

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.513 of 2020

MACA No.513 & 519 of 2020

Divisional Manager, Oriental Insurance Company Ltd., Balasore ***Appellant***
in both the cases

Mr. G.P. Dutta, Advocate in both the appeals

-versus-

Swapan Mohapatra and Another ***Respondents in***
both the appeals

Mr. B.N. Rath, counsel for Respondent No.1
(in both the appeals)

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
25.11.2022

Order No.

- 03.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. G.P. Dutta, learned counsel for the insurer and Mr. B.N. Rath, learned counsel for the claimant.
 3. Both the appeals being arise out of the common impugned judgment, are heard together and disposed of by this common order.
 4. Both the appeals by the insurer are directed against common judgment dated 19th February, 2020 of learned 5th MACT, Mayurbhanj passed in MAC Case No.33 and 34 of 2016 on account of death of two deceased persons, namely Arati Mohapatra and Gouttam Mohapatra respectively in the motor vehicular accident dated 15th January, 2016.

5. The common claimant – Respondent No.2 in both the appeals is the son of deceased Arati Mohapatra and brother of deceased Gouttam Mohapatra. In MAC No.33 of 2016, compensation to the tune of Rs.8,72,160/- has been granted and in MAC No.34 of 2016, compensation to the tune of Rs.17,00,370/- has been granted, along with interest @ 7% per annum from the date of filing of both the claim applications, i.e. 15th February, 2016.

6. Mr. Dutta while advancing his submissions contends that, the accident took place due to sole negligence of the deceased Gouttam Mohapatra, who was driving the motor cycle on the wrong side of road at the time of accident.

7. It is seen that the police upon completion of investigation, has submitted charge-sheet against the accused driver of the offending truck bearing registration number OD 17A 6953 and both the driver and pillion rider of the motorcycle died in the accident. The insurer did not adduce any oral evidence nor took any specific pleading to attribute such negligence on the deceased driver of the motorcycle. It has relied on the same police papers filed by the claimants, except addition of the Crime Detail Form. Therefore, in absence of any evidence adduced from the side of the insurer – Appellant, their contention to attribute negligence on the part of the deceased driver of the motorcycle is rejected being unfounded.

8. With regard to the quantum of compensation, considering all such challenges raised by the insurer – Appellant, a reduced compensation of Rs.8,00,000/- with 6% interest in MACA No.513 of

2020 (MAC No.33 of 2016) and Rs.15,50,000/- along with 6% interest in MACA No.519 of 2020 (MAC No.34 of 2016) is proposed to the parties. This is agreed by Mr. Rath, learned counsel for the claimant in both the appeals and Mr. Dutta, learned counsel for the insurer in both the appeals leaves it to the discretion of the court. As such the compensation amount is fixed to the said extent.

9. In the result, both the appeals are disposed of with a direction to the insurer, i.e. Oriental insurance Co. Ltd. to deposit respective reduced compensation of Rs.8,00,000/- (eight lakhs) in MACA No.513 of 2020 and Rs.15,50,000/- (fifteen lakhs fifty thousand) in MACA No.519 of 2020, before the tribunal along with interest @ 6% per annum from the date of filing of the claim applications, i.e. 15th February, 2016, within a period of two months from today; whereafter the same shall be disbursed in favour of claimant – Respondent, namely Swapan Mohapatra on such terms and proportion to be decided by the learned tribunal.

10. The statutory deposit made by the insurer before this court in both the appeals along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

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

(B.P. Routray)
Judge