

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.611 of 2017**

***Divisional Manager,***  
***Reliance General Insurance Co. Ltd.*** ..... ***Appellant***  
Mr.G.P.Dutta, Advocate

***-versus-***

***Susama Roula and others*** ..... ***Respondents***  
Mr.B.N.Samantray, Advocate for Respondent Nos.1 to 2

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

**ORDER**  
**07.12.2022**

**Order No.**

13.           1.           The matter is taken up through Hybrid mode.
2.           Heard Mr.Dutta, learned counsel for the Appellant-  
Insurer and Mr.Samantray, learned counsel for claimants-  
Respondent Nos.1 to 4.
3.           Present appeal by the Appellant is against the judgment  
dated 1<sup>st</sup> March, 2017 of the 3<sup>rd</sup> MACT-cum- Additional District  
Judge, Dhenkanal in M.A.C. Case No.194 of 2009, wherein  
compensation to the tune of Rs.2,01,000/- has been granted along  
with interest @7% per annum with effect from the date of filing  
of the claim application on account of death of the deceased in  
the motor vehicular accident on 10<sup>th</sup> June, 2009.
4.           Mr. Dutta contends for the Appellant that the offending  
vehicle, i.e. Tipper bearing Registration No. OSD-4584 did not

have a valid insurance policy on the date of accident and the offending vehicle was never insured under the Appellant and therefore, no liability can be fastened on the Appellant to pay the compensation amount.

5. It is seen from the record that as per the police seizure memo, the cover note bearing No.109000112674 was seized in respect of the offending vehicle. According to the claimants, the said cover note was issued in respect of a valid insurance policy taken by the owner for the offending vehicle bearing Registration No.OSD-4584. But the Insurer-Appellant denied issuance of said cover note in respect of the offending vehicle. According to the Insurer, the said cover note bearing No.109000112674 corresponding to insurance policy No.2402792338001893 was issued in respect of another vehicle, i.e. Tata Indica Car in the name of one Sudhansu Sekhar Rath as the owner. In this regard, Ext.A – the certificate of the Insurer and Ext.B – the copy of insurance policy bearing No. 2402792338001893, have been produced in evidence. The Insurer also examined one of his officials as O.P.W.1, the Senior Legal Executive of the company. In his evidence, said O.P.W.1 has categorically said that, their company has no insurable interest in respect of the offending vehicle and at no point of time, the company entered any contractual liability, either with the offending vehicle or its owner, through any insurance policy. On these specific evidences adduced from the side of the Insurer, no discussion has been made by the Tribunal in the impugned judgment. The Tribunal proceeded in a different way stating that, the Insurer produced a copy of the cover note at the end of the trial shown to have issued

in favour of one Sudhansu Sekhar Rath with interpolation in respect of engine number and chassis number. But it is seen from the L.C.R. that no such document has been marked in evidence. At the same time, only Ext.A and B, as stated above, have been brought on record from the side of the Insurer in support of their stand. Therefore, it is clear that the Tribunal has ignored the most contentious issue from discussion to illegally fix the liability on the Insurer without any established material.

6. It needs to be mentioned here that in respect of such statement made by O.P.W.1 in his evidence, though the claimants have cross-examined him, but did not choose to put any such question to him in rebuttal to such statement made at paragraph-2 of his evidence. It is thus established that the claimants have no answer to such specific contention of the Insurer to deny validity of the Insurance policy in respect of the offending vehicle. Thus, the conclusion of the Tribunal that the cover note and related policy number furnished on behalf of the Insurer cannot defuse the claim of the applicants, appears to be unjustified. The further observation of the Tribunal extending the right of recovery in favour of the Insurer also cannot be allowed to sustain for the reason that it is a case of no insurance policy and not a case of violation of policy condition.

7. It is also important to mention here that, the owner of the offending vehicle did not come to contest the claim before the Tribunal and also remained absent from this Court, despite valid

service of notice. Moreover, he (owner) refused to accept the notice from this Court.

8. Thus perusal of entire evidence adduced on record with regard to validity of insurance policy makes out a case in support of denial of the Insurer that it did not issue any insurance policy in respect of the offending vehicle at any point of time. As such, the appeal is allowed and the impugned order is set aside in respect liability saddled on the Appellant. Since the owner is liable to pay the compensation amount, the claimants-Respondents are at liberty to realize the entire amount from the owner-Respondent No.3 in accordance with law, in case he fails to deposit the same within two months from today.

9. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

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

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

*C.R.Biswal*