

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.782 of 2018

***Bajaj Allianz General Insurance Co. Appellant
Ltd.***

Mr. G.P. Dutta, Advocate

-versus-

Annapurna Dash and others Respondents

Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 6

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

**ORDER
25.08.2022**

Order No.

07.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for the Respondent Nos.1 to 6-claimants.

2. It is submitted at the bar that Respondent No. 6, namely, Basanta Dash died during pendency of the appeal on 15.09.2019 leaving behind the LRs, who are already on record. A memo is filed to the effect praying to delete his name. Accordingly the name of Respondent No.6 is deleted from the cause title.

2. Present appeal by the insurer is directed against the judgment dated 28.02.2018 of learned 1st M.A.C.T., Cuttack in M.A.C. No.720 of 2010 wherein compensation to the tune of Rs.17,48,193/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim

application i.e.29.09.2010 on account of death of the deceased in the motor vehicular accident dated 18.09.2009.

3. The main ground taken by the Appellant to dispute the involvement of the offending vehicle in the accident is that the FIR was lodged after five days of the accident and in discharge certificate of the hospital, it is mentioned that the accident was caused due to involvement of an autorickshaw.

4. Upon hearing Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 to 6 and going through the impugned judgment, it reveals that the Police have submitted charge-sheet against the driver of the offending Bolero vehicle bearing Registration No.OR-21-B-6050 and the FIR speaks about involvement of the said offending Bolero vehicle. The owner has contested the case, but did not dispute involvement of his Bolero vehicle in the accident. Under such circumstances, the preponderance of probability lies in favour of the contention of the claimants regarding involvement of the offending Bolero and as such the contention of the insurer to dispute the same is rejected.

5. With regard to quantum of compensation, considering the challenges advances on that aspect, a reduced compensation of Rs.16,50,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 to 6 agrees to the same and Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company

leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

6. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.16,50,000/- (rupees sixteen lakhs fifty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.29.09.2010 within a period of two months from today; where-after the same shall be disbursed in favour of Respondent Nos.1 to 5 on such terms and proportion to be fixed by the Tribunal.

7. 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.

8. The MACA is disposed of with aforesaid directions.

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

(B.P. Routray)
Judge