

(2021) 11 OHC CK 0079
In the Orissa High Court
Case No : MACA No.656 Of 2018

Divisional Manager, National Insurance Co. Ltd

APPELLANT

Vs

Padmini Kuanra And Others

RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

Citation : (2021) 11 OHC CK 0079

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : B.N. Udgata, P.K. Mishra

Final Decision : Dismissed

Judgement

B. P. Routray, J

1. Heard Mr. B.N. Udgata, learned counsel for the Appellant-Insurance Company and Mr. P.K. Mishra, learned counsel for the Respondent Nos.1 to 5-claimants.

2. The present appeal by the Insurer is against the award of learned 3rd MACT, Jagatsinghpur dated 9.2.2018 passed in MAC No.290 of 2010 granting compensation in favour of the claimants for the death of the deceased in a motor vehicular accident on 3.7.2010. The total compensation amount is to the tune of Rs.25,27,000/-.

3. The contention of the Appellant that the vehicle i.e. Tata Sumo bearing Registration No.OR-05-V-1830 is not at all involved in the accident but has been planted. In the alternative, it is also contended that even if the vehicle is considered to be involved in the accident then also the deceased had contributed negligence as accident was side to side and not head-on collision.

4. At the outset, it is made clear that the insurer has to take any one of such pleas and he is not permitted to take such alternative pleas. Answering the first contention about non-involvement of the vehicle in the accident, the same has been negated by the learned Tribunal basing on the admission of the owner of

the Tata Sumo. The said admission of the owner is not disputed by the present Appellant.

5. In addition to the same, P.W.2 claiming to be an eye-witness of the accident has narrated about the involvement of the offending Tata Sumo in the accident. It is seen that the Police has also submitted the charge-sheet against the driver of the Tata Sumo vehicle. Therefore, the contention regarding non-involvement of the offending vehicle in the accident is rejected being not founded on record.

6. The Appellant cannot take the alternative plea that even if the vehicle is not found involved in the accident then also the negligence for the accident is partly contributed to the deceased. No material is seen on record to opine about any negligence contributed by the deceased in causing the accident. Particularly in view of the admission of the owner of the offending Tata Sumo as well as the fact of submission of charge-sheet by the Police against the driver of the Tata Sumo, the plea for contributory negligence on the part of the deceased is also not accepted.

7. The calculation has been arrived by the learned Tribunal determining the income as well as multiplier and the same is not seen with any infirmity. The ancillary heads counted in support of the claimants towards conventional heads and other expenses do not leave reason to be interfered with.

8. Accordingly, the appeal is dismissed.

9. The Appellant-Insurance Company is directed to deposit the entire awarded amount before the learned Tribunal within a period of eight weeks from today; where-after the same shall be the disbursed to the claimants on the same proportion and terms as directed by the learned Tribunal.

10. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit before this Court with a refund application, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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