# IN THE HIGH COURT OF ORISSA AT CUTTACK

## MACA No.554 of 2020

***M/s.National Insurance Co. Ltd.*** .... ***Appellant***
Mr. B.B. Mishra, Advocate

*-versus-*

***Smt. Kuni Naik and others*** .... ***Respondents***
Mr. S. Swain, Advocate for Respondent Nos.1 & 2

**CORAM:**
**JUSTICE B. P. ROUTRAY**

**ORDER**
**14.12.2022**

| **Order No.** | |
|---|---|
| 07. | 1. Heard Mr. B.B. Mishra, learned counsel for the Appellant-Insurance Company as well as Mr. S. Swain, learned counsel for the Respondent Nos.1 & 2-claimants. |

2. Present appeal by the insurer is directed against the judgment dated 09.12.2019 of learned 1st M.A.C.T., Puri in M.A.C. No.94 of 2015, wherein compensation to the tune of Rs.8,55,000/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.02.04.2015 on account of death of the deceased in the motor vehicular accident dated 10.03.2015.

3. Mr. Mishra, learned counsel contends on behalf of the insurer that the driver of the offending vehicle, i.e. TATA ACE bearing Registration No.OD-13-A-2141 was driven by its owner with learner's license and therefore, the terms of policy condition is violated. Mr. Mishra further questions quantification of compensation amount on the ground that the applicable multiplier

would be '8' since the deceased was 59 years old at the time of accident.

4. It is seen that P.W.4, the witness examined from the side of the claimants, have stated in his evidence that the owner of the offending vehicle, namely, Bipin Bihari Chhotray was driving the vehicle having learner license and he (P.W.4), who has a qualified driver possessing required license, was sitting beside the driver in the front seat. Admittedly, the offending vehicle is a goods vehicle and at the time of accident, the same was not loaded with any goods. A person having learner license is not disqualified from driving the vehicle, provided the other required conditions are satisfied. In the instant case, no evidence has been adduced from the side of the insurer to dispute the evidence of P.W.4, which speaks that the owner-cum-driver of the offending vehicle was never disqualified to drive the vehicle. Therefore, all such contentions advanced by Mr. Mishra to disown the liability on violation of policy condition are rejected.

5. With regard to quantum of compensation, the submission that the deceased was aged about 59 years on the date of accident is not supported with any document produced on record. Mr. Mishra at this stage produces a photostat copy of Adhar Card of the deceased to substantiate his contention regarding age of the deceased as 59 years. Since no evidence has been adduced before the learned Tribunal nor any prayer has been made before this Court to adduce any such evidence additionally, the contention of Mr. Mishra based on the copy of the Adhar Card is not acceptable. Hence the age as concluded by the Tribunal based on

the recordings made in the inquest report as well as the post mortem report is confirmed to accept the deceased as 50 years old on the date of accident. So no illegality is seen in the applicability of multiplier '13' adopted by learned Tribunal. Accordingly, no reason is seen to interfere with the impugned award. However, the rate of interest is reduced to '6%' from '7%', against the direction of the learned Tribunal.

6. Mr. Swain, learned counsel for the claimants – Respondents No.1 & 2- at this stage submits that the Tribunal has failed to add future prospects to the income of the deceased. However, in absence of any express challenge advanced from the side of the claimants, this Court is not inclined to enter into such dispute in the appeal preferred by the Insurance Company.

7. In the result, the appeal is disposed of with a direction to the Appellant – Insurance Company to deposit the entire compensation amount of Rs.8,55,000/- (rupees eight lakhs fifty-five thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 02.04.2015 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the Tribunal.

8. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

9. The copies of depositions as filed by Mr. Mishra, learned counsel for the Appellant are kept on record.

10. An urgent certified copy of this order be granted on proper application.

***( B.P. Routray)***
***Judge***



B.K. Barik