

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.796 OF 2017

From the Judgment/Order dated 21.04.2017 passed by the learned 3rd M.A.C.T, Bhubaneswar in MAC Case No.247/273 of 2006.

**The Oriental Insurance
CO. Ltd.**

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Appellant

-:: VERSUS ::-

Bansidhar Nahak & Ors. ::::

Respondents

**Appeared in this case by Video Conferencing Mode /
Hybrid Mode.**

For Appellant :::: Mrs. P. Mishra, Advocate

**For Respondents :::: Mr. B.N. Rath, Advocate
(for Respondent Nos.1 & 2)
Mr. K.T. Panigrahi, Advocate
(for Respondent No.3)**

PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

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Date of Hearing- 05.05.2022:: Date of Order- 11.05.2022
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B.P.Satapathy, J. This matter is taken up through Hybrid Mode.

2. Heard Mrs. P. Mishra, learned counsel for the Appellant and Mr. B.N. Rath, learned counsel appearing for the Respondent Nos.1 & 2 and Mr. Kalpataru Panigrahi, learned counsel appearing for the Respondent No.3.

3. This appeal has been filed by the Appellant-Company challenging the judgment dtd.21.04.2017 passed in MAC Case No.247/273 of 2006 by the learned 3rd MACT, Bhubaneswar.

4. It is submitted by the learned counsel appearing for the Appellants that vide the aforesaid judgment learned Tribunal without proper appreciation of the grounds taken by the Appellant-Company vis-à-vis the claim made by the Claimants-Respondents No.1 & 2 directed the Appellant-Company to pay compensation amount of Rs.6,11,500/- (Rupees six lakhs eleven thousand five hundred) with interest @ 7% per annum payable from the date of filing of the case till its payment.

5. Mrs. Mishra, learned counsel appearing for the Appellant submitted that even though before the learned Tribunal violation of the provision contained under Sec.128 and 129 of the Motor Vehicle Act was specifically pleaded, but learned Tribunal without considering the same in its proper perspective held the Appellant-Company liable to pay the compensation amount of Rs.6,11,500/- (Rupees six lakhs eleven thousand five hundred) with interest @ 7% per annum.

6. It is also submitted that even though violation of the policy condition was raised before the learned Tribunal, but while allowing the compensation in favour of the Claimants, no right of recovery has been allowed. It is also submitted that learned Tribunal also directed for payment of interest @ 7% per annum, which is on the higher side as during the relevant time, the prevailing interest rate cannot be @ 7% per annum. Accordingly, Mrs. Mishra, learned counsel for the Appellant prays for interference of this Court with regard to the order passed by the learned Tribunal vide the impugned judgment.

7. Mr. Rath, learned counsel appearing for the Claimants-Respondents No.1 & 2 on the other hand submitted that learned Tribunal after proper appreciation of the claim Petition vis-à-vis the documents exhibited vide Ext.1 to 5 rightly assessed the compensation at Rs.6,11,500/- (Rupees six lakhs eleven thousand five hundred) with interest @ 7% per annum. It is accordingly submitted that no interference is called for by this Court.

8. Mr. Panigrahi, learned counsel appearing for the Respondent No.3 submitted that since in the charge sheet all the relevant documents concerning to the offending vehicle were produced, learned Tribunal rightly did not allow right of recovery as against the owner-Respondent No.3.

9. Heard learned counsel for the Parties at length. Perused the materials available on record. After a detailed perusal of the same, this Court finds that learned Tribunal has in

fact not considered the grounds taken by the Appellant-Company with regard to violation of the provision contained under Sec.128 and 129 of the Motor Vehicle Act and the claim of the Appellant-Company with regard to the right of recovery as against the owner-Respondent No.3.

10. This Court also finds that the rate of interest fixed by the learned Tribunal @ 7% per annum is on the higher side. Taking everything into account and in view of the fact that the claim is of the year 2006, this Court when came to a conclusion to interfere with the impugned judgment by holding the Claimants-Respondents entitled to get compensation amount of Rs.5,00,000/- (Rs. Five lakhs) with interest @ 6% per annum payable from the date of application i.e. 14.07.2006 till its realization. Mr. Rath, learned counsel appearing for the Respondent Nos.1 & 2 supported the said view of this Court. Mrs. Mishra, learned counsel appearing for the Appellant-Company left the said decision to the discretion of this Court.

11. Mr. Panigrahi, learned counsel appearing for the Respondent No.3-owner submitted that if at all this Court will be inclined to allow right of recovery as against the said Respondent, then necessary direction be issued to the learned Tribunal to provide reasonable opportunity of hearing to the said Respondents to prove his innocence.

12. In view of such rival stand taken by the learned counsel appearing for the Parties, this Court while interfering with the impugned judgment, held that the Claimants-Respondents No.1 & 2 are entitled to get

compensation amount of Rs.5,00,000/- (Rs. Five lakhs) with interest @ 6% per annum payable from the date of application i.e.14.07.2006 till its realization.

13. This Court further held that the Appellant-Company shall have the right of recovery as against the Respondent No.3-Owner. This Court accordingly directs the Appellant-Company to pay the aforesaid compensation amount along with interest so assessed by this Court within a period of eight(8) weeks from the date of receipt of this order with right of recovery as against Respondent No.3-owner.

14. It is also directed that the Appellant-Company shall deposit the compensation amount along with interest so assessed by this Court within the time indicated hereinabove before the learned Tribunal. It is further observed that on such deposit of the compensation amount along with interest, learned Tribunal shall disburse the same in favour of the Claimants-Respondents No.1 & 2 proportionately in terms of the earlier order passed on 21.04.2017.

15. It is further observed that if the Appellant-Company fails to deposit the compensation amount along with interest so assessed by this Court within the time stipulated, Claimants-Respondents shall be entitled to get interest @ 7.5% per annum for the period starting from the expiry of the period of 8 weeks till its payment.

16. It is also observed that if after payment of the compensation amount along with interest, the Appellant-

Company files any application before the learned Tribunal for recovery of the amount as against the owner-Respondent No. 3, learned Tribunal is directed to afford reasonable opportunity of hearing to the said owner-Respondent No.3 and decide the matter strictly in accordance with law.

17. It is further observed that only after deposit of the compensation amount along with interest so assessed by this Court, the Appellant-Company shall be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on proper identification.

18. With the aforesaid observation and direction, the appeal stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 11th May, 2022/Sneha