

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.452 of 2015

The New India Assurance Co. Ltd. ***Appellant***

Mr. V. Narasingh, Advocate

-versus-

Sampad Kumar Baral and another ***Respondents***

Mr. R.P. Bhagat, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
10.01.2022

Order No.

06.

1. This matter is taken up through video conferencing.
2. Heard Mr. V. Narasingh, learned counsel for the Appellant-Insurance Company as well as Mr. R.P. Bhagat, learned counsel for the Respondent No.1-claimant.
3. The notice issued to Respondent No.2 owner through registered post with A.D. on 8.8.2016 is treated sufficient in terms of provisions contained under Order 5 Rule 9 of the C.P.C.
4. The present appeal has been filed by the Insurance Company against the award dated 28.01.2015 of the learned 5th MACT, Puri in MAC No.18 of 2010.
5. The case of the claimant before the Tribunal is that while travelling along with his wife and minor son and standing on extreme left side of the road, the offending vehicle, i.e. OR-05-

AG-3588, a white color Hyundai Getz car suddenly swerved to the road side and dashed against him resulting the injuries.

6. It is the specific case of the insurer that the Registration No.OR-05-AG-3588 against which the insurance policy has been taken is a motor cycle, but not the car and the name of the owner is also different from the name of Res No.2.

7. The owner did not come to contest the claim application before the learned Tribunal.

8. It is seen from the impugned judgment that the learned Tribunal though has recorded the submission of the insurer to the effect that the registration number is relating to a motor cycle, but did not make any further discussion on the same and concluded with saddling the liability on the insurer to indemnify the compensation.

9. Learned counsel for the claimant-Respondent No.1 is unable to reply the contention of the insurer that the policy valid for vehicle No.OR-05-AG-3588 is a motor cycle.

10. It is further seen that the insurer has adduced three documents under Exts.A, B & C to justify his contention that the aforesaid registration number is not relating to the car but relating to a motor cycle.

11. Upon analysis of the contentions of the insurer which is not rebutted by the claimant, the inference deduced is that, either the owner of the offending vehicle has used a fake registration

number in his vehicle or the registration number of the offending car has not been correctly mentioned. But neither of these is the case of claimant. The Police investigation report also does not give any light on this aspect. But learned Tribunal without delving into the same has simply concluded with the liability saddled on the insurer. Therefore, in absence of adequate proof with regard to involvement of the particular vehicle in the accident having Registration No.OR-05-AG-3588 and in view of clear anomaly in the policy relating to the vehicle insured, the insurer is exonerated from its liability to indemnify the compensation. The direction of the learned Tribunal is accordingly modified and the insurer-Appellant is held not liable to indemnify the compensation.

12. The appeal is allowed to the above extent. However the claimant – Respondent No.1 is at liberty to realize the compensation amount from the owner of the offending vehicle as per the direction of learned Tribunal.

13. The statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company on proper application.

14. The appeal is disposed of.

15. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned

advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office Order circulated vide Memo No.514, dated 7th January, 2022.

(B.P. Routray)
Judge

B.K. Barik

