

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.82 of 2017

***New India Assurance Company Ltd.
represented through its Manager, Legal
Cell***

.... ***Appellant***

Mr. P.K. Mishra-1, Advocate

-versus-

Indumati Sarangi and Another

.... ***Respondents***

Mr. B.N. Rath, counsel for Respondent No.1

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

**ORDER
29.9.2022**

Order No.

- 15.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. P.K. Mishra-1, learned counsel for the insurer – Appellant and Mr. B.N. Rath, learned counsel for claimant-Respondent No.1.
 3. Present appeal by the insurer is against the impugned judgment dated 22nd October, 2016 of the learned 1st MACT, Nayagarh passed in MAC Case No.20 of 2012 wherein compensation to the tune of Rs.9,75,435/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 27th April, 2012 has been granted on account of death of deceased in the motor vehicular accident dated 4th October, 2007.

4. Mr. Mishra, learned counsel for the insurer mainly questions the death of the deceased in the accident and involvement of the offending motor cycle in the alleged accident. As per him, the F.I.R. was lodged after two years of the accident and as such there is every reason to doubt death of the deceased in the accident. He continues to submit that the claimant as well as the owner and police have colluded to make out a false case of accident to manage compensation.

5. It is seen from the impugned judgment that under Issue No.I, the tribunal has discussed the said aspect in detail. As it reveals from the facts, the accident occurred on 4th October, 2007 and the deceased died on 22nd October, 2007 while undergoing treatment in Vivekananda Hospital, Bhubaneswar. During this period he was in Coma stage and Nayapalli P.S. UD case No.54 dated 23rd October, 2007 was registered upon his death. Despite registration of the UD case police did not register the P.S. case to take up investigation though it was the consistent case of the claimants before the police in the UD case that the deceased died due to motor vehicular accident. The claimants therefore were compelled to lodge a complaint case under Section 156 of the Cr.P.C. and upon direction of the Magistrate, Fategarh P.S. Case No.18 of 2009 was ultimately registered corresponding to G.R. Case No.46 of 2009. Therefore no unusual conduct is seen on the part of the claimants to disbelieve their case regarding death of the deceased in the alleged motor vehicular accident.

6. The owner of the offending motorcycle by filing written statement has admitted about the accident, the injuries sustained by the deceased and the involvement of the offending motor cycle

bearing registration number OR 05M 9657. When the owner of the offending motor cycle admits the accident and the death of the deceased is established due to the injuries sustained in the motor vehicular accident, no substance remains in the contention of Mr. Mishra to disbelieve involvement of the offending motor cycle and death of the deceased in the accident. As such, his contention is rejected.

7. With regard to quantum of compensation, Mr. Mishra submits that the amount of Rs.93,387/- granted by the tribunal for treatment expenses is unjustified.

8. Perusal of the impugned judgment reveals that, it is the consistent case of the claimants that the deceased was under treatment in the hospital being in Coma stage for the period from 4th October, 2007 to 22nd October, 2007. Considering the fact that Vivekananda Hospital, Bhubaneswar is a private hospital, no flaw is seen in the finding of the tribunal to grant Rs.93,387/- towards treatment expenses based on evidence of P.W.1, the widow. As such, the same is confirmed.

9. There being no further challenge with regard to income and age of the deceased, the compensation amount granted by the tribunal in favour of the claimants is confirmed. However, the rate of interest is reduced to 6% from 7%.

10. In the result, the appeal is disposed of with a direction to the insurer – Appellant to deposit entire compensation amount of Rs.9,75,435/- (nine lakhs seventy-five thousand four hundred thirty-five) before the tribunal along with interest @ 6% per annum from the

date of filing of the claim application, i.e. 27th April, 2012 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents in terms of the direction contained in the impugned judgment.

11. The statutory deposit made by the insurer - 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.

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

(B.P. Routray)
Judge

M.K.Panda

