

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.780 of 2017

The Divisional Manager, National Insurance Co. Ltd. *Appellant*

Mr. A.K. Roy, Advocate

-versus-

Chaitu Naik and another *Respondents*

Mr. P.K. Mishra, Advocate for Respondent No.1

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

**ORDER
24.08.2022**

Order No.

10.

1. Heard Mr. A.K. Roy, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 15.03.2017 of learned 1st M.A.C.T., Keonjhar in MAC Case No.113 of 2011 wherein compensation to the tune of Rs.2,79,800/- has been granted along with interest @7.5% per annum to the claimant from the date of filing of the claim application, i.e.20.04.2011 on account of injury sustained in the motor vehicular accident dated 25.12.2009.

3. It is submitted on behalf of the Appellant-insurer that the offending vehicle, i.e. Pick Up Van bearing Registration No.OR-09-D-6512 was not having a valid insurance policy on the date of accident.

4. Upon hearing Mr. Roy and perusal of the impugned judgment, it reveals that the learned Tribunal at paragraph 9 has discussed about validity of the insurance policy in respect of the offending vehicle and the onus on the insurer to disprove such contention of the claimants. The learned Tribunal having detailed the discussion on the same has concluded that the insurer having been failed in discharging its onus to disprove the validity of the insurance policy in respect of the offending vehicle is liable to be fastened with the liability.

5. Admittedly a specific policy number has been mentioned in the claim application which according to the insurer was not a valid number. It was contended by the insurer that such 19 digit number was never issued for any insurance policy where all the insurance policies are 20 digit numbers. The copy of the insurance policy under Ext.A has been filed on behalf of the insurer to suggest that such policy was not issued in respect of the offending vehicle.

6. It is true that considering the status of the claimants, it cannot be always expected on their part to bring definite evidence on the validity of the policy in a motor accident compensation case. The police investigation reveals that the policy issued by the National Insurance Company Ltd. (the Appellant) was valid upto 14.3.2010 in respect of the offending vehicle. Therefore, it is obvious that such policy would have been issued on 15.3.2009 and thus it was incumbent upon the insurer to bring on record positive evidence like the concerned register regarding issuance

of insurance policy from Baripada Branch on 15.3.2009. It would have then satisfied the required onus on the insurer. But the insurer has failed to bring any such positive evidence to disprove the contention regarding valid insurance policy in respect of the offending vehicle. Therefore, in the present facts of the case, the reason assigned by the Tribunal in fastening the liability on the insure for their failure to discharge their onus cannot be faulted with.

7. In the result, the appeal is dismissed being without merit.

8. The Appellant – Insurance Company is directed to deposit the entire compensation amount of Rs.2,79,800/- (rupees two lakhs seventy-nine thousand eight hundred) before the Tribunal along with interest @7.5% per annum from the date of filing of the claim application, i.e. 20.04.2011 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on same terms and proportion as directed by the Tribunal.

9. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

(B.P. Routray)
Judge