

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.627 & 628 of 2011

(From the judgment dated 28th February, 2011 passed by Shri H.M. Bisoi, LL.B., learned Additional District Judge-cum- M.A.C.T., Balangir in MAC No.135/67 of 2008-10 and MAC No.134/66 of 2008-10)

Anadi Tandi

..... Appellant in both appeals

Versus

Jagannath Sahu and another Respondents in both appeals

Advocate(s) appeared in this case :-

For Appellant	:	Mr. S.K. Joshi, Advocate
For Respondents	:	Mr. R.C. Sahoo-1, Advocate for Respondent No.2

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. Both the appeals have been filed by the claimant against respective judgments dated 28th February, 2011 of learned ADJ-cum-MACT, Balangir in MAC No.135/67 of 2008-10 and MAC No.134/66 of 2008-10.

2. Present Appellant namely Anadi Tandi filed two claim applications concerning death of his wife Nira Tandi and minor daughter Uma Tandi. It is stated that on 10th August, 2008 when the deceased persons were returning to their village in the offending Jeep bearing registration number OR-17-A-6355, on the way on a down

bridge over river Suktel which was swollen with flood water, the vehicle washed away in the flood water with its occupants including both the deceased persons. Rescue operation was undertaken and the F.I.R. lodged on the next day. Three dead bodies could be recovered other than the bodies of Nira Tandi and Uma Tandi, the alleged deceased persons. Police submitted the charge-sheet stating that 21 occupants were there in the offending Jeep and due to the accident 3 persons died as well as 12 persons were injured. There was no mention of death of Nira Tandi or Uma Tandi in the police report.

3. The claimant examined 5 witnesses namely, Hada Tandi, Parvati Tandi, Kunti Jal, Kasturi Tandi and Sahadev Tandi as P.W.1 to P.W.5. But the claimant did not choose to examine himself as a witness.

4. The owner contested the case. The owner though admitted the accident but did not say anything about death of Nira Tandi and Uma Tandi in the accident, either denying or admitting the same. He took the stand that since the offending vehicle was validly insured on the date of accident, the insurer is liable to indemnify him for the compensation amount.

The insurer also contested the claim by taking the stand that the policy of insurance in respect of the offending Jeep was for 'Act Liability' only and as the occupants of the vehicle at the time of accident were gratis passengers where the vehicle is a private one, the insurer is not liable to indemnify the owner for the compensation. However, the insurer did not admit death of the alleged deceased persons in the accident.

5. Learned Tribunal upon analysis of evidence brought on record, disbelieved the fact of death of the alleged deceased persons in the accident and resultantly passed nil award dismissing both the claim applications.

6. It is submitted on behalf of the claimant that P.W.3 and P.W.5 who are the eye witnesses of the accident being occupants of the offending vehicle at the time of accident have stated presence of Nira Tandi and Uma Tandi in the vehicle along with them during that ill-fated event. So based on the evidence of such eye-witnesses there should not be any doubt regarding death of those two deceased persons in the accident even in absence of police report.

7. Thus the seminal issue involved in the dispute is that, whether Nira Tandi and Uma Tandi died due to the accident concerning the offending vehicle. In this regard, to see the evidence brought on record in support of the same, it is the oral statement of P.Ws.3 and 5 only. They have stated to the effect that Nira Tandi and Uma Tandi were the occupants of the offending vehicle along with others and all were returning from Padmapur to their village Sanuden on that day. When the vehicle was on the down bridge over river Suktel, the entire vehicle with the occupants drowned in the flush of water. The dead bodies of Nira Tandi and Uma Tandi could not be traced out despite all efforts put by the rescue team and local people. It is also stated by these witnesses that since the date of accident nobody has seen Nira Tandi and Uma Tandi till date.

The evidence of P.Ws.3 and 5 are found supporting the claim of the Appellant regarding death of Nira Tandi and Uma Tandi. Here one

thing is to be noticed that the claimant did not examine himself as a witness to support the death of his wife and daughter in the accident. This makes the conduct of the claimant suspicious because he being the husband and father of the deceased persons is the best person to speak about their absence or missing or death in the accident. But he abstained from deposing in court suspiciously without any reason and admittedly no reason has been offered for his non-examination.

8. Next coming to the police papers, it is seen that Ext.1 is the copy of F.I.R. and Ext.12 is the copy of the charge-sheet. Neither Ext.1 nor Ext.12 does mention about death of any of the deceased persons in the accident or their presence in the offending vehicle at the time of accident. It is clear from different other exhibits filed on behalf of the claimant that the inquest reports and post mortem reports of other three deceased persons have been prepared. It is clearly mentioned in the charge-sheet that 3 persons died in the accident and 12 persons were injured. Neither the name of Nira Tandi nor Uma Tandi was mentioned anywhere as deceased persons or missing persons. The police report does not reflect anything to suggest that the dead bodies of Nira Tandi or Uma Tandi were untraced. The Appellant also did not submit his protest to the police report.

9. Thus, considering the nature of documentary evidence and the oral evidence adduced from the side of the claimant to support the claim of death in the accident, the oral evidence adduced through the witnesses are found insufficient to establish the claim of death of the deceased persons Nira Tandi and Uma Tandi in the accident particularly in absence of evidence of the claimant himself. It is to be reminded here that the plaintiff being the master of the lis his non-

examination in support of the pleadings has a deep consequence on the fate of the case. When the claimant himself refrains from coming to the witness box without any reason, the averments and contentions made in the plaint lose their weight. As such, keeping the nature documentary evidence in view, no fault is seen in the approach of the learned Tribunal to disbelieve the case of the Appellant regarding death of deceased persons in the accident.

10. Accordingly it is held that the deaths of the deceased persons in the accident are not proved satisfactorily. In view of such finding, the further issue relating to liability of the insurer depending on the nature of policy is not required to be dealt with.

11. In the result both the appeals are dismissed.

(*B.P. Routray*)
Judge

M.K.Panda