

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1018 of 2018

The Oriental Insurance Company Ltd.* *Appellant

Mr. M.C. Nayak, Advocate

-versus-

Sri Sitaram Khillo and others* *Respondents

Mr. S.B. Das, Advocate for Respondent Nos.1 & 2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

28.09.2022

Order No.

08.

1. Heard Mr. M.C. Nayak, learned counsel for the Appellant-Insurance Company and Mr. S.B. Das, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 18.07.2018 of learned M.A.C.T., Malkangiri in M.A.C. Case No.08/2014 wherein compensation to the tune of Rs.5,05,800/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e.22.08.2014 on account of death of the deceased in the motor vehicular accident dated 01.05.2014.

3. Mr. M.C. Nayak, learned counsel for the Appellant contends that the deceased was a gratuitous passenger in the offending tractor-trolley and therefore, the Appellant is not liable to indemnify the compensation amount.

4. After hearing Mr. S.B. Das, learned counsel for the Respondent No.1-claimant, it reveals from the impugned judgment that two persons including the deceased were travelling in the tractor-

trolley at the time of accident as labourers. This being the consistent case of the claimants, no rebuttal evidence has been adduced either from the side of the insurer or owner to contend that they were gratuitous passengers. Therefore, the finding of the Tribunal in terms of the claim of the applicants that the deceased was travelling in the offending vehicle as a labourer at the time of accident is confirmed.

5. Mr. Nayak further submits that the deceased was a married lady on the date of her death and therefore her parents cannot be treated as dependants of her income and therefore they are not entitled for compensation.

6. The deceased was 36 years as per the post mortem report. On examination of record, nothing reveals about marital status of the deceased. However in course of hearing it is admitted by the parties that that the deceased was staying along with her parents (present claimants). Therefore, it is natural that the parents were dependant on the income of the deceased. Further in the case of *N. Jayasree -Vs- Cholamandalam MS General Insurance Company Ltd, 2021 SCC OnLine SC 967*, the Supreme Court treated the mother-in-law of the deceased as one of the dependants based on the evidence adduced.

7. In the instant case in absence of any evidence adduced from the side of the insurer to deny dependency of the parents on the income of the deceased, such contention raised by the insurer is rejected.

8. No dispute is raised regarding quantum of compensation in course of hearing and as such, the amount awarded by the learned

Tribunal is confirmed. However, the penal interest as directed by the Tribunal is waived.

9. 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 @6% per annum from the date of filing of the claim application, i.e. 22.08.2014 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 as per the direction contained in the impugned judgment.

10. 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 Insurance Company.

(*B.P. Routray*)
Judge