IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1155 of 2017

The Divisional Manager, ICICI Lombard General Insurance Co. Ltd. .... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Tara Gumansingh and others .... ***Respondents***

Mr. J. Sahoo, Advocate on behalf of Mr. A. K. Sahoo, Advocate for Respondent Nos.1 & 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
07.12.2022

Order No.	
07.	1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company and Mr. J. Sahoo, learned counsel on behalf of Mr. A.K. Sahoo, learned counsel for the Respondent Nos.1 & 2.

2. Notice on Respondent Nos.3 & 4 is treated sufficient in view of the Office note and postal tracking report.

3. Present appeal by the insurer is directed against the judgment dated 21.08.2017 of learned 1st M.A.C.T., Deogarh in M.A.C. Case No.34 of 2014, wherein compensation to the tune of Rs.6,88,000/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e. 16.09.2014 on account of death of the deceased in the motor vehicular accident dated 11.05.2014.

4. The entire challenge advanced by Mr. G.P. Dutta, learned counsel for the Insurance Company is regarding status of the occupant as a gratuitous passenger of the offending vehicle, i.e. Tata Magic bearing Registration No.OD-23-9093 at the time of accident. It is submitted on behalf of the Appellant that the deceased was going as an occupant of the offending vehicle as a member of Band Party to attend a marriage function and due to negligent driving of the driver of the same Tata Magic, he died being thrown away from the vehicle. In support of such submission, the contents of the FIR under Ext.1/ Ext.B are relied on by Mr. Dutta. The insurer further relies on the copy of the dead-body Chalan under Ext.C in that regard.

5. It is seen that two witnesses including P.W.2, the undisputed eye-witness of the accident, were examined on behalf of the claimants. At the same time, one witness as O.P.W.1, who is an Officer of the Company, has been examined from the side of the insurer. The eye-witnessing of the accident by P.W.2 is not disputed. The Police upon completion of investigation have submitted the charge-sheet against the accused-driver for commission of offences under Sections 279/304-A, I.P.C.

6. The consistent case of the claimants is that the deceased was standing by the side of the road along with P.W.2 when the offending vehicle dashed against him. Therefore, two things remain admitted are about involvement of offending vehicle in the accident and that, the accident was the result of rash and negligent driving of its driver. The only disputed question is that, whether the deceased was an occupant of the same vehicle at the

time of accident or he was standing by the side of the road? When the evidence adduced from the side of the claimants are ample and enough to substantiate their case that the deceased was standing on the road side, the same cannot be denied in absence of any rebuttal evidence to the contrary. No such oral evidence has been adduced from the side of the insurer to counter the evidence of P.W.2. The only reliance placed by the insurer to the contents of the FIR as well as the dead-body Chalan under Ext. B & C respectively, are non-substantive and non-supportive. Therefore, on the principles of preponderance of probability, the case of the claimants' is established that the deceased was standing on the road side at the time of accident. For lack of evidence to substantiate the contention of the insurer that the deceased was an occupant of the offending vehicle at the time of accident, the same is rejected.

7. Next coming to the question of quantum of compensation, no reason is found to interfere with the same as the learned Tribunal has derived the compensation amount just and reasonably. Therefore, no reason is found to interfere with the impugned award. However, the additional interest of 6% directed by the Tribunal as default interest is waived.

8. In the result, the appeal is disposed of with a direction to the Appellant-Insurance Company to deposit the entire compensation amount along with interest before the learned Tribunal as per its direction within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on same terms and proportion contained in the impugned judgment.

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.

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

(B.P. Routray)
Judge

B.K. Barik