

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.503, 27, 568 of 2018

(From the judgments of learned 6th MACT, Karanjia dated 7th September, 2017 passed in MAC No.153 of 2012 and dated 9th March, 2018 passed in MAC No.152 of 2012)

***The Divisional Manager, New India
Assurance Co. Ltd.***

(in MACA No.503 & 568/2018)

Dasaratha Soren and Another

(in MACA No.27 of 2018)

Appellants

-versus-

Dasaratha Soren and Others

(in MACA No.503 of 2018)

Sinigo Marndi and Others

(in MACA No.568 of 2018)

Dildar Hussain and Another

(in MACA No.27 of 2018)

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. Somnath Roy, Advocate in
MACA No.503 & 568 of 2018

Mr. B.B. Singh, Advocate in MACA
No.27 of 2018

For Respondents : Mr. B. K. Mohanty, counsel for
Respondent No.3 and

Mr. B.B. Singh, counsel for
Respondents 1 & 2 in MACA No.503
& 568 of 2018

Mr. Somanath Roy, counsel for
Respondent No.2 in MACA No.27 of
2018

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th March, 2023

B.P. Routray, J.

1. All the three appeals, which are concerning death of two persons in the same accident, are taken up together and disposed of by this common order.

2. MACA No.503 of 2018 is arising out of MAC No.153 of 2012 concerning death of a minor girl, namely Sonali Soren, wherein the tribunal has directed for payment of a sum of Rs.3,34,000/- as compensation. The claimants have preferred MACA No.27 of 2018 against the same award praying for enhancement of the compensation amount.

3. In MACA No.568 of 2018, the award of the tribunal passed in MAC No. 152 of 2012 granting compensation of Rs.6,30,000/- concerning death of the deceased, namely Narendranath Marandi has been challenged.

4. The common case of the claimants in all the cases are to the effect that, on 3rd March 2012, the minor girl Sonali, reading in Class-

VII, went as a pillion rider in the motor cycle driven by her uncle, Narendranath Marandi from Jashipur to their village on NH-49. The offending vehicle, i.e. Bolero bearing registration number OR-02-AK-7718 coming from opposite direction with high speed being driven in rash and negligent manner dashed the motor cycle. Narendranath died on the spot and Sonali died at the hospital. Jashipur P.S. Case No.28 dated 3rd March, 2012 was registered in respect of the accident and the investigation ended with submission of charge-sheet against accused driver of the offending vehicle alleging offences under Section 279/337/338/304-A of I.P.C.

5. The finding of the tribunal with regard to involvement of the offending vehicle and negligence of its driver in causing the accident is not disputed by the insurer – Appellant. The entire dispute raised by the insurance company in MACA No.503 and 568 of 2018 is with regard to validity of the insurance policy and its liability to indemnify the compensation amount. According to the owner, the offending vehicle was having coverage of insurance vide policy No. 5508023 1110100004252 for the period 16th September 2011 to 15th September 2012 and therefore, the insurance company is liable to indemnify him in respect of payment of compensation amount. On the other hand as

per the insurer, the aforesaid policy issued in respect of the offending vehicle was cancelled from the date of its inception much prior to the accident due to dishonor of the cheque given by the owner of the vehicle and therefore, the insurer should not be saddled with any liability for the contract of insurance was no more in subsistence on the date of accident.

6. The tribunal upon adjudication of the controversy have come to the conclusion that though cancellation of policy has been made, but the required intimation thereof was not sent to the owner (insured) and the RTO and therefore, the insurer cannot be absolved of its liability under the policy. The Tribunal then directed for payment of compensation amount by the insurance company.

7. Such finding of the tribunal with direction to pay the compensation amount by the insurance company is the subject matter of challenge in MACA No.503 and 568 of 2018. As per Mr. Roy, learned counsel for the insurer the intimation of cancellation of the policy was sent to the owner as well as the RTO by Registered Post and the tribunal has failed to appreciate the same.

8. On the backdrop of such controversy with regard to cancellation of insurance policy and intimation thereof to the insured as well as the RTO, the relevant documents are found under Ext.C/2, D/2, E/2, F/2, G/2 & H/2. Further, the insurer also examined its officer as O.P.W.1 to depose about cancellation of the policy.

9. The owner (insured) also examined himself as O.P.W.1. Said O.P.W.1 in his evidence has stated that the policy of insurance was validly issued on 16th September, 2011 and he did not receive any intimation of cancellation of the same. As per the evidence of O.P.W.2 – the Branch Manager of New India Assurance Co. Ltd., Cheque No. 576571 dated 15th September 2011 for Rs.7530/- given by the owner was dishonoured as per intimation of the Bank dated 20th January 2012. Thereafter the policy of insurance issued in favour of the offending vehicle was cancelled. The intimation of such cancellation was intimated by Registered Post with A/d on 27th January 2012 to the owner which was received by him on 2nd February 2012 and similarly the RTO, Bhubaneswar received the same on 3rd February, 2012.

10. Before delving into the dispute, it is mentioned here that issuance of policy No.55080231110100004252 on 16th September

2011 by the insurer, i.e. New India Assurance Co. Ltd. is not disputed. So, the onus on proof of cancellation of said policy and the intimation thereof to all concerned is on the insurer. The Supreme Court in the case of *United India Insurance Company Limited vs. Laxmamma and others*, (2012) 5 SCC 234 have set the law at rest on the point of cancellation of policy due to dishonour of cheque. With discussion to earlier decisions rendered in the cases of *Oriental Insurance Co. Ltd. vs. Inderjit Kaur*, (1998) 1 SCC 371, *New India Assurance Co. Ltd. vs. Rula*, (2000) 3 SCC 195 and *National Insurance Co. Ltd. vs. Seema Malhotra*, (2001) 3 SCC 151, the Supreme Court have stated the legal position as follows:

“26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner,

the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

11. This Court in the case of *Rashmita Mohanty and others vs. Santosh Kumar Padhi and another, 2016 (I) OLR 989* has observed as follows:

"Accordingly, no material had been produced by the Insurance Company before the learned Tribunal to show that such intimation regarding cancellation of policy had been given to the concerned Registering Authority. Therefore, in absence of an intimation to the concerned Registering Authority regarding cancellation of the Insurance Policy issued in respect of the offending vehicle, as required under section 147(4) of the M.V. Act, the insurer is liable to pay the awarded compensation amount to the claimants, with the right to recover the same from the owner of the vehicle."

12. As stated earlier Ext.C/2 is the copy of the cancelled policy, Ext.E/2 is the postal receipt sent to Sk. D. Hussain (the owner) and Ext.F/2 is the postal acknowledgment signed by one Ajit Kumar Patra, the recipient. Neither the insurer nor O.P.W.2 say anything about the relationship of Ajit Kumar Patra with Sk. D. Hussain nor did they say in what capacity the Registered letter was received by him. Therefore, the tribunal has rightly held that proof of service of the intimation by Registered Post is not established on record and this court confirms the

same. Similarly, the postal acknowledgement under Ext.H/2 does not disclose anything regarding receipt of intimation of cancellation by the office of the RTO, Bhubaneswar nor does it bear any official seal. O.P.W.2 also has admitted in his evidence regarding the same. Thus on analysis of evidence regarding service of intimation of cancellation of the policy, this court comes to conclusion that the same has not been established on record and the insurer has failed to discharge the onus on his part. So as per the settled law discussed above this court agrees with the finding and direction of learned Tribunal for payment of compensation by the Insurance Company. It is reiterated here that for the failure on the part of the Insurance Company to prove valid service of intimation of cancellation of the policy, it cannot be absolved of its liability in respect of third party as per the contract of insurance. However, since the fact of dishonour of the Cheque in respect of payment of premium by the owner has been established on record by production of the original Cheque under Ext.A/2, liberty is granted in favour of the insurer to recover the compensation amount from the owner (insured).

13. So far as MACA No.27 of 2018 is concerned which has been filed by the claimants for enhancement of the compensation amount in

respect of death of the minor girl, considering the grounds urged on behalf of the claimants, particularly addition of future prospects to the notional income as held by the Hon'ble Supreme Court in the case of ***Kirti and Another v. Oriental Insurance Co. Ltd., (2021) 2 SCC 166***, I am inclined to enhance the same to Rs.5,00,000/-. It is clarified here that keeping in view the age of the deceased as 14 years, future prospect to the extent of 40% is liable to be added against 25% granted by the tribunal and further, the claimants are entitled to loss of parental consortium as well as adequate amount towards general damages.

14. No merit is seen to interfere with the compensation amount quantified by the tribunal in respect of death of Narendranath Marandi as the tribunal by adopting all settled procedure has derived the same.

15. In the result all the appeals are disposed of with direction to the insurer, i.e. New India Assurance Co. Ltd. to deposit compensation amount of Rs.5,00,000/- (five lakhs) for death of Sonali Soren (in MAC No.153 of 2012) and Rs.6,30,000/- (six lakhs thirty thousand) for death of Narendranath Marndi (in MAC No.152 of 2012) before the tribunal along with interest @ 6% per annum from the date of filing of respective claim applications, within a period of two months from

today, which shall be disbursed in favour of the respective claimants on such terms and proportion to be decided by the tribunal.

16. The statutory deposits made by the insurer - Appellant before this court in MACA No.503 of 2018 and 568 of 2018 along with accrued interest thereof be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

M.K. Panda, Sr. Steno

