IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.887 of 2024
CNR No. ODHC010579692024

The Oriental Insurance Co. Ltd, Balangir ..... ***Appellant***

Represented by Adv. - Rimjhimbala Pati

-versus-

Tripura Naik & Ors. ..... ***Respondents***

Represented by Adv. - M/S. Brundaban Rout, Prasanna Ku.Negi, Sandeep Mohanty

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
20.08.2026

Order No.
10.

1. This matter is taken up through Hybrid mode.

2. Heard learned counsel for the Appellant-Insurance Company and the learned counsel for the claimant-Respondents. Perused the appeal memo as well as the grounds taken thereon.

3. By filing the present appeal under Section 173 of the M.V. Act, the Appellant-Insurance Company has approached this Court by filing the present appeal, thereby challenging the judgment dated 23.11.2023 passed in M.A.C No.71/82 of 2016-2022 by the 4th M.A.C.T. Balangir. By virtue of the impugned judgment, the learned Tribunal has awarded a total compensation of Rs.10,89,000/- along with interest @ 6% per annum w.e.f. the date of filing of the claim

application that is 25.07.2016 in favour of the claimant-Respondents.

4. Learned counsel for the Appellant-Insurance Company, at the outset, submitted that the impugned judgment dated 23.11.2023 has been assailed on the ground that the offending vehicle was being driven by its owner, who was not holding a valid driving licence to drive the said vehicle. Therefore, it was contended that the present case is one of driving without a valid driving licence and, since the driver was also the owner of the offending vehicle, the liability could not have been fastened upon the Appellant-Insurance Company. It was further contended by learned counsel for the Appellant-Insurance Company that the deceased was travelling in the offending vehicle on hire. As such, the fastening of liability upon the Insurance Company is seriously disputed, and it was argued that the liability, if any, ought to have been fastened upon the driver-owner of the offending vehicle.

5. Learned counsel for the Appellant-Insurance Company also disputed the quantum of compensation awarded by the learned Tribunal. She submitted that the learned Tribunal has committed an error in assessing the income of the deceased and, consequently, in determining the total compensation payable to the claimants. Learned counsel for the Appellant-Insurance Company further submitted that the monthly income of the deceased has been assessed at Rs.6,600/- by taking his daily income at Rs.220/- as a highly skilled labourer, instead of Rs.213/- per day applicable to a semi-skilled labourer, as per the relevant Government notification. She further submitted that such determination is erroneous, as the deceased was working as a mason and, therefore, his wages ought to have been assessed at the rate applicable to a skilled labourer, i.e.,

Rs.213/- per day, prevailing at the relevant point of time. On such ground, learned counsel for the Appellant-Insurance Company prayed for setting aside the impugned judgement passed by the learned Tribunal.

6. Learned counsel for the Respondents-claimant, on the other hand, supported the judgment passed by the learned tribunal dated 23.11.2023. He further contended that the learned tribunal has not committed any error in fixing the liability on the Insurance Company as the vehicle in question was insured with the Appellant-Insurance Company. It was also contended that while calculating the monthly income of the deceased, the learned Tribunal, taking into consideration the fact that the deceased was a mason, has assessed the income at the rate of highly skilled labourer and, accordingly, the total compensation amount has been determined. In such view of the matter, learned counsel for the Respondents-claimants contended before this Court that the tribunal has not committed any illegality. As such, the impugned judgment does not call for any interference by this Court, at this stage.

7. Having regard to the submissions made by the learned counsel appearing for both sides, on a careful examination of the background facts, and on a scrutiny of the impugned judgment dated 23.11.2023, this Court found that the Appellant-Insurance Company has approached this Court by filing the present appeal challenging the impugned judgment on two grounds; first(1) the fixation of the liability on the Insurance Company as the vehicle in question was being driven by the owner-driver, and, secondly (II) the fixation of the monthly income as well as total quantum of compensation is erroneous as the same has been determined by taking into

consideration the deceased to be a highly skilled labourer instead of a skilled labourer.

8. On a careful analysis of the aforesaid grounds, and the factual and legal background of the present case, this Court is of the view that in any case of this nature, liability should have been saddled with the owner-driver. However, the learned Tribunal has fixed the liability on the Appellant-Insurance Company. In view of the aforesaid position, this Court modifies the award to extent that the Appellant-Insurance Company shall first pay the compensation amount to the claimants, thereafter, they will have the right to recover the amount from the driver-owner, subject to verification of the fact that the owner-driver of the offending vehicle was not having a valid DL. In the aforesaid limited ground, the appeal is remanded to the learned trial court for consideration of grant of the right of recovery in favour of the Appellant-Insurance Company. Let the Appellant-Insurance Company approach the learned tribunal along with a certified copy of today's order within two weeks from today. In such eventuality, the learned Tribunal shall determine the aforesaid questions as expeditiously as possible and consider the right of recovery in favour of the Insurance Company.

9. Further, taking into consideration the submission of the learned counsel appearing for both sides with regard to the quantum of compensation, this Court is of the view that the learned Tribunal has erred in law in calculating the monthly income of the deceased by taking into consideration the wages payable to the highly skilled labourer. So far, the profession of a 'mason' is concerned, they are skilled labourers and as per the notification of the State Government at the relevant point of time they are entitled to Rs.213/-. Therefore,

taking into consideration the wages at Rs.213/-per day, a total compensation amount would be Rs.08,94,000/-. Additionally, the claimants are entitled to get Rs.77,000/- non-pecuniary damages. Therefore, the total amount comes to Rs.9,71,000/-. The Appellant-Insurance Company is directed to deposit the aforesaid compensation amount before the tribunal along with interest @ 6%, if the same has not been deposited in the meantime, within a period of eight weeks from the date of communication of a copy of today's order. The default interest awarded by the learned Tribunal is hereby set aside. It is further directed that on production of a copy of the acknowledgement receipt evidencing deposit of the amount before the learned Tribunal, the Registry of this Court shall release the statutory deposits made by the Appellant-Insurance Company along with accrued interest, on an application being filed by the Appellant-Insurance Company before the Registry of this Court.

10. With the aforesaid directions, the appeal is partly allowed.

(Aditya Kumar Mohapatra)
Judge

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