A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.815 of 2020 & MACA No.677 of 2020

(From the judgment dated 18th February, 2020 passed by the Presiding Officer, 3rd MACT, Jajpur in M.A.C.Case No.11 of 2013)

MACA No.815 of 2020
Manager Legal,
M/s.Future Generali Insurance
Company Limited …… **Appellant**

Versus

Manjulata Rout and others …... **Respondents**

Advocate(s) appeared in this case :-

For Appellant : Mr.A.A.Khan, Advocate

For Respondents : Mr.S.B.Das, Advocate for Respondent Nos.1 to 4

MACA No.677 of 2020
Manjulata Rout and others …… **Appellants**

Versus

Subash Chandra Sahoo and others …... **Respondents**

Advocate(s) appeared in this case :-

For Appellants : Mr.S.B.Das, Advocate

For Respondents : Mr.A.A.Khan, Advocate for Respondent No.2

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT
23rd August, 2022

B.P. Routray,J.

1. Both the appeals are directed against the common judgment dated 18th February, 2020 passed by the Presiding Officer, 3rd MACT, Jajpur in M.A.C.Case No.11 of 2013.

2. MACA No.815 of 2020 has been filed by the Insurance Company challenging the award whereas MACA No.677 of 2020 has been filed by the claimants praying for enhancement of the compensation amount.

3. The case of the claimants before the Tribunal is that the deceased namely, Biswanath Rout while returning to his house after completing his duty in Paradip Port, on the way at Paradip Port Prohibited Area No.II Jetty, all of a sudden one Hyva Dumper bearing Registration No.OR-21B-0833 loaded with lime stone dashed against him from backside being driven in a rash and negligent manner with high speed. As a result of said accident, the deceased died at the spot. The claimants are the wife and children of the deceased.

4. The specific case of the Insurer is that no motor vehicular policy was issued in respect of the offending vehicle but a CMP i.e., (contractor's plant and machinery insurance policy) was there. Therefore

the accident being a motor vehicular accident, the indemnity in the policy does not cover the nature of risk. In other words, it is the contention of the Insurer that the present policy is not a policy covered under Section 147 of the Motor vehicle Act to indemnify the risk arising out of use of motor vehicle. The copy of the policy has been marked in Exhibit-B & C before the Tribunal. In the opinion of the Tribunal, even if the policy is a CMP Policy the insurer cannot escape from its liability to indemnify the compensation since premium for third party damage has been accepted.

5. It is submitted by Mr.Khan that the nature of policy does not cover a risk arising out of use of motor vehicle on public road.

6. Mr.Das on the other hand submits that keeping in view the nature of the policy particularly acceptance of premium for third party damages, the policy covers the risk in the present case of accident in terms of Chapter-XI of the M.V.Act. In support of his contention, Mr.Das relies on the decisions reported in the case of ***State of Bombay vrs. R.M.D.Chamarbaugwala,*** AIR 1957 SC 699, ***Harihar Polyfibres vrs. The Regional Director, ESI Corporation*** decided on 4th September, 1984 and the decision of the Madras High Court in the case of ***Mahboob Basha vrs. Tamil Nadu Wakf Board*** decided on 25th July, 2012.

7. Admittedly, the policies issued under Exts.B & C are CMP policies. The question falls for decision is that, even if the policy is not a motor vehicular policy in terms of Chapter-XI of the M.V.Act, whether the same can be extended to be considered as a policy issued under Chapter-XI of the M.V.Act for the reason that it has accepted to cover the third party risk.

8. In this regard, the definition as contemplated in Section 145 (b) postulates that “certificate of insurance” means a certificate issued by an authorized insurer in pursuance of Sub-section (3) of Section 147. Section 147 (3) speaks that a policy shall be of no effect for the purpose of Chapter-XI unless and until it is issued by the insurer in favour of the person by whom the policy is effected containing the prescribed particulars of any condition subject to which the policy is issued and for any other prescribed matter. Section 147(1) prescribes that, in order to comply with the requirements of this Chapter, a policy of insurance must be issued by an authorized insurer insuring a person or class of persons to the extent specified in Sub-Section 2. Sub-section (2) read with sub-section (1) of Section 147 says that a policy of insurance shall cover such liability incurred in respect of any accident to a third party caused by or

arising out of the use of the motor vehicle in a public place up to such limits. Therefore a thorough examination of the provisions contained in Chapter-XI makes it clear that the policy of insurance and its limit shall be against such liability that may be incurred in respect of an accident arising out of use of a motor vehicle. Thus a thorough reading of all such provisions under Chapter-XI of the M.V. Act does not imply such a conclusion that a policy issued for plants and machineries would be treated or extended in respect of a motor vehicle.

9. In the instant case the Tribunal has assigned the reason that, despite Exts.B & C are undisputedly CPM policy and the offending vehicle is a motor vehicle and place of accident is a public place, the same would cover the risk involved in the accident because under the said policy, the insured has paid premium of Rs.313/- for coverage of third party liability to the extent of Rs.1,25,000/-. As discussed in the above paragraph, this Court is unable to agree with such finding of the Tribunal in view of the clear provisions contained in Section 147 of the M.V. Act. The policy as in the present case is in respect of a machine cannot at any stretch be extended to use of a motor vehicle for which specific statutory provisions have been provided for issuance of valid

insurance policy. Therefore the finding of the Tribunal to the extent that the CPM policy covers the risk of third party in respect of a motor vehicle to indemnify the liability is set aside.

10. It is pertinent to state here that the decisions cited by Mr. Das, learned counsel for the claimants are on different aspect i.e. on interpretation of the wordings ‘or’ and ‘and’ in a statute. Undoubtedly the provisions for compensation arising out of motor vehicular accident provided in the M.V. Act are beneficial provisions in favour of poor claimants. But the same cannot be stretched at any imagination to the extent to cover a policy which is not a statutory policy issued in respect of motor vehicle in terms of Chapter-XI of the M.V. Act.

11. In respect of the claim of applicants for enhancement of the compensation amount, the grounds raised are not found convincing to interfere with the same. As such, the same is rejected.

12. In the result, the appeal filed by the Insurer i.e. MACA No.815 of 2020 is allowed and the Appellant i.e., M/s. Future General Insurance Company Limited is exempted from its liability to indemnify the compensation amount. However, the claimants are at liberty to realize the compensation amount from the owner of the vehicle.

13. MACA No.677 of 2020 filed by the claimants is dismissed.

14. The statutory deposit made by the Insurer in MACA No.815 of 2020 with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

(B.P.Routray)
Judge

C.R.Biswal