
(2025) 12 OHC CK 1928
In the Orissa High Court
Case No : MACA No.1198 Of 2014

New India Assurance Co. Ltd

APPELLANT

Vs

Pabana Mallik And Others

RESPONDENT

Date of Decision : 22-12-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2025) 12 OHC CK 1928

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : B.K. Mohanty, P.K. Mishra

Final Decision : Disposed Of

Judgement

V. Narasingh, J

1. Heard learned counsel for the Appellant-Insurance Company and learned counsel for the Respondents.

2. The present MACA has been preferred by the Appellant-Insurance Company assailing the award dated 5. 08.2014 passed by the learned 4th MACT, Puri in M.A.C Case No.229 of 1996 whereby learned Tribunal directed for payment of compensation of Rs.1,52,000/- along with interest at the 7.5% per annum to the claimant from the date of filing of the claim case i.e. 11.07.1996 till realisation.

3. The brief facts of the Claimants are that on 24. 03.1996, while the deceased was occupying the carrier of a bi-cycle and going towards Nuahat side from Tulasipur, the offending vehicle bearing registration number OR-04-2055 came in a high speed dashed against the bi-cycle, as a result of which the deceased sustained grievous injuries. Thereafter, she was shifted to the hospital but unfortunately she succumbed to the said injuries at the hospital. Since the deceased was a professional musician and was earning Rs.2000/- per month, a claim application was filed claiming compensation of Rs.1,50,000/-.

4. Opposite Party No.1 who is the owner of the offending vehicle appeared and contested the claim case denying the liability. Appellant-Insurance Company appeared and filed its written statement denying the assertions made in the claim petition.

On the pleadings of the parties, the following issues were framed:

"1. Is the claim application maintainable?

2. Has the deceased succumbed to the injuries on account of a motor vehicle accident involving vehicle OR-04-2055 on 24.3.1996?

3. Was the rider of the offending vehicle was rash and negligent in causing the accident?

4. Are the petitioners entitled to get compensation, if so, to what extent and from which O.P.?

5. To what relief?"

In order to substantiate their claim, Claimant-Respondent No. 2 examined herself as P.W.2, and one independent witness was examined as P.W.1, and documents were exhibited on behalf of the Claimants and marked as Exts. 1 to 3.

No witness was examined on behalf of the owners of the offending vehicle as well as the Insurance Company. But the Oriental Insurance Company filed two documents which were marked as Exts.A to B.

Considering the evidence on record, learned Tribunal directed for payment of compensation of Rs.1,52,000/- along with 7.5% interest per annum from the date of filing of the claim, i.e.11.07.1996, till the date of payment.

5. The impugned award is primarily challenged by the Appellant-Insurance Company on the ground that, since during investigation, it came to light that the offending vehicle was insured with National Insurance Company and not with the present Appellant, the reliance of the Tribunal on the xerox copy of the insurance policy filed from the side of the Claimant, to hold that the same was insured with the present Appellant-Insurance Company, ought not to have weighed with the Tribunal in saddling the present Appellant with the liability of compensation. The award is also assailed on the ground that the assessment of compensation, taking into account the prevailing Wages Act on the date of accident, is very much on the higher side and consequentially, such quantification is liable to be interfered with.

6. The issue as to whether the present appellant can be fastened with the liability was specifically dealt with under Issue No. 4, as extracted hereunder. The same is culled out for convenience of ready reference;

"xxx xxx xxx

Here the petitioners claim themselves to the father and mother of the deceased

and the same has not been challenged in anywhere and hence, in my view, they are entitled for compensation to be awarded in this case. So far as liability to pay compensation is concerned, it is found from the seizure list and zimanama that the said bus was already insured with O.P.No.2 covering the date of accident i.e. on 29.2.2008 and DL Of the driver of the said bus was also valid on the same day and hence, in my view, O.P.No.2 is liable to pay compensation amount to be awarded in this case.

As regards the liability of compensation and quantum, as per the learned Counsel for the O.P No.2 the multiplier is to be taken considering the age of the parents and not the deceased. He has relied on the case law reported in 2007(4) T.A.C 17(S.C) (New India Assurance Company Ltd. Vs Smt. Shanti Pathak and others). On the other hand, on the said point as per the learned counsel for the petitioners universally for the accident claim case the Present trend is to consider the age of the deceased to fix Multiplier. He has relied on the Sarla verma case and also the case "reported in 2013(131) AIC 219 (S.C) (Kishan Gopal and another vrs Lala and others); where it has been decided as per rule laid down in Sarla verma case and subsequently it has been followed by three bench decision in Reshma Kumari case of the said Apex Court. Further, in the case reported in 2012(4) TAC 775 (S.C) (Amrit Bhanu Shali and others vrs. National Insurance Company Ltd.) the principle has been decided as regards passing of multiplier basing on the age of the deceased and not the age of the claimants. Hence, in my view, in this case multiplier is to be fixed basing on the age of the deceased and not the claimants. So far as liability of the Insurance company is concerned according to the learned counsel for the O.P the disclosed cover note is a forged one and the police has seized the insurance policy for National Insurance company any which was valid from 22.6.93 to 21.3.97 and also the accident took place on 24.3.1996 and so, the xerox copy of the cover note has been fabricated. O.P No.2 is not in the picture and hence, O.P.No.2 is not liable. On this point, as per the learned counsel for the petitioners since the O.P.No.2 has filed a petition under Section 170 of the Motor Vehicles Act, he takes all the responsibilities of O.P.No.1. Hence, it is he to establish that the said xerox copy is a fake one. Further, since the xerox copy correlates with the details of the seized insurance as per the policy and hence, it is needless to say that the police has wrongly mentioned the name of the insurance i.e. National Insurance Company in place of New India Assurance Company in the case reported in 2010(4) TAC 306(Ori.) (United India Insurance Company Ltd. vrs. Ullash Chandra Moharane and others) it has been decided that in the written statement the question of fact by way of defence is to be specifically raised and the same denial is not sufficient and the denial must be evasive. Here, O.P. Has only made evasive denial regarding his non-connection to the case but has not substantially established the same. Further in the case reported in 2000 ACJ 1259 (Divisional Manager, United India Insurance Co.Ltd. Vrs. Labanga Sahu and others) it has been decided as follows:

"Liability of Insurance Company-Cover note Presumption as to liability of insurance company-Number of cover note was disclosed, a copy thereof

containing name of insurance company, agent, date of cover note and period of insurance was filed. To except the insurance company from liability he has to rebut the prima facie presumption that the vehicle was validly insured with it."

Here, O.P.No.2 has not discharged his such duties. Further, in the case reported in 2012 (112) AIC 842(PAT.HC) (New India Assurance Co.Ltd. VARANASI, U.P and another vrs. Md.Khalil Nai and others) it has been decided that the plea raised in the cover note is forged, fabricated and fake document. The Tribunal in a summary proceeding no error committed by giving liberty to the insurance company to take legal action, if any, against the owner and driver of the vehicle. Here, the O.P has not collected for the same., Thus, I am of the view to rely on the said xerox copy of the cover note for the concerned O.P.-Insurance Company. The seizure list shows that the offending vehicle was duly Insured under National Insurance Company Ltd. It is found from the claim application that in place of National Insurance Company, New India Assurance Company has been added as party in this case and it is also found from the xerox copy of the insurance policy filed from the side of the applicants that the offending vehicle was insured under New Indian Assurance Company and the date of validity was from 23.3.96 to 22.3.97 but that date is not legible. There is no counter document filed from the side of the O.P.No.2 that the said vehicle was insured under them. Hence, in my view, the said vehicle was insured under O.P. No.2 and the same was valid on the date of accident and hence, O.P.No.2 is liable to pay the awarded amounts to be awarded in this case.

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(Emphasized)

7. In dealing with such issue, the learned Tribunal took into account that the Appellant-Opposite Party No. 2 had not led any evidence to substantiate its stand that the vehicle in question was not insured with the Appellant, in the light of the seizure list indicating that the vehicle was insured with the National Insurance Company. On verification of the insurance policy, the learned Tribunal came to a finding that the offending vehicle was insured with the New India Assurance Company. In the face of such finding, since no counter-evidence was led to rebut the same and the oral testimonies of P.W.2 relating to the present Appellant being the insurer having stood the test of cross- examination, the finding of the learned Tribunal that the present Appellant is the insurer of the offending vehicle does not merit interference by this Court in exercising its appellate jurisdiction.

8. Considering that the deceased girl was aged about 18 years on the fateful date (24.03.1996), evaluation of the quantification of compensation by the Tribunal at Rs.1,52,000/- along with interest at the rate of 7.5% per annum from the date of application i.e., 11. 07.1996 till realisation, on the touchstone of just compensation, this Court does not find any merit in the allegation of illegality in

such quantification, warranting interference. Taking into account the delineation as above, the MACA stands dismissed being devoid of merit.

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

10. In view of the disposal of the MACA, all the pending I.As. stand disposed of.