

(2024) 04 OHC CK 0172
In the Orissa High Court
Case No : MACA No.1099 Of 2023

Manager In Charge, Oriental Insurance Co. Ltd

APPELLANT

Vs

Kamakshya Prasad Dehury And Others

RESPONDENT

Date of Decision : 19-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A

Citation : (2024) 04 OHC CK 0172

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

Bench : Single Bench

Advocate : P.K. Mahali, S.C. Samantaray

Final Decision : Disposed Of

Judgement

B. P. Routray, J

1. Heard Mr. P.K. Mahali, learned counsel for the Appellant-Insurance Company and Mr. S.C. Samantaray, learned counsel for Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 27.07.2023 of learned 1st M.A.C.T., Dhenkanal in M.A.C. Case No.22 of 2021, wherein compensation to the tune of Rs.4,18,680/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.19.02.2021 on account of death of the deceased in the motor vehicular accident dated 05.04.2017.

3. The main ground of challenge in the appeal, as submitted by Mr. P.K.Mahali, is that, there is delay in lodging the FIR to doubt the genuineness of the accident.

4. It is true that, the FIR was lodged on 17.1.2018, when the alleged accident took place on 5.4.2017. However perusal of the documents reveal that, Mangalabag P.S. UD Case No.563, dated 10.4.2017 was registered upon death of the deceased in S.C.B. Medical College & Hospital, Cuttack. As per the inquest report and post-mortem report prepared concerning the said UD Case, the

deceased died in the motor accident on 5.4.2017 and succumbed to the injuries on 10.4.2017. Further, as per the Police investigation report, the involvement of the offending vehicle, i.e. motorcycle bearing Regd. No.OD-06-5994 is clearly established and the charge-sheet has been submitted against the accused-driver on 17.10.2020 for alleged commission of offences under Sections 279/304-A, I.P.C. Apart from this, no evidence has been adduced from the side of the insurer to substantiate their stand to exclude involvement of the offending vehicle from the accident or to satisfy their contention that the deceased was not injured in any accident on 5.4.2017 involving the offending vehicle. On the other hand, sufficient evidence has been produced from the side of the claimants to satisfy their contention that, the death of the deceased was due to the accident dated 5.4.2017 involving the offending vehicle and due to the fault on the part of the accused-driver. Therefore all such contentions raised by Mr. Mahali, at this stage are rejected.

5. With regard to quantification of compensation amount, considering the factors relevant for the same, a reduced compensation of Rs.3,10,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. S.C. Samantaray, learned counsel for the claimants agrees to the same and Mr. P.K. Mahali, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

6. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.3,10,000/- (rupees three lakhs ten thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.19.02.2021, within a period of two months from today; where-after the same shall be disbursed in favour of the claimants-Respondents No.1 & 2 on such terms and proportion to be fixed by the Tribunal.

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

8. The MACA is disposed of with aforesaid directions.

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

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