IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.676 of 2017

M/s. Oriental Insurance Company Ltd., through the Regional Manager .... ***Appellant***

Mr. Subrat Satpathy, Advocate

-versus-

Nalini Sahu and Others .... ***Respondents***

Mr. P.K. Mishra, counsel for Respondents 1-4

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
3.11.2022

Order No.

13. 1. The matter is taken up through hybrid mode.

2. Heard Mr. S. Satpathy, learned counsel for the insurer - Appellant and Mr. P.K. Mishra, learned counsel for the claimant – Respondents. None appears on call for owner - Respondent No.5.

3. Present appeal by the insurer is against the impugned judgment dated 23rd March, 2017 of the learned District Judge-cum-MACT, Bargarh passed in MAC No.63 of 2013, wherein compensation to the tune of Rs.34,27,424/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 2nd August, 2013 has been granted on account of death of deceased Dillip Kumar Sahu in the motor vehicular accident dated 9th January, 2013.

4. Mr. Satpathy contends that since the deceased, who was riding the motor cycle at the time of accident, was not wearing the helmet, he equally contributed negligence for the cause of accident. He

accordingly submits to fix 50% contributory negligence on the deceased.

5. Admittedly, the accident is a head-on-collusion between the offending Bolero vehicle bearing registration number CG 04HA 5972 and the motor cycle driven by the deceased. To satisfy the contention of the insurer that the deceased was not wearing the helmet, no evidence is brought on record. Even though the contention of the insurer is accepted, it will not attract any negligence on the part of the deceased because not wearing the helmet may attract punishment prescribed there-for, but would not attract the culpability of negligence in absence of any material with regard to his competency to ride a motor cycle. For the simple reason that it was a head-on-collusion, negligence cannot itself be attributed to the deceased without specific material. As such, the contention of Mr. Satpathy is rejected.

6. With regard to quantum of compensation, considering the grounds of challenge advanced in that regard, a reduced compensation of Rs.32,00,000/- along with 6% interest is proposed to the parties. This is agreed by Mr. Mishra, learned counsel for the claimant – Respondents and Mr. Satpathy, learned counsel for the insurer leaves it to the discretion of the court. Accordingly, the compensation amount is fixed to the said extent.

7. In the result the appeal is disposed of with a direction to the insurer - Appellant to deposit the reduced compensation amount of Rs.32,00,000/- (thirty-two lakhs) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 2nd August, 2013, within a period of two months from

today, where-after the same shall be disbursed in favour of the claimant – Respondents on such terms and proportion to be decided by the learned tribunal.

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

M.K.Panda