IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.767 of 2018 & MACA No.574 of 2018

<u>In MACA No.767 of 2018</u>

National Insurance Company Ltd. .... ***Appellant***
Mr. J.R. Deo, Advocate

-versus-

Sasmita Swain and others .... ***Respondents***
Mr. K.K. Jena, Advocate for Respondent No.3

<u>In MACA No.574 of 2018</u>

Sasmita Swain and others .... ***Appellants***
Mr. K.K. Jena, Advocate

-versus-

Sabita Jena and others .... ***Respondents***
Mr. J.R. Deo, Advocate for Respondent Nos.3 & 4

CORAM:
JUSTICE B. P. ROUTRAY

<u>ORDER</u>
10.10.2022

<u>Order No.</u>

<u>MACA No.767 of 2018 & MACA No.574 of 2018</u>

14. **1.** Heard Mr. J.R. Deo, learned counsel for the Insurance Company and Mr. K.K. Jena, learned counsel for the claimants.

2. Both the appeals are directed against the judgment dated 09.02.2018 in M.A.C. No.730 of 2011 of the learned 1st MACT, Cuttack, wherein compensation to the tune of Rs.38,98,300/- has been granted along with simple interest @6% per annum from the date of filing of the claim application, i.e.08.11.2011 on account of death of the deceased in the motor vehicular accident dated 12.05.2011.

3. Mr. K.K. Jena, learned counsel for the claimants does not want to press the appeal, i.e., MACA No.574 of 2018. Accordingly, the same is disposed of as withdrawn.

4. Mr. J.R. Deo, learned counsel for the Insurance Company while pressing his appeal, i.e., MACA No.767 of 2018 submits that the accident being the result of head on collusion between the Truck bearing Registration No.OR-14-D-8861 and the Indica Car bearing Registration No.OR-05-AA-8482 wherein the deceased was an occupant and was plying on hire basis in violation of the policy conditions, the right of recovery in respect of the amount granted for the Indica Car should be directed in favour of the insurer.

5. It reveals from the impugned judgment that both the vehicles involved in the accident were insured by the same Insurance Company, i.e. M/s.National Insurance Company Ltd., present Appellant in MACA No.767 of 2018. The learned Tribunal while deciding the question of negligence has concluded that the drivers of both the vehicles were negligent for the cause of accident. Again on the question of liability, since the Insurance Company is same for both the vehicles, the Insurance Company is directed to pay the entire compensation amount.

6. It is evident from the discussions of the Tribunal that the drivers of both the vehicles were equally negligent for the cause of accident. In other words, had the insurers for both the vehicles been separate Companies, they would have been liable for 50% of the compensation amount. On such consideration, the insurer is entitled to get recovery of 50% of the compensation amount in respect of the Indica Car.

7. So far as violation of policy conditions is alleged against the Indica Car, P.W.1, the widow of the deceased, has admitted in her cross-examination that the deceased was travelling in Indica Car on hire basis. The owners did not come to contest the case before the Tribunal and as such, the contention of the insurer that the Indica Car was a private vehicle and not authorized to be used as commercial vehicle for hire purpose could not be substantiated with evidence.

8. Mr. Deo produces a copy of the Insurance Policy to support his contention that the vehicle is not authorized to be used for hire purpose. But as seen from the impugned judgment, the Insurance Policy has neither been marked in evidence nor has been brought on record by the insurer.

9. In such view of the matter, it would be unsafe to opine anything by this Court on such contention of the insurer. It needs to be mentioned here that the validity of the Insurance Policy in respect of the offending vehicle on the date of accident is not disputed. However, considering the contentions put-forth by the insurer, he is granted liberty to proceed against the owner to recover 50% of the compensation amount subject to satisfaction of violation of such condition.

10. Accordingly, MACA No.767 of 2018 is disposed of with a direction to the Insurance Company to deposit the entire compensation of Rs.38,98,300/- (rupees thirty-eight lakhs ninetyeight thousand three hundred) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e. 08.11.2011 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 as directed by the Tribunal. However, the default interest @12% per annum as directed by the Tribunal is waived.

11. As stated above, the insurer is granted liberty to recover 50% of the amount in respect of Indica Car in accordance with law after granting opportunity of hearing to its owner and subject to satisfaction of violation of such policy condition.

12. 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 in MACA No.767 of 2018 with accrued interest thereon shall be refunded to the Insurance Company.

13. The copies of evidences of P.W.1 and the policy as produced by Mr. Deo are kept on record.

14. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik