

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.379 of 2021

The Divisional Manager, Oriental Insurance Company Ltd. ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Smt. Sarmila Kumari Swain and others ***Respondents***

Mr. D. Mohapatra, Advocate for Respondent Nos.1 to 4

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
06.09.2022**

Order No.

06.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company and Mr. D. Mohapatra, learned counsel for the Respondent Nos.1 to 4-claimants.

2. Present appeal by the insurer is directed against the judgment dated 31.08.2021 of the learned 8th MACT, Aska in M.A.C. Case No.569 of 2014 wherein compensation to the tune of Rs.8,43,000/- has been granted along with simple interest @5% per annum to the claimants from the date of filing of the claim application, i.e.28.01.2013.

3. The deceased though has died, but the learned Tribunal granted compensation on account of injury sustained by him in the accident.

4. Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company contends that in absence of any material with regard to the amount of expenses counted by the learned Tribunal towards attendant charges and special diet is liable to be reduced.

5. Mr. D. Mohapatra, learned counsel for the Respondent Nos.1 to 4-claimants submits that despite their case that the deceased died due to comma after 10 years of the accident, but the learned Tribunal disbelieved such death of the deceased connected with the nature of injuries and only granted compensation on account of sustenance of injury.

6. It reveals from the impugned judgment that the learned Tribunal has granted compensation of Rs.4,80,000/- towards attendant's cost, Rs.2,43,405/- towards medical expenditure, Rs.20,000/- towards conveyance charges and Rs.1,00,000/- towards special diet, totaling to Rs.8,43,000/-.

7. It appears on perusal of the impugned judgment that the learned Tribunal though under Issue No.2 has concluded that the claimants have failed to establish any connection between death of the deceased and the injuries sustained by him in the accident and as such denied to grant any compensation for the same. But subsequently while discussing under Issue Nos.3 & 5, the learned Tribunal has opined that it is forthcoming from the treatment papers that the deceased sustained head injuries and hemeplegia and was in vegetative stage till his death being confined to the bed for last 10 years. It needs to be mentioned here that the deceased died on 10.2.2021 when the date of accident is

11.10.2011. Therefore, the findings of the learned Tribunal given under Issue No.2 and Issue Nos.3 & 5 are seen contradictory regarding death of the deceased arising out of the injuries sustained in the accident. However, in absence of any challenge from the side of the claimants, this Court refrains from further interfering with the same and only confines to the challenges advanced by the insurer.

8. Now coming to see the disability certificate under Ext.9 and the medical documents produced on record coupled with the consistent oral evidence of the claimants that the deceased was in continuous vegetative stage for last 10 years till his death, the amount of Rs.4.80,000/- granted towards attendant's cost cannot be faulted with. Similarly the amount of Rs.1,00,000/- granted towards special diet cannot be said as excessive.

9. It is next contended by Mr. Dutta that the offending motorcycle bearing Registration No.OD-07-2006 was not registered before the competent authority on the date of accident though the insurance policy obtained on the basis of engine number and chasis number in respect of the said vehicle was valid on the date of accident. In the instant case, the claim is against 3rd party and therefore in the opinion of this Court non-registration of the vehicle was immaterial for the purpose since the insurance policy was valid.

10. At the same time since the registration of the vehicle is a mandatory requirement for plying of the same on the public road, violation of the same is treated as breach of policy conditions for

which the insurer is entitled for right to recover the amount from the owner. Accordingly, the right of recovery is granted in favour of the insurer.

11. However, the penal interest @12% as directed by the learned Tribunal is waved.

12. In the result, the appeal is disposed of confirming the direction of the learned Tribunal towards grant of compensation to the claimants by the insurer-Appellant with such terms and conditions as contained in the impugned judgment. Further, as prayed on behalf of the Appellant, it is open for him to seek such right of recovery from the owner of the vehicle in accordance with law after affording opportunity of hearing to the owner.

13. On deposit of the award amount by the insurer before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the insurer.

14. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge