

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.879 OF 2015

From the judgment and order dated 13.4.2015 passed by the learned IInd MACT, Cuttack in Misc. Case No.339 & 340 of 2006.

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Lilima Digal & Others

Appellants

-versus-

**Sasibhusan Sahu &
Another**

Respondents

For Petitioner : M/s. Jitendra Kumar Digal,
Advocate

For Opp. Parties : M/s. M. Sinha, Advocate

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 06.05.2022 and Date of Order: 17.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. J.K. Digal, learned counsel appearing for the appellants and Mr. M. Sinha, learned counsel appearing for Respondent No.2-Company.
3. This appeal has been filed by the appellants challenging the judgment dated 13.4.2015 passed by the learned 2nd M.A.C.T, Cuttack in Misc. Case No.339 of 2006. It is submitted that

learned Tribunal without appreciating the stand taken by the claimants-appellants and without applying judicial mind to the facts of the case, dismissed Misc. Case No.339 of 2006 and thereby declaring the claimants-appellants not entitled to get compensation on account of the death of late Madan Digal. It is submitted that learned Tribunal while vide the impugned judgment allowed the claim of the injured as raised in Misc. Case No.340 of 2006, but rejected the claim of the appellants. It is submitted that the deceased Madan Digal and the injured petitioner in Misc. Case No.340 of 2006 were travelling in the offending bus bearing Regd. No.OR-12-A 2482 and due to rash and negligent driving of the said bus, it capsized to the roadside and as a result the petitioner in Misc. Case No.340 of 2006 and the deceased petitioner in Misc. Case No.339 of 2006, sustained injuries on their person and were shifted to Thana PHC and thereafter to MKCG Medical College & Hospital, Berhampur for treatment. Mr. Digal, learned counsel for the appellant submitted that while the claim raised by the injured in Misc. Case No.340 of 2006 was allowed with a direction to the respondents-company to pay compensation of Rs.2,67,900/- along with interest @ 7% per annum, but the claim raised by the appellants was rejected without proper appreciation of the claim and the factum of the death of the deceased. Accordingly, it is prayed that this Hon'ble

Court may interfere with the matter and remand the matter for fresh adjudication by the learned Tribunal.

4. Mr. Sinha, learned counsel appearing for the respondents-company also did not dispute the fact that both the Misc. Cases bearing Nos.339 & 340 of 2016 were filed because of the accident which took place on 7.4.2006. While Misc. Case 340 of 2006 was filed by the injured, Misc. Case No.339 of 2006 was filed by the claimants of the deceased, Madan Digal. It is submitted that since the appellants herein could not substantiate their claim, learned Tribunal rightly rejected the matter vide the impugned judgment dated 13.4.2015.

5. Heard learned counsel for the parties. Perused the materials available on record.

6. Since it is not disputed that both the misc. cases were filed on account of the accident which took place on 7.4.2006 and the deceased as well as the injured were travelling in the offending bus, this court is of the considered opinion that learned Tribunal without proper appreciation of the said fact and without applying judicial mind rejected the claim in Misc. Case No.339 of 2006 vide impugned judgment dated 13.4.2015. Since the case in Misc. Case No.339 of 2006 is a case of death, learned Tribunal should not have rejected the claim without assigning sufficient reason and

on a technical ground. Hence, this Court is of the considered opinion that learned Tribunal has illegally rejected the claim in Misc. Case No.339 of 2006.

7. Accordingly, this Court is inclined to set aside the judgment dated 13.4.2015 so far as it relates to the claim in Misc. Case No.339 of 2006. Accordingly, while setting aside the same, this Court remit back the matter to the learned Tribunal to rehear the same and decide the claim afresh.

8. It is observed that since the case is of the year 2006, learned Tribunal shall do well to dispose of the matter on such remand within a period of six months from the date of this order. It is further observed that learned Tribunal shall allow the appellants as well as the Respondents herein to lead any further oral or documentary evidence in support of their claim.

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

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 17th of May, 2022/sangita