IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.979 of 2015

The New India Assurance Company Ltd.	....	***Appellant***
		Mr. A. Das, Advocate

-versus-

Mamali Panigrahi and another	....	***Respondents***
		Mr. K.C. Nayak, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
23.12.2022

Order No.
08.

1. Heard Mr. A. Das, learned counsel for the Appellant-Insurance Company as well as Mr. K.C. Nayak, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 16.01.2015 of learned M.A.C.T., Rayagada in M.A.C. No.21 of 2011, wherein compensation to the tune of Rs.23,86,400/- has been granted along with interest @6% per annum to the claimant from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 22.6.2010.

3. Mr. A. Das, learned counsel submits on behalf of the Appellant-Insurance Company that the driver of the offending Tractor bearing Registration No.OR-18-B-1806 did not have a valid license on the date of accident and therefore, the liability cannot be fastened on the Insurance Company.

4. Perusal of the impugned judgment reveals that no evidence has been adduced from the side of the Insurance Company except a Photostat copy of the insurance policy.

5. Mr. Das contends regarding non-availability of the driving license based on the Police charge-sheet submitted in the criminal court alleging commission of offence under Section 181 of the M.V. Act. The owner did not come to contest the claim application, who would have been the appropriate person to explain about validity of the driving license of his driver. However, the submission of the Police charge-sheet only alleging commission of offence under Section 181 of the M.V. Act would not be enough requirements to conclude that the driver did not have a valid license.

6. The offending vehicle is a tractor and law is well settled that unless the knowledge of the owner regarding absence of a valid license by the driver is found deliberate and the driver did not have the competency to drive the vehicle, the insurer should bear the liability of the owner. In the case of ***National Insurance Co. Ltd. vs. Swaran Singh and others, (2004) 3 SCC 297, Nirmala Kothari vs. United India Insurance Company Limited, (2020) 4 SCC 49*** and ***Rishi Pal Singh vs. New India Assurance Co. Ltd. and others (Civil Appeal No.4949 of 2022, decided on 26th July, 2022)***, the Supreme Court have clarified the position.

7. In the instant case, in absence of any evidence adduced with regard to non-availability of driving license on the part of the

driver, his competency to drive the vehicle and the knowledge of the owner about such deficiency in the driver of the vehicle, the Insurance Company cannot be absolved of its liability to indemnify the compensation amount on behalf of the owner, particularly when the policy is found valid and perfect. As such, the challenge advanced by Mr. Das for waiver the liability of the insurer is rejected.

8. With regard to quantification of compensation amount, upon considering all such grounds of challenge advanced, a reduced compensation of Rs.21,00,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. K.C. Nayak, learned counsel for the claimant-Respondent No.1 agrees to the same and Mr. A. Das, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

9. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.21,00,000/- (rupees twenty-one lakhs) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimant-Respondent No.1 on such terms and proportion to be fixed by the Tribunal.

10. 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.

11. The MACA is disposed of with aforesaid directions.

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

(B.P. Routray)
Judge

B.K. Barik