

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.364 of 2022

***Legal Manager,
M/s.Shriram General Insurance
Company Ltd.***

.... Appellant

Mr.G.P.Dutta, Advocate

-versus-

Prahallad Rana and others

.... Respondents

Mr.P.K.Mishra, Advocate
for Respondent Nos.2 & 3

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

**ORDER
21.10.2022**

Order No.

3.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Dutta, learned counsel for the Appellant-Insurer and Mr.Mishra, learned counsel for claimants-Respondent Nos.2 and 3.
3. Mr.Mishra submits that claimant-Respondent No.1, namely, Prahallad Rana died during pendency of the appeal on 15th August, 2022 and all his L.Rs being on record, no further substitution is required.
4. Present appeal by the Insurer-Appellant is against the judgment dated 18th April, 2022 of the learned 2nd Addl. District Judge-cum-3rd MACT, Cuttack, in MAC Case No.587 of 2018, wherein compensation to the tune of Rs.10,30,942/- has been

granted along with interest @6% 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 14th June, 2018.

5. Mr.Dutta, learned counsel for the Insurer contends that the deceased was travelling by sitting on the engine of the offending tractor trolley as a gratuitous passenger. In support of his contention, he relies on the contentions of the F.I.R., charge-sheet under Exts.1 & 2.

6. After hearing Mr.Mishra, learned counsel for the claimants-Respondents and perusal of the impugned judgment reveals that the fact of travelling of the deceased sitting on the engine is not disputed and the same is mentioned in the F.I.R. itself. But the submission to the effect that the deceased was a gratuitous passenger in the tractor is not supported by any material. As per the F.I.R., to which the Insurer also relies on, the deceased was travelling in the tractor as a labourer. The status of the deceased as the labourer of the offending tractor trolley is also confirmed in course of police investigation. Therefore no merit is seen in such contention to treat the deceased as a gratuitous passenger.

7. So far as the travelling of the deceased by sitting on the engine is concerned, the same cannot attribute any negligence on the part of the driver of the tractor or the deceased himself for his status as the labourer. Since the deceased was accepted to be a labourer in respect of the offending tractor trolley, which was loaded with electrical equipments at the time of accident, contributory negligence cannot be attributed due to that only

either to the driver or the deceased. However, it is seen from the impugned judgment that learned Tribunal has already granted right of recovery in favour of the Insurer and as such, no further reason is seen to disturb such direction of the Tribunal.

8. With regard to quantum of compensation, no such valid point is raised to interfere with the same.

9. In the result, the appeal is dismissed without disturbing the finding of the Tribunal including grant of right of recovery. However, the penal interest to the extent of 12% as directed by the Tribunal is waived. The Appellant is directed to deposit the entire compensation amount along with interest as per the direction of the Tribunal within a period of two months from today, where-after the same shall be disbursed in favour of claimant nos.2 & 3, namely, Laxmi Rana and Samrat Rana, on such terms and proportion to be decided by the Tribunal.

10. 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.

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

(B.P. Routray)
Judge