

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.603 of 2019

Sahena Bibi and Others *Appellants*

Mr. B. N. Samantaray, Advocate

-versus-

Divakar and Another *Respondents*

Mr. G.P. Dutta, Advocate of Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
21.7.2022

Order No.

- 08.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. B.N. Samantaray, learned counsel for the Appellant and Mr. G.P. Dutta, learned counsel for insurer – Respondent No.2.
 3. Present appeal by the claimants is directed against impugned judgment dated 10th July, 2019 of learned 3rd MACT, Jajpur passed in MAC No.54 of 2010 wherein compensation to the tune of Rs.11,45,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 21st May, 2010 has been granted on account of death of the deceased in the motor vehicular accident dated 7th January, 2010.
 4. Learned tribunal while granting compensation in favour of the claimant – Appellants, has directed the same be paid by the owner – Respondent No.1 and exempted the insurer from the liability.

5. The claimants have come up in appeal against such exoneration of the insurer from its liability to pay the compensation on behalf of the owner.

6. It is submitted on behalf of the Appellants that, the tribunal by saying that the claimants have failed to prove existence of any valid insurance policy in view of denial of the insurer about the same, has absolved the liability of the insurance company despite the insurance policy No.1801792343002376 has been specifically stated by the claimants in the claim application. It is thus submitted that when prima facie materials have been supplied by the claimants, the onus is shifted to the insurer to dispute the same and considering the status of the claimants, the burden cannot be fastened on them to prove the validity of the insurance policy.

7. The claimants while filing the appeal, has attached two documents under Annexure-2 and 3 which are the MVI report and the copy of the insurance policy respectively.

8. Considering the dispute over the policy, this court in order dated 11th April, 2022, directed the counsel for the insurer to get instructions on the copy of the policy of insurance filed at Annexure-3. Mr. Dutta, learned counsel for the insurer submits that despite repeated reminders sent to the company, no instructions have been received from them till date. A copy of the e-mail sent by Mr. Dutta to the company is also produced before the court which is kept on record. Accordingly it is inferred that the insurer – respondent has failed to controvert existence of the policy under Annexure – 3 and a presumption is drawn in favour of the claimant – Appellants.

9. A perusal of Annexure-2 which is the report of the MVI dated 12th January, 2010 reveals that the offending vehicle bearing registration number AP-12-U-9561 was validly insured on the date of accident vide insurance policy No.1801792343002376, which is the same number mentioned in the claim application as stated above. The policy was issued by the Reliance General Insurance who is the present Respondent No.2. Annexure-3 is the copy of the said insurance policy that speaks its validity in respect of the same offending truck for the period from 17th July, 2009 till 16th July, 2010. The date of accident being 7th January, 2010, the insurance policy under Annexure-3 appears to be validly covering the offending vehicle on such date. Therefore, the finding of the learned tribunal under issue No.II to exonerate the insurer from its liability is set aside being found against the evidence. As such, the insurer is held liable to indemnify the compensation amount on behalf of the owner.

10. In the result the appeal is allowed and Respondent No.2 – insurer is directed to deposit the entire compensation amount along with interest before the tribunal as per its direction contained in the impugned judgment within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Appellant on such terms and proportion as per the impugned judgment.

11. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge