

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.33298 Of 2021
(Through hybrid mode)**

The BM, SBI General Insurance Co. Ltd. and another ***Petitioners***

Mr. Somnath Roy, Advocate

-versus-

Monalisa Dash and another ***Opposite Parties***

Mr. P.K. Mishra, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
30.06.2022

Order
No.

2.

1. Mr. Roy, learned advocate appears on behalf of petitioners (insurance company). He submits, impugned is award dated 18th August, 2021 passed by the Permanent Lok Adalat. He submits, under a personal accident cover, claim was made on the insured having died while riding motorcycle. He submits, death was ascertained to be by cardiac arrest. It was not motor accident, which caused the death. In the circumstances, the personal accident cover did not provide for the cause of death.

2. Mr. Mishra, learned advocate appears on behalf of opposite party-beneficiary. He submits, the deceased suffered heart attack

when running motor cycle because he was struck by lightening. It was, therefore, an accident.

3. On query from Court Mr. Roy refers to the postmortem report. Cause of death has been given as cardiac arrest due to lightening, sufficient to cause death in ordinary course of nature. Petitioner's contention is that the cover was in respect of motor accident. By the personal accident cover, petitioner undertook to pay compensation as per prescribed scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured whilst mounting into/dismounting from or travelling in the insured vehicle as to co-driver, caused by violent accidental external and visible means, which independent of any other cause shall within six calendar months of such injury result in death.

4. There is no dispute that the deceased was struck by lightning when riding motorcycle, which resulted in death. Court is convinced death was caused by violent accidental external and visible means of lightning striking the individual riding a motorcycle for it to be seen as an accident. Lightning is an external phenomenon and visible causing, in this case, the rider being struck thereby and consequently his death by heart attack.

5. It appears the PLA adjudicated upon failure to achieve settlement. In the circumstances Court does not find reason to interfere. Mr. Roy submits, there ought not to have been direction for payment of interest. However, Court is not inclined to interfere with the direction except in reducing the rate to 6% per annum on the period directed by the award.

6. The Registry is directed to forthwith disburse the money deposited by petitioners to opposite party no.1 along with interest, if any accrued, on it having been kept deposited in an interest bearing account. Petitioners are directed to pay the balance within three weeks of communication along with interest at 6% per annum simple, the period commencing as directed in the award, calculated up to the date of deposit of 50% in the Registry and thereafter at that rate on the balance 50%, till date of payment.

7. In event all or any of above directions are not complied with by petitioners, the writ petition will be deemed to have been dismissed and opposite party no.1 will thereupon become entitled to seek execution of award of the Permanent Lok Adalat including its directions on interest, as a decree of Court, in accordance with law.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks

