A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.641 of 2020

Divisional Manager, National Insurance Co.Ltd. .... ***Appellant***

Mr.Subrat Satpathy, Advocate

-versus-

Sukanti Purty and others .... ***Respondents***

Mr.P.K.Nayak, Advocate for Respondent Nos.1 to 5

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
21.07.2022

Order No.
11.

1. The matter is taken up through Hybrid mode.

2. Heard Mr.Satpathy, learned counsel for the Appellant-Insurer and Mr.Nayak, learned counsel for claimants-Respondent Nos.1 to 5.

3. Present appeal by the Insurer is against the judgment dated 16th September, 2019 of the learned Third M.A.C.T., Talcher in MAC Case No.07 of 2018, wherein compensation to the tune of Rs.12,79,600/- has been granted along with interest @ 7% per annum with effect from the date of filing of the claim

application on account of the death of the deceased in the motor vehicular accident on 15th June, 2017.

4. There are five claimants, who filed the claim application being the wife, two minor children of the deceased-Ashok Kumar Purty and his parents.

5. The case of the claimants is that the accident took place on 15th June, 2017 at 6.00 PM under Khamar Police Station when the deceased was going as a pillion rider in the offending motor cycle bearing registration no.OD-35-A-4080. The said motorcycle dashed against another motorcycle bearing registration no.OR-06-E-0712, as a result of which the deceased fell down, sustained injures and died.

6. It is submitted by Mr.Satpathy, learned counsel for the Appellant that though in the F.I.R., which was lodged by Rela Purty- Claimant No.4 mentioned the deceased to be his nephew and Claimant No.5, Balma Purty being the wife of Rela Purty becomes aunt of the deceased, but in the claim application both Rela Purty and Balma Purty have been added as parents of the deceased. It is further submitted by Mr.Satpathy that earlier the wife and children of the deceased who are present claimants 1, 2

and 3 had filed MAC No.113 of 2018 before the said claims tribunal stating Rela Purty died. Subsequently, the said MAC No.113 of 2018 was disposed of as withdrawn. It is thus submitted by Mr.Satpathy that the identity of the deceased, namely, Ashok Kumar Purty is doubtful since his father's name is not confirmed.

7. Mr.Nayak, learned counsel for the Respondents 1 to 5 submits in reply that it was a mistake of fact mentioned in the F.I.R. and as per the Adhara Card which has been exhibited under Exhibit-9, deceased Ashok Kumar Purty is the son of Rela Purty.

8. Upon hearing both parties and perusal of the record, it reveals that admittedly there is no discrepancy in the name of the deceased who is Ashok Kumar Purty. The controversy is raised by the Appellant taking advantage of the recitals made in the body of the F.I.R. that the deceased is the nephew of Rela Purty. Admittedly, no evidence has been adduced from the side of the Insurer and no confrontation has been made to any of the witnesses in this aspect as mentioned in the F.I.R. Therefore, the fact that Rela Purty is the father of the deceased Ashok Kumar Purty is not disputed by the Insurer before the Tribunal.

Otherwise also the dispute whether Rela Purty is the uncle or father of the Ashok Kumar Purty is not that material to affect the fate of claim of compensation made by the wife and children of the deceased. Though admittedly Rela Purty has been added one of the claimants being the father of deceased Ashok Kumar Purty, he is not entitled for any substantial share from the compensation amount being a Class-II heir of Ashok Kumar Purty. Nonetheless, in absence of any rebuttal evidence produced from the side of the Insurer, this Court is not in favour of entertaining the objection raised at this stage by the Appellant with regard to the status of Rela Purty whether as father or uncle of Ashok Kumar Purty, but for the purpose of the claim application he is accepted as father of the Ashok Purty.

9. It is next contended by Mr.Satpathy that in the police investigation report, the driver of other motorcycle bearing registration No. OD-35-A-4080 has been charge-sheeted for commission of offence under Section 279/304-A of the I.P.C. and therefore the negligence for the cause of accident is attributable to the said driver namely, Budhuram Pingua. But the Tribunal ignoring such fact arrived by the police investigation has fixed negligence on the driver of the motorcycle in which the deceased

was riding as a pillion rider. This being the finding against the police investigation, negligence on the present owner is not sustainable and resultantly, no liability can be fastened on the present Appellant as the Insurer of motorcycle bearing registration no. OD-35-A-4080.

10. Here the question arises whether the contents of a charge-sheet can itself be read as evidence in a claim proceeding. The answer is certainly - No. A charge-sheet is mere opinion of the investigating officer. The charge-sheet ipso facto does not prove anything unless the facts in the charge-sheet are duly proved by independent evidence. The facts in the claim application need to be proved on the basis of evidence adduced in the said proceeding. It is held by the Supreme Court in the case of ***National Insurance Company Ltd. Vs. Chamundeswari and others,*** *2021 SCC OnLine SC 849*, that, if any evidence before the Tribunal runs contrary to the contents of the First Information Report, the evidence which is recorded before the learned Tribunal has to be given weightage over the contents of the First Information Report. Further in the case of ***Mataji Bewa and others vs. Hemanta Kumar Jena***, *1993 SCC OnLine Ori.56*, it is

held by this Court that the contents of a charge-sheet cannot possibly be treated as evidence in the claim proceedings.

11. In the instant case, P.W.2 is the eyewitness who has categorically stated in his evidence about negligence of the driver of the present motorcycle bearing registration No.OD-35-A-4080 in causing the accident and based on his evidence, the Tribunal has come to the conclusion to decide in favour of the claimants that the accident took place due to negligence of the driver of the offending motorcycle. So no force is found in the submission of the Insurer to exclude negligence from the driver of the present offending motorcycle. As such, the contentions in this regard are rejected.

12. The age and income of the deceased are not disputed. The quantum of compensation as directed to be paid by the Tribunal is also not seriously disputed by the Appellant. Otherwise also upon perusal of the impugned judgment, no serious flaw is noticed in computation of just compensation as awarded by the Tribunal in the impugned judgment in favour of the claimants and further directing the present Appellant for payment of the same.

13. In the result, the appeal is dismissed and the Appellant is directed to deposit the compensation amount including interest before the Tribunal within a period of two months from today which shall be disbursed in favour of the claimants in terms of the direction of the Tribunal. However, the penal interest @2% is waived.

14. 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.

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

(B.P. Routray)
Judge

C.R.Biswal