(2022) 11 OHC CK 0133

In the Orissa High Court

Case No : MACA No. 829 Of 2017

Rahil Bhengra And Others APPELLANT

Vs

Soumya Narayan Mohanty And Another RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Citation : (2022) 11 OHC CK 0133

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

Bench : Single Bench

Advocate : P.K.Nayak, S.Satpathy

Final Decision : Dismissed

Judgement

B. P. Routray, J

1.The matter is taken up through Hybrid mode.

2. Heard Mr.Nayak, learned counsel for the Appellant and Mr.Satpathy, learned counsel for Respondent No.2.

3. Present appeal by the claimants-Appellants is directed against the judgment dated 9th March, 2017 of the IInd Additional District Judge-Cum-Vth M.A.C.T., Rourkela, in M.A.C.Case No.279 of 2010, wherein compensation to the tune of Rs.7,79,000/- along with interest @6% per annum has been directed to be paid by the owner with effect from the date of filing of the claim application on account of injuries sustained by the claimants in the motor vehicular accident on 14th January, 2010 and the Insurance Company has been exempted from its liability.

4. The claimants have come up in appeal challenging exemption of the Insurance Company from the liability to indemnify the compensation amount. Mr.Nayak submits that despite copy of the cover note was produced under Ext.7, the Tribunal has erroneously decided in favour of the Insurance Company exempting their liability.

5. Upon hearing Mr.Satpathy and on perusal of the impugned judgment, it reveals that Ext.7 produced on behalf of the claimants is the photocopy of the insurance cover note and the same was marked with objection by the Insurance Company. On the contrary, Exts.A to D were produced from the side of the Insurance Company to substantiate their denial of issuance of any cover note in favour of the offending vehicle. Ext.A is the cancelled cover note including the customer copy, Ext.B is the previous policy and Ext.C is the subsequent policy issued with effect from 25th January, 2010. The consistent case of the Insurance Company is that, no premium was received from the owner of the offending vehicle to issue the cover note and therefore, no cash receipt was granted in favour of the owner. The Tribunal has elaborately dealt with the evidence produced from both sides in that regard and came to the conclusion that no such cover note was issued in respect of the offending vehicle valid on the date of accident.

6. The owner did not come to contest the claim application. He also remains absent before this Court despite valid service of notice. Admittedly, no cash receipt of the alleged Insurer was produced on record and the original customer copy of the cover note was also brought on record. In such circumstances, the finding arrived by the Tribunal upon analysis of Exts.A, B & C along with Ext.7 that no such cover note was issued in favour of the offending vehicle on 13th January, 2010 cannot be faulted with. Moreover, the offending vehicle was insured with effect from 25th January, 2010 vide copy of the policy under Ext.C. Therefore, the submission of the claimants to saddle the liability on the Insurance Company is not substantiated and as such, the same is rejected.

7. In the result, the appeal is dismissed.

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