

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.644 of 2020

National Insurance Co. Ltd. ***Appellant***

Mr. S.R. Pattanaik, Advocate

-versus-

Kundia Sardar@Khundia Sardar and others ***Respondents***

Mr. B.N. Rath, Advocate for Respondent Nod.1 to 3

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
14.02.2022

Order No.

04.

1. Heard Mr. S.R. Pattanaik, learned counsel for the Appellant-Insurance Company as well as Mr. B.N. Rath, learned counsel for the Respondent Nos.1 to 3-claimants.

2. Present appeal by the insurer is directed against the judgment dated 25.01.2020 of the learned IIIrd MACT, Rairangpur in MACA No.08 of 2016 wherein compensation to the tune of Rs.7,70,056/- along with interest @6% per annum from the date of filing of the claim application, i.e.,10.02.2016 was granted by the learned Tribunal to the claimants on account of death of the deceased in a motor vehicular accident dated 31.01.2016.

3. Mr. S.R. Pattanaik, learned counsel for the Appellant-Insurance Company submits that though the driver had no valid driving license, learned Tribunal has failed to notice the same. Secondly, he submits that the compensation is faulty one as the age of the

deceased has not been properly determined to fix the multiplier. As per his submission, no bone test of the deceased has been conducted to determine the right age of the deceased and only on the basis of age mentioned in the post mortem report, the multiplier has been fixed.

4. Having heard both parties, it reveals from the impugned judgment that the learned Tribunal under Issue No.3 has answered the question about driving license of the driver of the offending vehicle. Learned Tribunal has observed that though no driving license has been seized by the Police, but in absence of submission of charge-sheet for offence under Sec.181 of the M.V. Act, it can be presumed that the driver had the valid license. It needs to mention here that concerning the accident, the charge-sheet for the offences under Secs.279/304-A, I.P.C. only has been submitted in connection with Bahalda P.S. Case No.6 dated 31.01.2016. Admittedly the insurer-Appellant has not adduced any evidence nor produced any material to dispute valid holding of license by the driver. Thus no infirmity is found in the conclusion of the learned Tribunal with regard to valid holding of license by the driver and consequent liability of the insurer to indemnify the owner.

5. So far as the submissions put-forth by Mr. Pattanaik with regard to determination of the age of the deceased, the approach of the learned Tribunal based on the recording of the post mortem report is found quite justified and such contentions of Mr. Pattanaik is rejected out-right being without any substance.

6. Accordingly, the amount of compensation as granted by the learned Tribunal along with the findings rendered in the judgment is confirmed. The appeal is dismissed.

7. The Insurance Company is directed to deposit the entire amount of Rs.7,70,056/- (Rupees Seven Lakhs Seventy Thousand Fifty-six only) along with interest @6% per annum from the date of filing of the claim application i.e.10.2.2016 before the learned Tribunal within a period of four weeks from today; where-after the same shall be disbursed in favour of the claimants in such terms and proportion as directed in the impugned judgment.

8. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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

(B.P. Routray)
Judge