

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.319 of 2021

The Divisional Manager, New India *Appellant*
Assurance Company Limited

Mr. G.P. Dutta, Advocate

-versus-

Sharmila Devi and others *Respondents*

Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 3

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
12.05.2022

Order No.

04.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for Respondent Nos.1 to 3, the claimants.

2. Present appeal by the insurer is directed against judgment dated 26.02.2021 of learned 3rd M.A.C.T., Rourkela in M.A.C. Casae No.261 of 2015 wherein compensation to the tune of Rs.38,76,874/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e.10.09.2015 on account of death of the deceased in the motor vehicular accident dated 18.07.2015.

3. The facts of the case are that two vehicles, i.e., Auto-rickshaw bearing Registration No.OD-14-C-7354 and the Maruti Swift Car bearing Registration No.OD-14-B-1836 were involved in the accident. The deceased was an occupant of the Auto-rickshaw at

the time of accident as a passenger. The accident was due to head on collision of both the vehicles.

4. Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company submits that the FIR was lodged in respect of the accident stating entire negligence on the part of the driver of the Car. The police investigated the case and submitted the charge-sheet against the driver of the Car for criminal prosecution. It is thus contended on behalf of the insurer that when the police submitted the charge-sheet against the driver of the Car only and the recitals of the FIR speaks off negligence on the part of the driver of the Car, the finding of the learned Tribunal in fixing negligence to the extent of 30% on the driver of the Auto-rickshaw is illegal and as such unsustainable.

5. Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 to 3 submits in his reply that the learned Tribunal has arrived at such conclusion logically keeping in view the fact that the accident was due to head on collision. He further submits that the opinion of the IO in the charge-sheet for criminal prosecution has little bearing in the present claim case to fix the negligence.

6. Upon hearing both the parties, it reveals from the impugned judgment that the learned Tribunal with a detailed discussion on such aspect at paragraphs 13 and 14 has concluded as such fixing the negligence on the part of the driver of the Car as well as the Auto-rickshaw to the extent of 70% and 30% respectively. Admittedly, the accident is a result of head on collision between

the two vehicles. The submission advanced by Mr. Dutta that when the charge-sheet submitted by the police under Ext.2 has been relied on by the claimants, they cannot now differ from the same to contend negligence on the part of the driver of the Auto-rickshaw. This contention of the insurer is not acceptable for the reason that the claimants are not contradicting the contents of the charge-sheet or the FIR, but their case is that there was also negligence in the cause of the accident by the driver of the Auto-rickshaw in addition to the negligence attributed to the Car driver. In other words, there is composite negligence on the part of both the drivers. As per the evidence of P.W.2, the eye-witness, the accident took place while both the vehicles were in the middle of the road coming from opposite direction. The Tribunal analyzed on the said aspect to held that, since the accident was a result of head on collision, composite negligence is attributable to the driver of the Auto-rickshaw, and any such opinion given in the charge-sheet submitted by the police for criminal prosecution where strict liability is required to establish the culpability for the offences, the same will not be binding in the claim proceeding. It is true that the facts in the claim proceeding has to be established through the evidence brought in the said proceeding and any finding in criminal proceeding in respect of the same accident cannot be treated as binding on the Claims Tribunal. Therefore, no infirmity is seen in the approach of the learned Tribunal for fixing the composite negligence on the driver of the Auto-rickshaw to the extent of 30%.

7. Mr. Dutta further questions the quantum of compensation and submits that despite 70% liability has been fixed on the driver of the Car, the claimants have compromised for Rs.9,60,000/- in respect of the insurer of the Car. But the Tribunal has saddled Rs.11,63,062/- on the present insurer towards 30% of the liability. Therefore, he submits to calculate his liability of 30% taking Rs.9,60,000/- as 70% amount.

8. This submission of Mr. Dutta is not found conceivable and rejected out-right for the reason that at the time of compromise between the claimants and the insurer in respect of the Car, neither any evidence was not taken before the Tribunal nor any extent of negligence was decided. In fact, the compromise and settlement was arrived on 11.8.2018, while taking of evidence before the tribunal began on 4.1.2021.

9. Moreover, it is seen that the computation made by the learned Tribunal to arrive just compensation is found in conformity with the settled principles decided in the case of *National Insurance Company Limited vs. Pranay Sethi and others*, (2017) 16 SCC 680 where all such aspects have been taken care of. Therefore, the challenge with regard to compensation as urged by the present insurer-Appellant is seen without merit

10. Accordingly, the appeal is dismissed.

11. The Appellant-Insurance Company is directed to deposit the entire award amount as per the direction of the learned Tribunal

along with interest within a period of two months from today before the learned Tribunal which shall be disbursed in favour of the claimants in terms of its direction.

12. 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



B.K. Barik