

(2025) 04 OHC CK 1399
In the Orissa High Court
Case No : MACA No.371 Of 2015

Manager, Legal ICICI Lombard General Insurance Co. Ltd APPELLANT
Vs
Sadananda Sahoo & Others Vs RESPONDENT

Date of Decision : 11-04-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2025) 04 OHC CK 1399

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : A.A. Khan, S.K. Nayak

Final Decision : Disposed Of

Judgement

V. Narasingh, J

1. Heard learned counsel for the Insurance Company. None appears for the Claimant when the matter is called.

2. Respondents as Claimants filed MAC Case No.28 of 2011 (69 of 2014) in the court of 3rd M.A.C.T., Dhenkanal claiming compensation of Rs.5,00,000/- from the Appellant-Insurance Company on account of the death of one Jamini Sahoo who is the wife of Respondent No.1 and mother of Respondent Nos.2 to 4. The owner of the offending vehicle was arrayed as Opposite Party No.1 before the learned Tribunal and the present Appellant as the Insurer was cited as Opposite Party No.2.

3. The case of the Claimants was that the deceased wife was a pillion rider in a bicycle when it was hit by the offending vehicle bearing registration number OR-06-H-8213 on account of which the wife of Respondent No.1 suffered injuries including on the backside of her head. Considering the injuries suffered she was first taken to Analaberani C.H.C and thereafter, referred to D.H.H., Dhenkanal and on the way to D.H.H., Dhenkanal unfortunately she succumbed. The amount of compensation was claimed, inter alia, on the ground that the deceased was

aged about 40 years and her monthly income was Rs.6,300/- as Anganwadi Worker and from dairy farm. Attributing rash and negligent driving of the driver of the offending vehicle is the sole cause of accident.

Pursuant to the notice, the present Appellant as the insurer and the owner of the offending vehicle appeared. The owner was set ex parte since he did not contest. The present Appellant as the Opposite Party No.2 before the learned Tribunal raised a specific plea that driver of the offending vehicle had no driving licence and sought for dismissal of the claim application. On the pleadings of the parties, following issues were framed:

"1. Whether due to the rash and negligent driving of the driver of the motor cycle bearing Registration No.OR/06-H-8213 the accident took place and in that accident, deceased Jamini Sahoo succumbed to the injuries ?

2. Whether the petitioners are entitled to get any compensation? If so, what would be extent?

3. Whether all the O.Ps. or any one of them, is/are liable to pay compensation ?

4. To what relief, if any, the petitioners are entitled?"

While the Opposite Party No.1- husband was examined as P.W.1 and P.W.2 deposed as an eye witness of the accident.

No witness was examined on behalf of the Opposite Party No.2-Insurance Company nor any documents were placed on record on their behalf.

Exhibits 1 to 8 were admitted into evidence at the behest of the Claimants-Respondents.

4. On an analysis of the evidence on record, taking into account the oral as well as documentary evidence at the behest of the Claimants and the plain paper certificate indicating the monthly income of the deceased was Rs.2063/- issued by the C.D.P.O., Parjanga, learned Tribunal assessed the monthly income at Rs.2500/- and the annual income as Rs.30,000/-. Taking into account the age of the deceased, 14 multiplier was held to be applicable in view of the judgment of the Apex Court in the case of Sarala Verma and others vrs. Delhi Transport Corporation and another, (2009) 43 OCR (SC) 349 and deducting 25% on account of dependency, the total loss was assessed at Rs.3,15,000/-, loss of estate and transportation and funeral expenses was assessed as Rs.10,000/- and total compensation was quantified at Rs.3,25,000/- along with interest at the rate of 7% per annum.

5. Learned counsel for the Insurance Company, Mr. Khan urged with vehemence on the basis of the memorandum of appeal that it is a case of patent manipulation of the record inasmuch as FIR was lodged by the brother of the Claimants that he was riding the offending motor cycle bearing registration number OR-04-H-8213 and the deceased was travelling as a pillion rider and on the way he dashed another bicycle which resulted in the death of the wife of

Opposite Party No.1.

But, in order to claim compensation with the connivance of the local police one Santosh Kumar Sahoo was shown as the accused driver. Though FIR (Ext.1) as well as 161 statement (Ext.7) were on record, learned Tribunal failed to take note of the same.

Hence, award being the outcome of non-application of mind is liable to be set aside. It is his further submission that since the Respondent No.1 had no driving licence, the Appellant is not liable to pay any compensation.

The aforementioned grounds were taken as Ground No.2 and 3 in the memorandum of appeal.

It is also urged that quantum of compensation militates against the concept of just compensation and award of interest @ 7% is also not justified.

6. This Court carefully examined the award with reference to the evidence on record. Admittedly no evidence was adduced on behalf of the Insurance Company either oral or documentary in support of its stand. Taking note of the evidence of P.Ws.1 and 2 - the husband and eye witness respectively, learned Tribunal came to the conclusion that the accident took place because of rash and negligent driving of the driver of the offending motorcycle bearing registration number OR-04-H-8213 and in the said accident deceased died and consequentially quantification of compensation was done.

Since the Appellant Insurance Company admittedly did not adduce any evidence it is not open for the Insurance Company to raise ground of false implication before this Court to resist the claim of compensation.

7. On a conspectus of the evidence on record this Court does not find any infirmity in the impugned award, keeping in view the time tested principle of just compensation and the benevolent nature of legislation to interfere with the impugned award. However, this Court is persuaded to hold that the reduction of interest from 7% per annum to 6% would subserve the ends of justice.

Hence, while not interfering with the quantum of compensation the interest component is modified and reduced from 7% to 6%.

8. The Appellant is directed to deposit the compensation in terms of the modified award as above. Disbursal shall be done proportionately as per the award within a period of six weeks from the date of receipt/production of a copy of this order.

9. Within six weeks, on production of proof regarding deposit of the modified amount before the Tribunal, the statutory deposit along with accrued interest be refunded to the Insurance Company, on proper application.

10. The MACA is accordingly disposed of.

.....