

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.773 of 2011

The Sr. Divisional Manager, United India Insurance Co. Ltd. ***Appellant***

Mr. R.C. Sahoo-1, Advocate

-versus-

Kuntala Samantaray and others ***Respondents***

Mr. B.N. Samantaray, Advocate for Respondent Nos.1 to 4

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

12.10.2022

Order No.

13.

1. Heard Mr. R.C. Sahoo-1, learned counsel for the Appellant-Insurance Company and Mr. B.N. Samantaray, learned counsel for the Respondent Nos.1 to 4-claimants.

2. This Court by earlier order dated 22.09.2022 has dismissed the appeal against the owner-Respondent No.5 on the ground of failure of the Appellant for appropriate substitution.

3. Mr. R.C. Sahoo-1, learned counsel for the Appellant submits that dismissal of the appeal against Respondent No.5 has no consequence to continue with the right to sue against the claimants in view of the provisions contained in Order 22 Rule 4, C.P.C. Such submission of Mr. Sahoo appears to be misconceived for the reason that the appeal has been dismissed for want of appropriate substitution.

4. Since the liability of the insurer is dependent on the liability of the owner, the insurer cannot pursue his right to sue against the

claimants alone upon dismissal of the appeal against the owner. Consequently the appeal is dismissed against the claimants also, i.e. Respondent Nos.1 to 4.

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

(B.P. Routray)
Judge



B.K. Barik