

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.575 of 2011

MACA Nos.575, 576, 577, 578 & 579 of 2011

***National Insurance Company Ltd.
represented through its Officer-in-
Charge, Orissa Legal Cell***

***.... Appellant in all
the appeals***

Mr. P. Panda, Advocate

-versus-

Bayadhara Swain and Others (In MACA No.575/2011)

Prema Bisoyi and Another (In MACA No.576/2011)

Chandrama Swain and Another (In MACA No.577/2011)

Pitabas @ Pitambara Bisoyi & Anr. (In MACA No.578/2011)

Namita Khandual and Another (In MACA No.579/2011)

.... Respondents

**Mr. D. Patnaik, counsel for Respondents 1-3
(in MACA No.575/2011)**

**Mr. Rakesh Behera, counsel for Respondent No.1
(in MACA Nos.576, 577, 578 & 579/2011)**

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

28.9.2022

Order No.

10. 1. The matters are taken up through hybrid mode.
2. Heard Mr. P. Panda, learned counsel for the insurer, Mr. D. Patnaik and Mr. R. Behera, learned counsels for claimants.
3. All these appeals being arise out of the common judgment dated 17th May, 2011 of learned 4th MACT, Aska Circuit, District Ganjam

passed in MAC Case Nos.72, 69, 70, 73, and 71 of 2004, are heard together and disposed of by this common order.

4. The common facts in all the appeals are that the deceased and the injured persons were travelling in the offending trekker bearing registration number OR 02H 2199 which fell down the bridge due to rash and negligent driving of the driver.

5. Mr. Panda, learned counsel submits on behalf of the insurance company that the offending trekker is a private vehicle with permissible capacity of 9 occupants only. But at the time of accident there were around 30 occupants in the vehicle and therefore, the insurer is not liable to indemnify the compensation amount for violation of policy condition.

6. Upon perusal of records it reveals that the insurer did not adduce any evidence, except the copy of the insurance policy, to support such contention before this court. The factum of accident due to falling of the vehicle from the bridge is not disputed by the insurer and the consequent death as well as injuries sustained by the occupants. As such, in absence of denial to negligence of the driver and any evidence adduced in rebuttal, the contention raised by the insurer at this stage is not tenable and accordingly rejected.

7. In the result all the appeals are dismissed and the insurer – Appellant in all the appeals is directed to deposit the entire compensation amount before the tribunal along with interest in each claim case as per the direction of the tribunal within a period of two months from today, where-after the same shall be disbursed in favour

of respective claimants on same terms and proportion as contained in respective impugned judgments.

8. At this stage it is submitted by Mr. D. Patnaik, learned counsel for claimant in MACA No.575 of 2011 that the claimant – Respondent No.1, namely Bayadhara Swain died in the meantime. Therefore, it is further observed that the other claimants are at liberty to bring the said fact to the notice of the learned tribunal who shall pass orders thereof in accordance with law.

9. The statutory deposit made by the insurer in all 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.

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

(B.P. Routray)
Judge

M.K.Panda