IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.427 of 2016

MACA Nos.427 & 428 of 2016

The Divisional Manager, New India Assurance Company Ltd	....	***Appellant in both the appeals***

Mr. S. Roy, Advocate (in both the appeals)

-versus-

Tag Munda and Others	***(In MACA No.427/2016)***
Basanti Mohakud and Others	***(In MACA No.428/2016)***

.... ***Respondents***

Mr. L. Bhuyan, counsel for Respondents 1-3 (in MACA No.427/2016)

Mr. S.K. Hota on behalf of Mr. R.K. Mahanta, counsel for Respondents 1-4 (in MACA No.428/2016)

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
29.7.2022

Order No.

10. 1. The matters are taken up through hybrid mode.

2. Both the appeals being arise out of the common judgment, are heard together and disposed of by this common order.

3. Heard Mr. S. Roy, learned counsel for the insurer – Appellant in both the appeals, Mr. L. Bhuyan and Mr. Sitakanta Hota on behalf of R.K. Mahanta, learned counsels for respective claimant – Respondents in both the appeals.

4. Present appeals by the insurer are directed against the common impugned judgment dated 30th January, 2016 passed by learned 1st MACT, Keonjhar in MAC Case Nos.233 and 232 of 2012.

5. In MAC Case No.233 of 2012 total compensation of Rs.5,21,000/- and in MAC Case No.232 of 2012 total compensation of Rs.8,64,000/- has been granted along with interest @ 6% per annum.

6. Mr. Roy, learned counsel for the Appellant is on the limited challenge that the deceased has contributed 50% negligence for the cause of accident against the finding of the tribunal to the extent of 25%. Secondly, he questions the liability of the insurer on the ground that the driver of the offending vehicle was possessing a fake driving licence on the date of accident.

7. Before dealing with the challenges, it needs to be mentioned the facts in nutshell. The same are to the effect that at the time of accident, i.e. on 22nd November, 2012 both the deceased persons were coming in a motor cycle bearing registration number OR-09-L-0686. As per the case of the parties, the motor cycle and the offending vehicle, i.e. Safari bearing registration number OR-14-T-0095 colluded front to front resulting the death of the deceased persons. The tribunal while deciding the question of negligence, has come to the opinion that since the accident was a head-on-collusion, the driver of the motor cycle, namely Radha Munda (one of the deceased) who was driving without wearing helmet is 25% negligent towards cause of the accident. However, no such negligence on the part of the other deceased, namely Susanta Mahakud, who was the pillion rider, has

been discussed by the tribunal. But in paragraph 14, learned tribunal has deducted 25% of the compensation amount on account of composite negligence on the part of said two deceased persons. Nevertheless, in absence of any challenge from the side of the claimants, this court refrains from entering into the dispute to reduce the negligence attributed on the part of both the deceased persons to the extent of 25%, as directed by the tribunal.

8. Now coming to the challenge advanced by Mr. Roy, learned counsel for the Appellant that the negligence on the part of the driver of the offending vehicle should be reduced to 50%, it is found from perusal of the impugned judgment that the owner of the offending Safari vehicle was examined as OPW-1. As per him, the driver of the motor cycle was negligent for the accident and not his driver. Keeping in view the evidence adduced by PW-1 vis-à-vis the contents of police paper, their evidence is seen heavier than the evidence of OPW-1 under the principles of preponderance of evidence and as such, no reason is found in favour of the contention of the Appellant to reduce the negligence of the driver of the offending Safari to 50%.

9. So far the challenge regarding absence of driving licence on the part of the driver of the offending Safari is concerned, it is seen that in this regard the insurer has adduced copies of the letters issued by the concerned P.I.O.-CUM-I.M.V., Keonjhar under Ext.A and Ext.B which suggest that such copy of claimed driving licence of the accused driver is a fake one. The tribunal while discussing this aspect at page 7 of the impugned judgment, has concluded that the owner has failed to produce the original driving licence of the driver and thus the

insurer – Appellant has been given the right of recovery against the owner.

10. Therefore, it is clear from the finding arrived by the tribunal that the driver was possessing fake DL and taking advantage of such position, it is now contended by the Appellant that the insurer should not be held liable for payment of compensation at all for violation of policy condition.

11. The principles with regard to different contingencies of non-possession of DL by the driver of a vehicle involved in an accident is no more *res integra* as propounded in the case of ***National Insurance Co. Ltd. v. Swaran Singh and Others, (2004) 3 SCC 297*** and ***Beli Ram v. Rajinder Kumar and Another, 2020 SCC online SC 769.***

12. In the case at hand, nothing has come out from record to suggest that the owner had the knowledge of possession of fake DL by the driver. The owner while examining him as OPW-1 has confirmed to his stand that his driver was having a valid and genuine licence. As seen from his cross-examination (a copy of deposition of said P.W.1 is produced by Mr. Roy in course of hearing for perusal) that no such suggestion to rebut the evidence adduced from the side of claimant could be sufficiently elicited from his mouth. It is also not the case of the insurer that the owner knowing about fake DL of his driver had deliberately appointed him as his driver. It is also not pleaded by the insurer. Therefore, as per the principles propounded by the Hon'ble Supreme Court in the afore-cited cases, the direction of the learned tribunal to pay the compensation amount at the first instance by the

insurer with right to recover the same from the owner cannot be faulted with and the same is confirmed.

13. In view of the discussions made above, no merit is seen in the contentions of the Appellant and resultantly the appeals are dismissed.

14. The statutory deposit made by the insurer – Appellant in both the appeals before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda