

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.866 of 2015

**Divisional Manager, Oriental
Insurance Co. Ltd.**

Appellant

Mr. Somnath Roy, Advocate

-versus-

Radhasyam Nayak & Others

Respondents

Mr. A.K. Swain, Advocate
(for Respondent Nos. 1 & 2)
Mr. A.K. Swain, Advocate
(For Respondent Nos.4,5 &
6)

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

Order No

13.

ORDER

24.02.2022

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel for the appellant-company and learned counsel for the claimants-respondents.
3. The present appeal has been filed by the appellant-company challenging the judgment dated 20.3.2015 passed by the learned 2nd Addl. District Judge-cum-MACT, Cuttack in MAC Case No.915 of 2004.
4. It is the contention of the learned counsel for the appellant that while passing the impugned judgment, the learned Tribunal did not take into account the stand of the appellant-company that the deceased was a gratuitous passenger in the offending vehicle. It is further argued that the learned Tribunal while passing the impugned judgment did not take into consideration the judgment of the Hon'ble Apex Court reported in **2013(1) TAC 414 (S.C)**.
5. I find force in the aforesaid submission of the learned counsel for the appellant and in view of the stand of the

appellant- company that the deceased was a gratuitous passenger, while allowing the compensation, learned Tribunal should have extended the benefit of right of recovery in favour of the appellant-company.

6. Since the only issue raised by the appellant-company is with regard to the right of recovery as against the owner of the offending vehicle and in view of the decision cited (supra), I deem it fit and proper to allow the said prayer.

7. While not interfering with the award passed in the impugned judgment, I only observe that the appellant-company shall have the right to recover the awarded compensation amount from the owner of the offending vehicle in terms of the procedure laid down by the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Chella Upendra Rao**, reported in **(2004) 8 SCC 517**.

I further direct that the compensation amount of Rs.4,69,000/-(Rupees Four lakhs sixty nine thousand) along with simple interest @ 6% per annum w.e.f 16.12.2004 i.e. from the date of filing of the claim petition till the date of payment shall be paid in favour of the claimant-respondents within a period of six weeks from today.

8. It is further observed that only after payment of the aforesaid compensation amount of Rs.4,69,000/-(Rupees Four lakhs sixty nine thousand) along with simple interest @ 6% per annum for the period indicated above, the statutory deposit made by the appellant-company before the Registry of this Court will be returned with the accrued interest thereon.

9. With the aforesaid observation and direction, the MACA is disposed of.

(Biraja Prasanna Satapathy)
Judge