

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.229 of 2020 & MACA No.662 of 2019

**Divisional Manager, The New
India Assurance Co., Ltd.**

Appellant

-versus-

Sukumar Bandara & Others

Respondents

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
15.07.2022**

Order No

07. 1. This matter is taken up through Hybrid Mode.

2. Since common question is involved in both the appeals and both the appeals have been filed against the same impugned judgment, both the appeals were heard analogously and disposed of by this common order.

3. Heard Mr. S. Roy, learned counsel for the Insurer and Mr. P.K.Mishra, learned counsel for the Claimants.

3. While MACA No.662 of 2019 has been filed by the Claimants seeking enhancement of the compensation passed by the learned 1st MACT, Mayurbhanj, Baripada on 02.08.2019 in MAC Case No.119 of 2017, MACA No.229 of 2020 has been filed by the Insurer challenging the quantum of the compensation awarded vide the said judgment.

4. Mr. Ray, learned counsel for the Insurer submitted that learned Tribunal while assessing the compensation at Rs.9,98,760/- never take into account the plea raised by

the Insurer with regard to the fact that the driver of the offending vehicle was never having a valid driving licence and no such D.L was also seized by the I.O while submitting the charge sheet.

5. Mr. Roy, accordingly submitted that since no DL of the accused driver was produced and brought to the notice of the learned Tribunal, right of recovery should have been allowed against the owner-respondent. It is also submitted that the rate of interest allowed @ 7 % per annum is on the higher side.

6. Mr. Mishra, learned counsel for the Claimant-Respondent on the other hand submitted that learned Tribunal while assessing the compensation has illegally deducted 2/3rd of the income towards personal expenditure in place of 1/3rd.

7. It is also submitted that learned Tribunal while assessing the compensation has not assessed the monthly income taking into consideration the materials produced before it.

8. Mr. Mishra accordingly submitted that the compensation awarded by the learned Tribunal vide the impugned judgment needs enhancement.

9. Heard learned counsel for the Parties.

10. Perused the materials available on record. This Court after going through the same when came to a conclusion that the learned Tribunal has rightly assessed the compensation at Rs.9,98,760/-, learned counsel for the Parties supported the said view of this Court. But this

Court when held that the rate of interest allowed @ 7 % per annum be reduced to 6% per annum, learned counsel for the Parties also supported the said view of this Court. Since the D.L. of the accused driver was never produced by either the claimants or the owner. This Court also allows right of recovery as against the Owner/Respondent.

11. In view of such stand taken by the learned counsel for the Parties, this Court while confirming the compensation awarded by the learned Tribunal in the impugned judgment dated 02.08.2019 held that the rate of interest on the said amount will be @ 6 % per annum instead of 7% per annum. This Court accordingly directs the Insurer to deposit the compensation amount along with interest @ 6 % per annum payable from the date of application till its realization before the learned Tribunal within a period of eight weeks from the date of receipt of this order.

12. It is observed that on such deposit of the amount, learned Tribunal shall disburse the same in favour of the Claimant in terms of its order passed on 02.08.2019.

13. It is however observed that if the appellants fails to deposit the amount within the time indicated by this Court, the compensation amount will carry interest @ 7 % per annum for the period starting from the expiry of the period eight weeks till its payment.

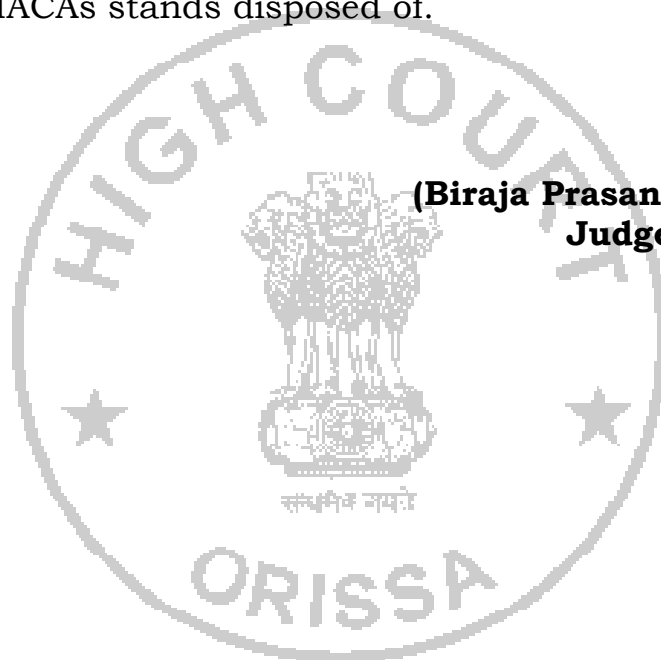
14. Since this Court is allowing of right of recovery as against the owner-respondent, it is observed that if any such application is filed by the Insurer, learned Tribunal shall consider the same strictly in accordance with law and

by giving reasonable opportunity of hearing to the owner-respondents.

15. It is further observed that only after payment of the entire amount, the appellant-company shall be permitted to take refund of the statutory deposit along with accrued interest so made in MACA No.229 of 2020 from the Registry of this Court on proper identification.

16. With the aforesaid observations and directions, both the MACAs stands disposed of.

Subrat



(Biraja Prasanna Satapathy)
Judge