IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.486 of 2016

Divisional Manager, Reliance General Insurance Co. Ltd. ... ***Appellant***

Mr.G.P.Dutta, Advocate

-versus-

Kunu@Subhashree Sahoo and others .... ***Respondents***

Mr.K.K.Das, Advocate for Respondent Nos. 1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
03.8.2022

Order No.

5. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.Dutta, learned counsel for the Appellant and Mr.Das, learned counsel for the claimants-Respondent Nos.1 to 3.

3. Present appeal by the insurer is directed against the judgment dated 16th October, 2015 of the learned District Judge – cum – 1st M.A.C.T., Nayagarh in MAC Case No.9 of 2012, wherein compensation to the tune of Rs.8,71,417/- has been granted along with interest @7% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident on 9th September, 2011.

4. The main challenge by the Insurer, as submitted by Mr.Dutta, is with regard to implantation of the offending vehicle i.e., the Mini Truck bearing Registration No.OR-25B-0066 in the accident. It is submitted that the accident took place on 9th September, 2011 at Lenkudipada near Panda Clinic, Nayagarh but the F.I.R. was registered on 11th March, 2011 and the deceased died on 19th March, 2011. Taking aid of statements of O.P.W.1 & 3, who are the Fireman and A.D.M.O. of District Headquarters Hospital, Khurda respectively, Mr.Dutta submits that in fact the accident happened on 9th February, 2011 at BeguniaBazar near Khurda due to fall of the deceased from his own motorcycle. But subsequently the present offending vehicle has been implanted in the accident.

5. Upon hearing Mr. Das, learned counsel for claimants-Respondents and perusal of the impugned judgment reveals that the Tribunal has discussed such contention of the Insurer in detail. With a detailed discussion of evidence of all the witnesses and exhibits including the evidence of O.P.W.1 & 3, the Tribunal has concluded to the effect that the accident as claimed by the Insurer at BeguniaBazar is not established, but on the other hand, the evidence led by the claimants that the accident took place at

Nayagarh involving the offending vehicle is established by preponderance of probability.

6. The main contention of Mr.Dutta to disbelieve such finding of the Tribunal is that if the accident took place at Nayagarh, then there would hardly have any chance of taking the deceased immediately to the District Headquarters Hospital, Khurda instead of District Headquarters Hospital, Nayagarh. It needs to be mentioned here that such contention is a mere probability based on speculation. The Tribunal has also refused to accept such contention and upon an elaborate analysis of the evidence of the witnesses has come to the conclusion that that the case of the claimants regarding the accident at Nayagarh is established under the principles of preponderance of probability. This Court, upon perusal of the evidence of all such witnesses, the copies of which are produced by Mr.Dutta in course of hearing, agrees with the finding of the Tribunal and confirms the view taken by the Tribunal.

7. It is next contended by Mr.Dutta that an amount of Rs.2,90,217/- granted by the Tribunal towards medical expenses of the deceased till his death on 19^{th} March, 2011 is exorbitant

and are not proved through credible documents. As per submission of Mr. Dutta, the trial bills filed on behalf of the claimants showing expenses therein should not be believed. However, Mr. Das, learned counsel for the claimants suggests that such medical expenses may be reduced to Rs.2,00,000/-.

8. Considering the period of treatment of the deceased i.e., around thirty eight days and the concession rendered by Mr. Das, the amount of medical expenses is fixed at Rs.2,00,000/- against the amount of Rs.2,90,217/- determined by the Tribunal.

9. Mr. Dutta fairly submits that other aspects regarding computation of monthly income and multiplier etc. are adequate.

10. Resultantly, total compensation amount granted by the Tribunal is reduced to Rs.7,81,200/-, rounded to Rs.7,82,000/- (Seven lakhs eighty two thousand), payable by the Insurer along with interest @6% per annum. The Insurer-Appellant is accordingly directed to deposit said reduced compensation of Rs.7,82,000/-(Seven lakhs eighty two thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the

claimants on such terms and proportion to be decided by the Tribunal.

11. With aforesaid modification in the compensation amount, the appeal is disposed of.

12. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

13. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal