

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.719 of 2019

The Sr. Manager (T.P. Cell), D.O.I., *Appellant*
M/s.New India Assurance Company
Ltd.

Mr. A.A. Khan, Advocate

-versus-

Kumudini Parida and others *Respondents*

Mr. K. Das, Advocate for Respondent Nos.1 to 4

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
16.03.2022

Order No.

06.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company as well as Mr. K. Das, learned counsel for the Respondent Nos.1 to 4-claimants.

2. Present appeal by the insurer is directed against award dated 16.5.2019 of the learned 1st MACT, Cuttack in MAC No.367 of 2014 wherein the learned Tribunal has granted compensation to the tune of Rs.7,78,750/- along with 6% interest per annum to the claimants from the date of filing of the application i.e. 17.05.2014 on account of death of the deceased in the motor vehicular accident dated 11.05.2014.

3. It is submitted on behalf of the Appellant that the offending vehicle, i.e. TVS motorcycle bearing Regd. No.OR-02-AR-4552 has been implanted in the case to manage the compensation. The FIR has though mentioned about involvement of Bullet

motorcycle bearing Regd. No.ORX-7195, but subsequently the present vehicle has been implanted. In this regard, Mr. Khan, learned counsel for the Appellant press on the recitals of the FIR under Ext.1.

4. In reply, Mr. K. Das, learned counsel for the claimants submits that the informant, who has been examined as P.W.4 before the Tribunal, has clarified in his evidence about involvement of the TVS motorcycle and further in the police case, charge-sheet has been submitted in respect of TVS motorcycle and not the Bullet as named in the FIR. Therefore, there should not be any ambiguity with regard to involvement of the present vehicle in the accident.

5. Having heard both the parties and upon perusal of the impugned judgment, it reveals that the learned Tribunal has discussed the entire contention of the Appellant under Issue No.2 to fix the negligence on the part of the present vehicle, i.e. TVS motorcycle bearing Regd. No.OR-02-AR-4552. The Tribunal has thoroughly relied on the evidence of P.W.4 and the police papers.

6. Perusal of the evidence of P.W.4, who was the informant and also eye-witness of the accident, it reveals that he has clarified in his examination-in-chief that the present TVS motorcycle is involved in the accident and he had wrongly mentioned about the Bullet motorcycle bearing Regd. No.ORX-7195 in the FIR. He has been cross-examined comprehensively where he confirms his stand stated in the examination-in-chief to the effect that Ashis Kumar Panda, the rider of the motorcycle, was riding the TVS

motorcycle bearing Regd. No.OR-02-AR-4552. He repeatedly clarified during his cross-examination that the description of the Bullet has been wrongly mentioned in the contents of the FIR.

7. Now to see corroboration if any is there to support the evidence of P.W.4-eye-witness, it reveals from the police papers that the seizure list is in respect of the TVS motorcycle. The charge-sheet under Ext.2 also reveals that the TVS motorcycle was involved in the accident. Therefore, what was stated by P.W.4 that he wrongly mentioned the Bullet motorcycle in the FIR is supported from the police papers. Except the suggestion given to the said P.W.4 during his cross-examination, no other material could be produced by the insurer to discard the version of said P.W.4. Therefore, upon thorough analysis of the evidence brought on record, the statement of P.W.4 that he had wrongly mentioned about involvement of the Bullet motorcycle in the accident cannot be disbelieved. As such the contention raised by the Appellant that the present TVS motorcycle has been implanted to manage the compensation is found without any merit and rejected.

8. Apparently no challenge has been made with regard to quantum of compensation except the ground that the major son, namely, Tapas Parida who is one of the claimants (claimant no.2) is not entitled to compensation. The said contention is rejected outright in view of the principle decided in the case of ***National Insurance Company Ltd. vs. Birender and others, (2020) 11 SCC 356***, wherein it has been held that, even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden

duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only.

9. In the result, the appeal is dismissed. However, the penal interest of 12% as directed by the learned Tribunal is liable to be discarded.

10. The Insurance Company is directed to deposit the entire award amount along with interest in terms of directions of the Tribunal within a period of two months from today which shall be disbursed in favour of the claimants.

11. 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.

(B.P. Routray)
Judge