IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.219 of 2021

Divisional Manager, United India Insurance Company Ltd. .... ***Appellant***

Mr. Somnath Roy, Advocate

-versus-

Mamata Dash and Others .... ***Respondents***

Mr. B.P. Mohanty, Advocate for Respondents 1-4

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
19.7.2022

Order No.

06. 1. The matter is taken up through hybrid mode.

2. Heard Mr. S. Roy, learned counsel for the insurer – Appellant and Mr. B.P. Mohanty, learned counsel appearing for claimant – Respondents.

3. It is submitted by the parties that in the meantime Respondent No.4, namely Smt. Harapriya Dibya who is the mother of the deceased, died on 31st January, 2018. But inadvertently the same could not be brought to the notice of the learned tribunal. As such it is prayed that her name may be deleted as no substitution is required to be taken since all other LRs of the deceased (who died in the motor vehicular accident) are already on record, viz., Respondent Nos.1, 2 and 3.

4. In view of such submissions the name of Respondent No.4, Smt. Harapriya Dibya is delted and the appeal is confined to Respondent Nos.1, 2, 3 and 5 only.

5. Present appeal by the insurer is directed against the impugned judgment dated 9th January, 2020 of learned 7th MACT, Bhubaneswar passed in MAC No.118 of 2016 wherein compensation to the tune of Rs.15,32,500/- along with interest @ 7% per annum from the date of filing of the claim application has been granted on account of death of the deceased in the motor vehicular accident dated 3rd December, 2015.

6. Mr. Roy, learned counsel strenuously contends that though the accident happened on 3rd December, 2015 but the complaint case was filed after one year and in terms of the direction passed by the Magistrate in the complaint case, Kumbharpada P.S. Case No.406 dated 28th December, 2016 was registered. He further submits that neither the final investigation report has been proved from the side of the claimant nor any document regarding seizure of the offending vehicle was produced before the tribunal. Therefore, the involvement of the offending vehicle is found doubtful and as such, the liability of the insurer does not arise.

7. On the other hand it is submitted by Mr. Mohanty, learned counsel for the claimant – Respondents that, the owner having admitted the factum of accident and death of the deceased due to the accident involving the offending vehicle, no point is made there in the submission of learned counsel for the appellant – insurer.

8. Perusal of the impugned judgment reveals the case of the claimants, who are the wife, two minor children and the mother (the deleted respondent) of the deceased, that, on 3rd December, 2015 when he was standing along his motorcycle, the offending motor cycle bearing registration number OR-13-E-8745 by coming in rash and negligent manner in high speed dashed against him causing injuries and resultant death of the deceased. At the time of accident the daughter of the deceased, namely Krishnapriya Upadhyaya (P.W.2) was present there and she is the eye witness to the occurrence. The deceased was an Advocate by profession and aged about 45 years on the date of accident. The deceased died after five days of accident while being treated at Ayush Hospital, Bhubaneswar.

9. Admittedly, Sahidnagar UD PS Case No.75 dated 8th December, 2015 was registered for the death of the deceased and it has been categorically mentioned in column III of the UD report that the cause of injuries resulting the death is due to road traffic accident. The post mortem examination report under Ext.7 and the inquest report under Ext.5 including the UD report under Ext.3 are undisputed documents and the insurer has not raised any objection to such document. In addition to those documents, the copy of the F.I.R. and oral evidence of the daughter (P.W.2) has been adduced. A cumulative reading of all such evidences including the oral statement of P.W.2 fortifies the contention of the claimants regarding sustenance of injuries and death of the deceased in the accident involving the offending motor cycle as well as the negligence on the part of the driver of the said motor cycle towards the cause of accident.

Therefore, the entire contention raised on behalf of the appellant to disbelieve the case of the claimants is rejected. In addition to the aforesaid materials produced in support of the contention of the claimants, the owner of the offending motor cycle has also admitted the accident and negligence on the part of the driver of the offending motor cycle for the cause of accident.

10. Thus in view of the discussions made above, the contention of Mr. Roy, learned counsel for the insurer to disbelieve the fact of accident and negligence on the part of the driver of the offending motor cycle, is rejected.

11. Mr. Roy, learned counsel next questions the quantum of compensation on the ground that the income of the deceased has been assessed at higher side. But he is unable to point out any such material against the finding of the learned tribunal in assessing the income of the deceased at Rs.10,000/- per month as an Advocate of Puri Bar. Upon perusal of the discussions made at paragraph 10 of the impugned judgment, I do not find any severe illegality in such assessment of the tribunal in computing the final compensation amount. However, it is noticed that the minor daughters of the deceased have not been granted any parental consortium by the tribunal in terms of the decision rendered by Hon'ble Apex Court in the case of ***Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram and Others, (2018) 18 SCC 130.*** But in absence of any challenge from the side of the claimants, this court refrains from interfering into the same.

12. In the result, the appeal is dismissed by confirming the award of the learned Tribunal and the appellant is directed to deposit the same including interest before the tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimant Respondent Nos.1, 2 and 3, namely, Smt. Mamata Dash, Krushnapriya Upadhyaya and Kaberi Upadhyaya on such terms and proportion to be fixed by the learned Tribunal.

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

14. The appeal is disposed of.

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

(B.P. Routray)
Judge

M.K.Panda