

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.846 of 2018

***IFFCO-TOKIO General Insurance
Company Ltd. represented through the Appellant
Head of the Customer Service***

Mr. A.A. Khan, Advocate

-versus-

Bijaya Seth and Another Respondents

Mr. S. Sourav, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
21.9.2022

Order No.

11. 1. The matter is taken up through hybrid mode.
2. Heard Mr. A.A. Khan, learned counsel for the insurer-Appellant and Mr. S. Sourav, learned counsel for claimant – Respondent No.1.
3. Present appeal by the insurer is against the impugned judgment dated 27th February, 2018 of the learned 1st MACT, Balangir passed in MAC Case No.46 of 2014 wherein compensation to the tune of Rs.27,07,104/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 27th March, 2014 has been granted on account of death of deceased Gobinda Seth in the motor vehicular accident dated 4th March, 2014.
4. Mr. Khan challenges the award mainly on two grounds. First, the driver was not having valid driving licence for driving the transport vehicle and secondly, the sole claimant, who is the father of the deceased, is not dependent on the income of the deceased.
5. Upon hearing Mr. Saurav and perusal of the impugned judgment, it reveals that the deceased was serving as a police

constable on the date of accident and the offending vehicle is a tractor trolley bearing registration number OR 03A 5854. Admittedly, the driver was authorized to drive LMV and thus keeping in view the provisions under Section 2(21) of the MV Act, such contention raised by Mr. Khan for non-transport vehicle is rejected as gross weight of the tractor trolley is below than 7500 kg.

6. With regard to the second contention that the father is not the dependent on the income of the deceased, keeping in view the decision of Hon'ble Supreme Court in *National Insurance Company Ltd. v. Birender and Others*, (2020) 11 SCC 356 and *N. Jayasree and Others v. Cholamandalam MS General Insurance Company Ltd.*, 2021 SCC OnLine SC 967, the contention of the insurer is rejected.

7. In the result, the appeal is dismissed and the Appellant – insurer is directed to deposit the compensation amount along with interest before the tribunal as directed by it within a period of two months from today, where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on the same terms and proportion as contained in the impugned judgment.

8. 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.

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

(B.P. Routray)
Judge