

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1040 of 2009

<i>The New India Assurance Co. Ltd.</i>		<i>Appellant</i>
		Mr. S. Roy, Advocate
-versus-		
<i>Helama Tirkey and others</i>		<i>Respondents</i>
		None

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

**ORDER
16.09.2022**

**Order No.
07.**

1. Heard Mr. S. Roy, learned counsel for the Appellant-Insurance Company. None appears on call for the claimants-Respondent Nos.1 to 5 despite the name of their lawyer is indicated in the cause list.

2. Present appeal by the insurer is directed against the judgment dated 06.03.2009 of learned 2nd M.A.C.T., Cuttack in Misc. Case No.507 of 1990 wherein compensation to the tune of Rs.3,54,464/- has been granted along with interest @7% per annum from the date of filing of the claim application, i.e.,27.6.1990 to the claimants on account of death of the deceased in the motor vehicular accident dated 7.4.1990.

3. The facts of the case are that the deceased was driving Bajaj Scooter bearing Registration No.OIU-6921 at the time of accident which dashed against another Scooter bearing Registration No.OIC-8430. The Tribunal has come to the finding that the

accident was due to negligence of the deceased being the driver of the Scooter bearing Registration No.OIU-6921.

4. It is contended by Mr. S. Roy, learned counsel for the Appellant-Insurance Company that the deceased being the owner of the Scooter who was held negligent for the cause of accident is not entitled for any compensation.

5. When the policy is for limited liability and the insured is the claimant, who is found negligent for the cause of accident, the Insurance Company is not statutorily liable to indemnify the insured in terms of the contract of insurance under Section 147 of the M.V. Act. Thus the appeal is bound to be allowed.

6. In the result, the appeal is allowed and the impugned order directing the insurer to pay the compensation amount is set aside.

7. The statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

(B.P. Routray)
Judge