IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1155 of 2018 & MACA No.1042 of 2018

<u>In MACA No.1155 of 2018</u>

The Divisional Manager, The Oriental Insurance Company Limited .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Najma Bibi and others .... ***Respondents***

Mr. P.K. Mishra, Advocate for Respondent No.6
Mr. K. Das, Advocate for Respondent Nos.1 to 5

<u>In MACA No.1042 of 2018</u>

Braja Kishore Agarwalla .... ***Appellant***

Mr. P.K. Mishra, Advocate

-versus-

Najma Bibi and others .... ***Respondents***

Mr. K. Das, Advocate for Respondent Nos.1 to 5
Mr. A.A. Khan, Advocate for Respondent No.6

CORAM:
JUSTICE B. P. ROUTRAY

<u>ORDER</u>
27.10.2022

<u>Order No.</u>

<u>MACA No.1155 of 2018 & MACA No.1042 of 2018</u>

07. **1.** Heard Mr. A.A. Khan, learned counsel for the Insurance Company, Mr. K. Das, learned counsel for the claimants and Mr. P.K. Mishra, learned counsel for the owner in both the appeals.

2. Both the appeals being arise out of the common judgment dated 29.08.2018 passed in M.A.C. No.225 of 2016 by the learned 1st M.A.C.T., Mayurbhanj, Baripada, are heard together and disposed of by this common order.

3. MACA No.1155 of 2018 is filed by the Insurance Company challenging the award. MACA No.1042 of 2018 has been filed by the owner challenging the liability fixed on him.

4. The accident involves Bus bearing Registration No.OR-05-AT-4641 (the offending Bus) and Dumper bearing Registration No.OR-16-C-5150. The offending Bus is a passenger carrying vehicle. The Dumper was parked on road-side and the Bus dashed against it to cause the accident.

5. As per the claimants, the accident took place due to sole negligence of the driver of the Bus and there is no quarrel over the finding of the Tribunal in fixing entire negligence on the driver of the Bus for the cause of accident. In the accident, 15 persons injured and one person died. Present claim application is in respect of death of that person.

6. According to the claimants, the deceased was travelling in the offending Bus as one of the occupants, whereas, the contention of Mr. Khan is that the deceased was the helper of the offending Bus and as such, in terms of the Insurance Policy, the insurer is not liable to indemnify the compensation for his death.

7. Mr. P.K. Mishra, learned counsel for the owner contends that, the owner has 5 to 6 Buses and other vehicles. The deceased was working as helper in one of the Buses, but not in respect of the same offending Bus. Therefore, the deceased should not be treated as the helper in the offending Bus, but to be treated as an occupant and therefore is covered within the limits of liability of the Insurance Policy. As such, it is prayed by Mr. Mishra to set aside the finding of the learned Tribunal in that respect to saddle the entire liability on the insurer.

8. In the impugned judgment, learned Tribunal has directed for payment of entire compensation amount by the insurer with further direction to realize an amount of Rs.5,14,000/- with proportionate interest from the owner.

9. The claimants examined two witnesses on their behalf. The owner as well as the insurer examined one witness each respectively. Besides, several documents were adduced in evidence from the side of the claimants and by the Insurance Company.

10. The entire dispute is relating to the status of the deceased in the offending Bus. When the claimants as well as the owner say that the deceased was an occupant of the offending Bus, at the same time the insurer contends that he is the helper. In this regard, the evidence of OPW-1, namely, Sambit Upadhya is relevant. Said OPW-1 describes himself as the conductor of the offending Bus and says that the deceased, namely, Sk. Razak died due to the accident was one of the passengers of the said offending Bus. In his cross-examination by the claimants, he confirms that the deceased was the passenger of the offending Bus at the time of accident. He has further stated that his owner is having 8 to 9 Buses and 3 to 4 Trucks and many persons are working under his owner in his transportation business. OPW-2, namely, Sudip Bakshi, the Administrative Officer of the Insurance Company says in the evidence that as per the terms of the policy, 56 passengers were covered and extra premium was paid for the driver only. No such extra premium has been paid in respect of any conductor or helper. In his cross-examination nothing substantial could be elicited to contradict his statement made in examination-in-chief.

11. The copy of the policy has been exhibited as Ext.F. Along with the same, the motor claim form dated 30.11.2016 filed by the owner before the Insurance Company raising his claim for damages has been exhibited as Ext.H. Mr. Khan placing reliance on the contents of the Ext.H submits that under the heading 'injury to driver/occupant', it is mentioned that in the accident, the driver sustained fracture injury, the occupant-conductor sustained injury, the occupant-helper died and 15 other passengers were also injured. According to Mr. Khan, the deceased has been described as the occupant-helper of the offending Bus by the owner himself and therefore the deceased cannot be treated as an occupant passenger of the offending Bus.

12. In this regard, the contents of FIR speaks that the deceased was the helper of the Bus. Ext.H is the Motor Claim Form submitted by the owner himself where he mentioned the status of the deceased as 'occupant-helper'. It is true that the term 'helper' does not find place in Chapter-XI of the Motor Vehicles Act (hereinafter referred as 'M.V. Act'). Proviso to sub-Section (1) of Section 147 of the M.V. Act speaks that a policy shall not be required to cover liability in respect of death of the employee arising out of and in course of his employment other than the liability arising under the Workmen's Compensation Act, 1923 in case such employee is engaged as a conductor or for examining tickets. The present claim application is a claim raised under Section 166 of the M.V. Act. It is not in dispute that the policy under Ext.F is a statutory policy issued under Section 147 of the M.V. Act. It is also not disputed that, as per the policy, 56 passengers plus one driver are covered. Though no dispute is raised to contents of Ext.H, but it is contended that the deceased was not the helper of the offending Bus. In terms of Section 147 of the M.V. Act, in case the vehicle is a public service vehicle, the person engaged as conductor or ticket examiner shall be covered within the proviso to sub-Section (1) of Section 147 of the M.V. Act. Here it is not the case that any extra premium has been paid in respect of the helper in the offending vehicle. So the liability in terms of the Insurance Policy will not be attracted unless the status of the deceased is established as a passenger or driver.

13. So far as contention of Mr. Mishra is concerned, to describe the deceased as occupant-helper, then also he would not be entitled to be covered within the limits of the policy unless he is treated as the conductor or ticket examiner in terms of the proviso to sub-Section (1) of Section 147 of the M.V. Act. The facts brought on record does not allow the Court to treat the deceased as conductor or ticket examiner because as per the Motor Claim application under Ext.H, the deceased was described as the occupant-helper apart from driver, conductor and passengers. If the contents of the FIR under Ext.1 and the Motor Claim Form under Ext.H are read together, it is established that the deceased was neither a passenger nor driver of the vehicle. When admittedly no extra premium has been paid for any other person than the passenger or the driver, if the deceased does not come within the scope of passenger or driver, the limits of the liability of the policy will not cover his death. Accordingly, this Court concludes that the insurer is not liable to indemnify the insured for the death of the deceased as the occupant-helper.

14. Resultantly, the appeal, i.e. MACA No.1155 of 2018 filed by the insurer is allowed and the insurer is exempted from its liability from payment of compensation. MACA No.1042 of 2018 filed by the owner is accordingly dismissed.

15. In the result, the insurer is not held liable to indemnify the compensation amount and exempted from the liability. The claimants are at liberty to realize the amount of compensation from the owner in accordance with law.

16. The statutory deposit made before this Court in MACA No.1155 of 2018 with accrued interest thereon shall be refunded to the Insurance Company.

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

(B.P. Routray)
Judge

B.K. Barik