

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1172 of 2018

The Divisional Manager,
M/s.National Insurance Co. Ltd. *Appellant*
Mr.B.Dasmohapatra, Advocate

-versus-

Dhanmali Dehury and another *Respondents*
Mr.K.C.Nayak, Advocate for Respondents no. 1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
06.09.2022

Order No.

I.A.No.1799 of 2018

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1. The matter is taken up through Hybrid mode.
 2. Upon hearing both the parties and considering the grounds mentioned in the petition, delay in filing the appeal is condoned.
 3. The I.A. is disposed of.

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4. Heard Mr.Dasmohapatra, learned counsel for the Appellant and Mr.Nayak, learned counsel for the claimants-Respondent No.1.
5. Present appeal by the Insurer is directed against the judgment dated 19th July, 2018 passed by learned Addl. District Judge-Cum-4th M.A.C.T., Angul in M.A.C. Case No.162 of 2016,

wherein compensation to the tune of Rs.4,29,640/- has been granted along with interest @ 6% 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 dated 9th September, 2016.

6. It is submitted on behalf of the Appellant that the offending bus at the time of accident was travelling with over passengers than permitted under the law and therefore, the policy conditions being violated, right of recovery should be granted in favour of the Insurer. It is further submitted that the ex-gratia compensation received by the claimants from the Government was not adjusted from the amount of compensation granted.

7. Shri Nayak, learned counsel for the claimants-Respondents though does not dispute travel of more passengers in the offending bus than permitted, but submits that the amount received through ex-gratia compensation is not liable to be deducted.

8. Perusal of the impugned judgment reveals that admittedly more passengers than permitted by the Transport Authorities were travelling in the offending bus at the time of accident which fell into the river being dashed with the poll near the bridge resulting death of nineteen passengers and injury to forty two passengers. The list of the passengers injured in the accident as well as the name of deceased passengers is well evident from copy of Ext.A as well as the police report under Ext.2. Therefore, the claim for getting right of recovery from the owner of the compensation amount is found justified.

9. With regard to the amount of ex-gratia compensation of Rs.2,00,000/- received by the claimants from the Government is not disputed. The same being a pecuniary advantage received only due the death arising out of the accident, is liable to be adjusted from the compensation amount.

10. Next coming to the quantum of compensation, perusal of the impugned judgment reveals that disbelieving the story of the claimants about income aspect of the deceased that he was running a goat farm, the Tribunal has assessed his monthly income at Rs.4,500/- based on the minimum wage rate prevalent on the date of accident. No such flaw is seen in the approach of the Tribunal in quantifying the amount. However, the default interest part as directed to be paid is waived.

11. In the result, after adjusting the ex-gratia compensation amount, the appeal is disposed of with a direction to the Insurer-Appellant to deposit a sum of Rs.2,29,640/- 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 fixed by the Tribunal. Further the Insurer-Appellant is at liberty to recover the compensation amount from the owner in accordance with law after granting him opportunity of hearing.

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

