IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.1245 of 2018

Divisional Manager (Legal), M/s. New India Assurance Company Ltd. .... ***Appellant***

Mr. S.K. Sarangi, Senior Advocate

-versus-

Damerun Bibi and Others .... ***Respondents***

Mr. P.K. Mishra, counsel for Respondents 1 to 4
Mr. K.K. Das, counsel for Respondent No.5

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
13.12.2022

Order No.

15. 1. The matter is taken up through hybrid mode.

2. Heard Mr. S.K. Sarangi, learned senior counsel for the insurer – Appellant, Mr. P.K. Mishra, learned counsel for claimant – Respondents 1 to 4 and Mr. K.K. Das, learned counsel for owner – Respondent No.5.

3. Present appeal by the insurer is against impugned judgment dated 20th September, 2018 of the learned 3rd MACT, Balasore passed in MAC No.129/476 of 2017/2016, wherein compensation to the tune of Rs.7,45,000/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 16th November, 2016 has been granted on account of death of deceased Sk. Sahid in the motor vehicular accident dated 15th June, 2016.

4. Mr. Sarangi, learned Senior Counsel contends on behalf of the insurer that though the tribunal came to the finding that the deceased,

who was an unauthorized person, was driving the offending vehicle at the time of accident, still it directed for payment of compensation by the insurance company granting liberty to recover the amount from the owner. According to him, such direction to indemnify the liability is unsustainable in view of the definite finding arrived by the tribunal.

5. Two cross-objections have been filed, one by the claimants praying for enhancement of the compensation amount and the other by the owner challenging such finding of the tribunal regarding the conclusion that the deceased was driving the offending vehicle.

6. Mr. Das while advancing his submissions in the cross objection filed by the owner, submits that such finding of the tribunal is against the evidence brought on record and as per the police report as well as oral evidence, the fact that the driver, namely Sk. Jahar was driving the vehicle is established.

7. It is seen from the impugned judgment that the tribunal under Issue No.II and III has come to the finding that it is clear about driving of the offending vehicle by the deceased at the time of accident.

Here it is needed to look to the evidence adduced on record. Three witnesses were examined from the side of the claimants, one witness from the side of the owner and one witness from the side of the insurer. Amongst them, no one is eye-witness of the accident. P.W.2 and P.W.3, examined by the claimants, reached at the spot just after the accident and O.P.W.1, the owner himself, is the informant. O.P.W.2 is the police investigating officer. The alleged accident took place at 4.30 am on 15th June, 2016 on the highway near Rajadhani

Dhaba. The F.I.R. was lodged in the morning at 10.30 am. The contents of the F.I.R. speak that one Sk. Jahar was driving the vehicle and the deceased was the helper. The deceased died due to capsizing of the vehicle.

8. P.W.3 is the owner of Rajadhani Dhaba, who hearing the sound of accident rushed there and after some time P.W.2, the driver of another Pick Up van, reached there. As per both P.W.2 and P.W.3, the vehicle had turned to its left side and the deceased was pressed within it. Both of them with the help of others rescued the deceased and took him to the hospital, where he was declared dead.

9. O.P.W.2, Manoranjan Puhan is the Investigating Officer in Basta P.S. Case No.155 of 2016, i.e. the criminal case registered on the F.I.R. lodged by the owner. Said O.P.W.2 is not an eye witness nor did have any direct knowledge about the accident. He played the role of Investigating Officer only to collect evidences regarding the accident. It needs to be mentioned here that O.P.W.2 upon completion of investigation submitted the charge-sheet stating that the deceased namely, Sk. Sahid was driving the vehicle at the time of accident. This was protested by the owner and on his protest, the learned Magistrate in C.T. Case No.1335 of 2016 has taken cognizance against the driver namely Sk. Jahar for commission of offence U/ss.279/304(A) of the I.P.C., by order dated 31st July, 2017.

10. O.P.W.1, the owner of the offending vehicle, namely Lambodar Tripathy, has stated in his evidence that Sk. Jahar is the driver of the offending vehicle and he was driving the vehicle at the time of accident. The deceased Sk. Sahid was the helper of said vehicle. Though he was cross-examined by the insurer incisively, but his

evidence with regard to employment of Sk. Jahar as the driver and his presence as such in the vehicle at the time of accident could not be rebutted.

11. When the contents of the F.I.R. that was lodged immediately after the accident speaks against Sk. Jahar as the driver of the vehicle at the time of accident, where the deceased was the helper, and no such witness has spoken contrary, the opinion of the investigating officer (O.P.W.2) that the deceased was driving the vehicle at the time of accident is without any basis. At the same time, the specific evidences of P.W.2 & 3, and O.P.W.1 are supporting the story narrated in the F.I.R. as well as the case of the claimants that the deceased was the helper of the offending vehicle and Sk. Jahar was the driver at that time. So, the finding of the tribunal against the deceased that he was driving the vehicle is not found justified. It is important to observe here that the evidence of the investigating officer, who is not a witness of facts, cannot prevail over the statements of P.W.2 & 3, and O.P.W.1. Thus, the case of the claimants that the deceased was the helper of the offending vehicle and died in the accident due to rash and negligent driving of accused driver Sk. Jahar is established based on principles of preponderance of probability. Accordingly, the owner is vicariously liable to pay the compensation and therefore, no merit is seen in the contention of the insurer to challenge their liability to indemnify since the validity of insurance policy is not questioned. On the other hand, the cross-objection filed by the owner is allowed and the finding as well as direction of the tribunal with regard to right of recovery granted in favour of the insurer is thus set aside.

12. It needs to be mentioned here that, the cross-objection by Respondent No.5 – owner has been filed with delay of 15 days, which is condoned by this court on oral prayer of Mr. Das and the objection to the same, as raised by Mr. Sarangi, is overruled.

13. Next coming to the question of quantum of compensation, the claimants have prayed for enhancement of the same by filing their cross-objection. The claimants – Respondents 1 to 4 entered appearance on 19th March, 2019 and filed their cross-objection on 29th August, 2022, i.e. with delay of about 1241 days. No limitation petition has been filed by the claimants – Respondents. Mr. Sarangi raises his objection on the cross-objection on the ground of limitation.

Upon hearing Mr. Mishra, learned counsel for the claimants as well as Mr. Sarangi and considering the fact that filing of the cross-objection by the claimants is barred by limitation, the same is rejected on the ground of limitation.

14. Since the insurer in his appeal does not question any other aspect than the liability, no need of further entering into the dispute is there regarding quantum of compensation. As such, the direction of the tribunal with regard to quantification of compensation amount is confirmed.

15. In the result, the appeal filed by the insurer is dismissed as well as the cross-objection filed by the claimants – Respondents 1 to 4. The cross objection filed by the owner – Respondent No.5 is allowed.

The Appellant – insurer is directed to deposit the entire compensation amount before the tribunal along with interest as directed by it, within a period of two months from today; where-after the same shall be disbursed in favour of the claimants – Respondents on same term and proportion as contained in the impugned judgment.

16. The copies of depositions and exhibits filed in course of hearing are kept on record.

17. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the award amount before the tribunal.

18. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda