(2025) 04 OHC CK 1419

In the Orissa High Court

Case No : MACA No.1397 Of 2015

Oriental Insurance Company Ltd., Bistupur Branch Cuttack — APPELLANT

Vs

Budhuni Mahanta Vs — RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2025) 04 OHC CK 1419

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : M.C. Nayak, A. Mohanty, K. Nayak

Final Decision : Disposed Of

Judgement

V. Narasingh, J

1. Since both the appeals arise out of one accident, they were heard together on the consent of the parties and disposed of by this common judgment.

2. Ullasi Mahanta as the wife of late Rabindra Mahanta filed MAC Case No.157/28 of 2014-09 in the Court of learned 4th M.A.C.T., Keonjhar claiming compensation of Rs.2,50,000/- for the death of her husband Rabindra @ Patel Mahanta. Sisters of the deceased filed MAC Case No.250/26 of 2014-11 claiming a compensation of Rs.3,00,000/- on account of the death of their brother Rabindra @ Patel Mahanta.

It is the case of the Claimants that the deceased Rabindra @ Patel Mahanta was the driver of the Ambassador car bearing registration number OR-04-4191 and while he was proceeding from Pallahara to Keonjhar driving the said car, a truck bearing registration number BR-16-H-0057 being driven in a rash and negligent manner came from the opposite side and dashed against the car for which the driver of the car Rabindra @ Patel Mahanta sustained severe head injury on his person and died at the spot. After completion of investigation, police submitted charge sheet against the driver of the offending truck bearing registration number BR-16-H-0057. In the claim application, the owner of the truck Paramjit Singh was arrayed as Opposite Party No.1 and Nageswar Prasad Agarwalla owner of the car was cited as Opposite Party No.2 and the insurer Oriental Insurance Company (Appellant herein) was arrayed as Opposite Parties 3 and 4 in both the claim applications.

The claim was resisted by the Appellant Insurance Company, inter alia, on the ground that the policy in question was never issued since the policy was allegedly issued by "Bistupur" branch of Oriental Insurance Company Ltd. which is a non-existent one. There is no Oriental Insurance Company Ltd. bearing Code No.170356 so also, on the ground of the driving licence being fake inasmuch as it was stated that the licence which was seized of the offending vehicle i.e. driver of the truck Sk. Yasin is a renewed one and the original licence belonged to Allahabad bearing number 31824/88. On verification, the same was found to be a fake one since no such driving licence was stated to be issued by the licencing authority at Allahabad.

The owners of both the offending truck and the car did not file their written statement nor contested the claim case and they were set ex parte.

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

"1.Whether the accident occurred due to rash and negligent driving of driver of the offending truck bearing registration No.BR-16-H-0057 or driver of car bearing registration No.OR-04-4191 and whether the Petitioners are entitled to get compensation ?

2. If so, to what extent and from whom?"

To fortify their submission, both oral and documentary evidence was adduced by both the contesting parties. Wife of the deceased was examined as P.W.2 and O.P.W.1 was examined on behalf of the Insurance Company (Appellants herein) to substantiate their stand of no insurance vis-à-vis the offending vehicle.

On an analysis of the evidence on record, taking into account the stand of no policy having been issued by the Appellant Insurance Company as untenable, learned Tribunal fastened the liability on the Insurance Company and the compensation was assessed on the following heads.

Sl.

No.

Heads

Calculation

(i)

Income per month

Rs.2000/-

(ii)

1/4th of (i) deducted towards personal and living expenses of the deceased

Rs.2000/- - Rs.500 = Rs.1,500/-

(iii)

30% of (ii) added as future prospects

Rs.1500/-

+Rs.450/-= Rs.1950/-

(iii)

Compensation after

multiplier of 18 is applied

Rs.1950/- x 12

x 18 = Rs.4,21,200/-

(iv)

Loss of consortium

Rs.50,000/-

(v)

Loss of estate

Rs.50,000/-

(vi)

Funeral expenses

Rs.5000/-

(vii)

Litigation cost

Rs.500/-

Total compensation awarded

Rs.5,26,700/-

(Rupees five lakhs twenty six thousand seven hundred)

only.

3. Learned counsel for the Appellant-Insurance Company, Mr. Nayak referring to the evidence on record submitted that it is a clear case of non-application of mind by the learned Tribunal and the evidence having been adduced regarding non issuance of the policy in question the Appellant Insurance Company ought not to have been saddled with the compensation. Hence, he seeks interference of this Court and the award to be set aside.

4. Per contra, learned counsel for the Claimants supported the award and submitted that the stand of the Insurance Company is untenable and the quantification of compensation also cannot be questioned since the deceased would come under the category of "Skilled Labour" and as per the Labour Department Notification, his monthly income has been rightly quantified in fact on the lower side.

5. It is apt to note that so far as the insurance policy is concerned, learned Tribunal has referred to an award passed by the learned 2nd M.A.C.T, Northern Division, Sambalpur in MAC Case No.103 of 2000 which arose out of the self-same accident and as the said award was "satisfied" by the Insurance Company and referring to the same learned Tribunal has come to a finding that the stand of the Insurance Company that there was no Branch at "Bishnupur" is untenable. In this context, it would be apposite to refer to the finding of the learned Tribunal regarding veracity of the claim that the insurance policy in question has never issued by the Oriental Insurance Company at "Bistnupur Branch".

"The insurance policy is not proved. It is mentioned in seizure list Ext.3 that the offending truck bearing registration No.BR-16-H-0057 was insured with the Oriental Insurance Company Ltd., Bistnupur Branch having policy No.170356/67096/98 valid till 30.03.1999. Padmanava Das (O.P.W 1) deposed that there is no branch of Oriental Insurance Company Ltd. at Bishnupur. A notice was sent to the owner of the offending truck Paramjit Singh by Oriental Insurance Company Ltd. through this court which returned unserved with endorsement that the addressee is out of station since long. The notice was issued to bring the original insurance policy and driving licence of drift. In order to ascertain the fact as to whether there is a Branch of Oriental Insurance Company Ltd. at Bistnupur. I searched the website of Oriental Insurance Company Ltd. and found that the Divisional Office of Oriental Insurance Company Ltd. Jamshedpur is at Hindustan Building, Bistupur-831001. The web page is down loaded by me and printed. The print out of the web page is kept as a part of the record. So, it is proved that Padmanav Das (O.P.W.1) is speaking falsehood. I should have initiated a criminal case against Padmanava Dash (O.P.W.1) as he being the Administrative Officer of the Oriental Insurance Company Ltd. is speaking falsehood in the Tribunal on oath. He is however saved as he has written in his affidavit as 'Bishnupur' instead of the word 'Bistupur'. I do not know as to whether Oriental Insurance Company Ltd. is promoting such officers who by their falsehood are negating the award in favour of a party for whose benefit the institution is established. He is warned not to adduce any such misleading evidence in future in any court or Tribunal. So, it is proved that the offending truck bearing registration No.BR-16-H-0057 was insured with the Oriental Insurance Company Ltd…."

(Emphasized)

6. Learned Tribunal on consideration of the materials on record and the evidence adduced came to a finding that there is nothing on record to indicate that the driver of the offending vehicle had no valid driving licence. In this context, learned Tribunal has taken note of non-examination of the investigator and has drawn adverse inference.

7. Hence, on a conspectus of the evidence on record the stand of the learned counsel for the Appellant-Insurance Company regarding the offending vehicle not being insured does not stand to reason so also the stand taken that the driver of the offending vehicle did not have a valid driving licence in the light of uncontroverted finding of the learned Tribunal hereinabove referred to that the award arising out of self-same accident in respect of another claimant has been satisfied.

Quantification of compensation is also in the factual backdrop of the case at hand. Balancing the equity inter se this Court is persuaded to hold that reducing the interest component to 6% instead of 7% per annum as awarded and deletion of default clause of 8% would subserve the ends of justice and it is accordingly so directed.

8. The award of compensation of Rs.5,26,700/- is not interfered with while the interest component is reduced from 7% to 6% per annum and direction for payment of default interest of 8% is set aside.

9. The Appellants are directed to deposit the compensation in terms of the award passed by the learned Tribunal and disburse the same amongst the Claimants proportionately as per the award within a period of six weeks from the date of receipt/production of a copy of this judgment.

10. 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.

11. Both the appeals are accordingly disposed of.

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