

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.510 of 2020

***Divisional Manager, Oriental
Insurance Company Ltd.***

.... ***Appellant***

Mr. P.K. Mohanty, Advocate

-versus-

Swarabala Ojha and Others

.... ***Respondents***

Mr. P. K. Behera, counsel for Respondents 2-4

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
17.11.2022

Order No.

- 04.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. P.K. Mohanty, learned counsel for the insurer - Appellant and Mr. P.K. Behera, learned counsel for claimant – Respondents 2, 3 and 4.
 3. Present appeal by the insurer is against impugned judgment dated 22nd January, 2020 of the learned 3rd MACT, Bhadrak passed in MAC No.120 of 2000, wherein compensation to the tune of Rs.1,41,684/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 22nd December, 2000 has been granted on account of death of the deceased Bhaskar Chandra Ojha in the motor vehicular accident dated 6th May, 2000.
 4. Mr. Mohanty contends on behalf of the insurer that the offending vehicle, i.e. Ambassador car bearing registration number OR 05H 5006 has been implanted in this case to manage

compensation. He further submits that as per the allegations of the F.I.R., no mention of the offending Ambassador car was there. But for the only reason that the owner of the Ambassador car is the father of the owner of the auto-rickshaw responsible for the cause of accident, the same was deliberately implanted in connivance with police officials. In support of his submission Mr. Mohanty relies on the evidence of O.P.W.1 – the investigating officer in the police case.

5. As per the claimants, the deceased while moving in the auto-rickshaw bearing registration number OR 05J 4496, the offending Ambassador car dashed it from behind. As a result of the accident the deceased fell down from the auto-rickshaw and sustained grievous injuries on his head. He died on the same day in the hospital.

6. Police registered Bhadrak Town P.S. Case No.58 dated 6th May, 2000 and upon completion of investigation submitted charge-sheet against the driver of the offending Ambassador Car for commission of offence under section 279/304-A of I.P.C. Two witnesses including P.W.2, the eye witness, were examined on behalf of the claimants and one witness as O.P.W.1, who is the investigating police officer, was examined from the side of the insurer. It is true that the contents of the F.I.R. under Ext.1 do not speak involvement of the offending car in the accident. But the admitted fact remains that, the police upon completion of investigation has submitted charge-sheet against the driver of the offending car.

7. The owner while contesting the claim application, has admitted the accident, involvement of the offending car in the accident and sustenance of grievous injuries by the deceased in the accident.

8. On the other hand, the investigating officer by coming to the court being examined as O.P.W.1, has never denied involvement of the offending car in the accident. Though he has stated about absence of any mark of damage on the front side of the Ambassador car or did not notice any mark of damage to the auto-rickshaw, still his evidence is not enough to take away the admission of the driver – owner of the Ambassador car regarding involvement of the same in the alleged accident. Nevertheless, the fact remains that charge-sheet has been submitted against the driver of the offending car for criminal prosecution. Thus, weighed on the principles of preponderance of probability, the evidence adduced from the side of the claimants are seen heavier to satisfy their contention regarding involvement of the offending car in the accident. As such, no merit is seen in the challenge of the insurer to dispute involvement of the offending vehicle in the accident.

9. No further challenge being advanced with regard to the quantum of compensation, which otherwise is seen just and reasonable, no ground is found to interfere with the impugned judgment.

10. In the result the appeal is dismissed and the insurer – Appellant is directed to deposit the entire compensation amount before the tribunal along with interest as per it's direction within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent Nos.2 to 4 on same terms and proportion contained in the impugned judgement.

11. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

12. The copies of depositions and exhibits as filed by Mr. Mohanty in course of hearing are kept on record.

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

M.K.Panda



(B.P. Routray)
Judge