

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.804 of 2020

MACA Nos.804 of 2020 & 102 of 2021

Mili Barik and Others (In MACA No.804/2020)

***National Insurance Company Ltd.
represented by its Manager &
Officer-in-Charge, Legal Cell*** (In MACA No.102/2021)
.... ***Appellants***

Mr. B. Singh, Advocate (in MACA No.804/2020)
Ms. Nibedita Mohanty, Advocate (in MACA No.102/2021)

-versus-

Sudarsan Nayak and Another (In MACA No.804/2020)

Mili Barik and Others (In MACA No.102/2021)

.... ***Respondents***

Ms. Nibedita Mohanty, counsel for Respondent No.2
(in MACA No.804/2020)

Mr. B. Singh, counsel for Respondents 1-3
(in MACA No.102/2021)

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

**ORDER
19.9.2022**

Order No.

- 09.
1. The matters are taken up through hybrid mode.
 2. Heard Ms. N. Mohanty, learned counsel for the insurer and Mr. B. Singh, learned counsel for the claimants.
 3. Both the appeals being arise out of same judgment, are heard together and disposed of by this common order.

4. Both the appeals are against the same impugned judgment dated 28th September, 2020 of learned 1st MACT, Baleswar passed in MAC Case No.52 of 2019 wherein compensation to the tune of Rs.9,70,144/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 4th February, 2019 has been granted on account of death of the deceased in the motor vehicular accident dated 25th November, 2018.

5. MACA No.804 of 2020 has been preferred by the claimants praying for enhancement of the compensation amount, whereas MACA No.102 of 2021 has been preferred by the insurer challenging the award.

6. First coming to the challenges advanced on behalf of the insurer it is submitted that the driver of the offending vehicle, i.e. Bus bearing registration number OD 11 K 2985 was possessing a fake driving licence and secondly, while determining the compensation the tribunal has erroneously applied multiplier '17' instead of '16'.

7. Mr. Singh, learned counsel for the claimants on the other hand submits that no future prospects has been added to the income of the deceased and less amount towards consortium has been paid to the claimants. He agrees to the submission of Ms. Mohanty for the insurer that appropriate multiplier should be '16'.

8. Upon hearing both parties and perusal of the copy of driving licence bearing number OR01 19990006792, a copy of which is produced by Ms. Mohanty in course of hearing, reveals that the same is issued in the name of one Pradeep Kumar Jena, son of Panchal Jena. But the copy of the driving licence as seized by police is in the

name of Harihar Jena, son of Panchalal Jena and the photographs pasted are of two different persons. Therefore it clearly appears that the driver of the offending bus was having fake driving licence. But nothing could be produced either before the tribunal or before this court to show that the owner of the offending vehicle had any knowledge about the possession of fake DL by the driver. Admittedly, no evidence has been adduced to that effect also. Accordingly, as per the principles decided in the case of *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 and *Nirmala Kothari v. United India Insurance Company Limited*, (2020) 4 SCC 49, the insurer is granted with the right of recovery of the entire compensation amount from the owner since he did not have the knowledge of possession of fake licence by the driver.

9. Next coming to the question of quantum it is seen that the age of the deceased as per his Aadhaar card was 33 years on the date of accident and therefore multiplier '16' is found applicable in the instant case. No further dispute being raised with regard to income of the deceased, what is calculated by the tribunal in this regard is accepted. It is further seen that no future prospects has been added while counting the loss of dependency and only Rs.25,000/- has been granted towards loss of consortium though the claimants are the widow and two minor children of the deceased. Accordingly, the total compensation amount is determined at Rs.13,55,836/-, payable with 6% interest.

10. In the result both the appeals are disposed of with a direction to the insurer, i.e. National Insurance Company Ltd. to deposit the total compensation of Rs. 13,55,836/- (thirteen lakh fifty five thousand

eight hundred thirty-six) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 4th February, 2019 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the tribunal. As stated above, it is open for the insurer to seek such right of recovery from the owner of the vehicle in accordance with law after affording opportunity of hearing to him.

11. The statutory deposit made by the insurer in MACA No.102 of 2021 before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

12. The copies of DL, as filed by Ms. Mohanty, are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda