

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.1072 of 2016

National Insurance Co. Ltd.

.... ***Appellant***
Mr.A. Das, Advocate

-versus-

Sumitra Mohapatra and others

.... ***Respondents***

Mr.B.N.Rath, Advocate for Respondent Nos.1 to 5
Mr.S.K.Swain, Advocate of Respondent No.8

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
28.9.2022

Order No.

16. 1. The matter is taken up through Hybrid mode.
2. Heard Mr.Das, learned counsel for the Appellant-Insurer and Mr.Rath, learned counsel for claimants-Respondent Nos.1 to 5 as well as Mr.Swain, learned counsel for Respondent No.8-Insurer.
3. Present appeal by the Insurer-Appellant is against judgment dated 26th April, 2016 of the Addl. District Judge-Cum-4th MACT, Angul in M.A.C. Case No.7 of 2012, wherein compensation to the tune of Rs.8,85,000/- 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 on 8th November, 2011.

4. Mr.Das contends that fixation of entire negligence on the Insurer of the bus is erroneous and as per him, negligence on the part of the driver of the bus cannot be more than 50%.

5. Upon hearing all the parties and perusal of the record, it reveals that the accident took place due to head on collusion between the offending bus bearing registration no.OR-04-G-1125 and the trailer bearing registration no.OR-02AR-6951. The deceased was a passenger of the bus. The police upon investigation submitted charge-sheet against the driver of the bus as well as the driver of the trailer for commission of offence under Sections 279/337/338/304-A of the IPC.

6. It reveals that based on the oral evidence of P.W.2, the Tribunal has come to the conclusion fixing entire negligence on the driver of the bus towards cause of the accident and exempted the driver of the trailer. But the admitted fact remains that said P.W.2 is not an eyewitness to the accident. He reached at the spot of accident after 5 to 10 minutes. Therefore it is not found safe to rely entirely upon the evidence of P.W.2 to exempt the driver of the bus from the negligence. Keeping in view the materials as collected during course of police investigation and the fact that the accident is the result of head on collusion between both the vehicles, it is felt appropriate to distribute negligence on both the drivers in equal proportion.

7. Here the submission of Mr.Swain in support of the finding of the Tribunal is thus rejected. Admittedly, no evidence has been adduced from the side of present Respondent No.8

(O.P.4) before the Tribunal. At this stage, it is submitted by Mr.Das as well as Mr.Swain that MAC No.23 of 2012 filed at Rourkela concerning death of another deceased in the same accident, the learned Tribunal i.e., 5th MACT, Rourkela has concluded in fixing 50% negligence on both the drivers and accordingly directed the concerned Insurance Companies to indemnify the compensation amount in equal proportion. It is further submitted that in other three injury cases arising out of the same accident, which was settled through Lok Adalat at Bhubaneswar, negligence for the accident has been equally contributed on both the drivers.

8. In view of the discussions made above and in absence of any challenge towards quantum of compensation, the Appellant as well as Respondent No.8 i.e., National Insurance Co. Ltd. and Oriental Insurance Co. Ltd. respectively are directed to pay the entire compensation of Rs.8,85,000/- along with interest in terms of the direction of the Tribunal in equal share i.e., each to pay Rs.4,42,500/- along with applicable interest within a period of three months from today, where-after the same shall be disbursed in favour of the claimants in terms of the direction contained in the impugned judgment.

9. 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.

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

(B.P. Routray)
Judge

C.R.Biswal

