upon hearing all the parties and perusal of the impugned judgment, it does not reveal any ground to interfere with the same including computation for arriving the quantum of compensation.

7. In the result, the appeal is dismissed and the Appellant-Insurance Company is directed to deposit the total compensation of Rs.13,19,600/- (rupees thirteen lakhs nineteen thousand six hundred) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 12.04.2018 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on same terms and proportion contained in the impugned judgment.

8. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

(B.P. Routray)
Judge