IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.380 of 2021

The Manager Claims, ICICI Lombard General Insurance Company Ltd. .... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Smt. Santilata Sahu and Another .... ***Respondents***

Mr. G.K. Nayak, counsel for Respondent No.1
Mr. D.R. Mishra, counsel for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
29.11.2022

Order No.

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

2. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant, Mr. G.K. Nayak, learned counsel for claimant – Respondent No.1 and Mr. D.R. Mishra, learned counsel for owner – Respondent No.2.

3. Present appeal by the insurer is against the impugned judgment dated 7th September, 2021 of the learned 3rd MACT, Bhanjanagar passed in MAC Case No.139 of 2016, wherein compensation to the tune of Rs.49,21,477/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 19th August, 2016 has been granted on account of death of deceased Chandrakanta Sahu in the motor vehicular accident dated 1st February, 2016.

4. Mr. Dutta contends on behalf of the Appellant that the deceased was driving the motor cycle at the time of accident without having a

valid driving licence and secondly, the offending vehicle, i.e. L & T Case Loader vehicle bearing registration number OR 15N 1763 was coming from opposite direction in the other lane of the road, when the deceased, due to his negligent driving, by crossing the road divider encroached upon the other lane and dashed against the offending vehicle. Mr. Dutta therefore submits that the driver of the offending vehicle has no negligence for the cause of accident.

5. It is seen from the copies of police papers, as produced in course of hearing, that the charge-sheet has been submitted against the driver of the offending vehicle for commission of offence U/s. 279/337/304-A of I.P.C. The tribunal based on the opinion stated in the charge-sheet, has fixed the negligence on the accused driver of the offending vehicle.

6. The claimant examined three witness on her behalf and amongst them, P.W.2 is the eye-witness accompanying the deceased in the same motor cycle as a pillion rider at the time of accident. He was cross-examined comprehensively and it was admitted by him that the road at the spot of accident was about 30 feet width and it was a four lane road with divider in the middle. The spot map prepared by police under Ext.A has been relied on and brought in to evidence by the insurer to substantiate their contention that the motorcycle by crossing the road divider went to the opposite lane, where the offending vehicle was coming from opposite direction.

7. Upon perusal of the evidence of P.W.2 as well as the copies of spot map and charge-sheet submitted by police, it is established that the deceased was driving the motorcycle at the time of accident and it went crossing the road divider to the other lane of the road. The

offending vehicle was coming in the other lane from opposite direction and the motorcycle driven by the deceased dashed against it. Therefore, prima facie negligence is seen on the part of the deceased as the rider of the motorcycle. Thus, as a matter of contribution to the negligence, the deceased can be held liable to the extent of 50%, because the offending vehicle was coming in the other lane of the road in its way and the deceased encroached it by crossing the divider. Therefore, this court holds 50% negligence on the deceased for causing the accident against the finding of the tribunal.

8. With regard to the submission made about absence of DL of the deceased, the same is not found correct in view of the categorical evidence adduced by the witnesses. It is seen that the deceased was having a valid driving licence which was issued on 17th July, 2007 and valid till 16th July, 2028. Therefore, this court agrees with the finding of the tribunal that the deceased was having a valid DL on the date of accident and the insurer failed to substantiate their contention in the contrary.

9. So far as the quantum of compensation is concerned, it is seen that the deceased was working as a Probation Officer in Bank of India at the time of accident and getting monthly salary of Rs.35,700.78. His salary particulars have been shown in Ext.14. The net salary of the deceased as mentioned therein has been taken at Rs.31,709.37 by the tribunal. But as contended by Mr. Dutta, perusal of Ext.14 reveals that though professional tax to the tune of Rs.200/- was deducted from the same, but no amount was deducted towards income tax. So, taking the net salary of the deceased at Rs.31,709.37 per month, which comes to Rs.3,80,512/- per annum, if the income tax at the applicable rate is

deducted there-from, the net annual incomes comes to Rs.3,62,460/-. Adding future prospects to the extent of 50% thereto, the amount comes to Rs.5,43,690/-. Deducting 50% towards personal expenses, the annual loss of dependency comes to Rs.2,71,845/- and applying multiplier '17', the total loss of dependency comes to Rs.46,21,365/-. Adding Rs.70,000/- towards consortium and general damages, the total compensation is determined at Rs.46,91,365/-.

10. As stated earlier, since 50% negligence is contributed towards the deceased, the present appellant – insurer is liable to pay 50% of the afore-said amount, which comes to Rs.23,45,682/- and payable along with interest @ 6% per annum.

11. In the result the appeal is disposed of with a direction to the insurer – Appellant to deposit the modified compensation of Rs.23,45,682/- (twenty-three lakhs forty-five thousand six hundred eighty-two) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 19th August, 2016, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on such terms and proportion to be decided by the tribunal.

12. However, the direction of the tribunal for payment of penal interest @ 9% is waived.

13. 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 awarded amount before the tribunal.

14. The copies of depositions and exhibits, as produced by Mr. Dutta are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda