IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1089 of 2018 & MACA No.502 of 2018

In MACA No.1089 of 2018

M/s.National Insurance Company Ltd. .... ***Appellant***
Mr. B.B. Mishra, Advocate

-versus-

Ratnakar Behera and others .... ***Respondents***
Mr. K.C. Nayak, Advocate for Respondent No.1

In MACA No.502 of 2018

Ratnakar Behera .... ***Appellant***
Mr. K.C. Nayak, Advocate

-versus-

Rakesh Kumar Das an others .... ***Respondents***
Mr. B.B. Mishra, Advocate for Respondent Nos.3 & 4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
12.10.2022

Order No.

MACA No.1089 of 2018 & MACA No.502 of 2018

10. **1.** Heard Mr. B.B. Mishra, learned counsel for the Insurance Company and Mr. K.C. Nayak, learned counsel for the claimant.

2. Both the appeals being arise out of the same judgment dated 27.03.2018 in M.A.C. No.311 of 2006 of the learned 1st MACT, Cuttack wherein compensation to the tune of Rs.1,10,000/- has been granted along with simple interest @6% per annum to the claimant from the date of filing of the claim application, i.e. 25.07.2006 on account of injury sustained by him in the motor vehicular accident dated 23.03.2006, are heard together and disposed of by this common order.

3. Mr. K.C. Nayak, learned counsel, does not want to press his appeal, i.e. MACA No.502 of 2018. Accordingly, the same is disposed of as not pressed.

4. Mr. B.B. Mishra, learned counsel, while pressing his appeal, i.e. MACA No.1089 of 2018, submits that the driver was having a fake driving license and therefore the insurer is not liable to indemnify the owner for the compensation amount.

5. Upon hearing both the parties, it reveals that as per the injury report under Ext.7, the claimant sustained one bruise, two lacerations along with one fracture injury. The fracture injury at the lower end of the tibia is grievous in nature. Therefore, considering the period of treatment and the gravity of injury, the compensation amount as directed in favour of the claimant is confirmed.

6. With regard to the contention that the driver was possessing fake license, it is seen that no witness has been examined from the side of the insurer. A copy of the driving license under Ext.A has been produced by the insurer. Said Ext.A does not relate to the alleged driver, namely, Prafulla Kumar Behera as per the police charge-sheet. Therefore, the learned Tribunal has rightly rejected such contention.

7. In the appeal, I.A. No.1581 of 2018 has been filed by the insurer praying to adduce additional evidence along with copy of the DL No.2979/02-03 seized by the police in course of investigation. The prayer is accepted and the document appended to the I.A. is taken on record. It reveals from the same that, this is regarding particulars of driving license bearing No.2979/02-03, which stands in the name of one Sudhansu Sekhar Rout. Here in this case, the name of the driver of the offending vehicle is Prafulla Kumar Behera and therefore, it is clear that the DL produced by him before the police is a fake one. Mr. Nayak has no answer to said document produced on behalf of the insurer.

However, no material is produced on record to reveal that possession of such fake DL by the driver was within the knowledge of the owner of the offending vehicle. The offending vehicle is the truck bearing Registration No.OSU-2631. Thus keeping in view the principles decided in the case of ***Nirmala Kothari vs. United India Insurance Company Limited, (2020) 4 SCC 49*** and in the case of ***National Insurance Co. Ltd. vs. Swaran Singh and others, (2004) 3 SCC 297***, the insurer has the right to recover the amount of compensation from the owner.

8. In the result, MACA No.1089 of 2018 is disposed of with a direction to the Insurance Company to deposit the entire compensation amount of Rs.1,10,000/- (rupees one lakh ten thousand) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e. 25.07.2006 within a period of two months from today, which shall be disbursed in favour of the claimant on same terms and proportion as contained in the impugned judgment. Further, the insurer is granted the right to recover the amount of compensation from the owner in accordance with law after granting due opportunity of hearing to him.

9. On deposit of the award amount before the learned Tribunal and upon filing of a receipt evidencing the deposit with refund application before this Court, the statutory deposit made before this Court in MACA No.1089 of 2018 with accrued interest thereon shall be refunded to the Insurance Company.

10. The copies of exhibits produced by Mr. B.B. Mishra, learned counsel for the insurer in course of hearing are kept on record.

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

(B.P. Routray)
Judge

B.K. Barik