

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.738 of 2008

***ICICI Lombard General Insurance
Company Ltd., represented through its
Manager (Legal), Link Road, Cuttack*** ***Appellant***

Mr. Jayasankar Mishra, Advocate

-versus-

Kalpana Behera and Others ***Respondents***

Mr. K. Panigrahi, counsel for Respondents 1 to 5

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
31.7.2023

Order No.

10.

1. The matter is taken up through hybrid mode.
2. Heard Mr. J. Mishra, learned counsel for the insurer – Appellant and Mr. K. Panigrahi, learned counsel for the claimant – Respondents.
3. Present appeal by the insurer – Appellant is directed against impugned common judgment dated 29th August, 2008 of learned 5th MACT, Kendrapara passed in MAC Case Nos.14 of 2006, 16 of 2006 and 17 of 2006. Present appeal is in respect of MAC No.14 of 2006, wherein compensation to the tune of Rs.3,00,000/- along with interest @ 7.5% per annum from the date of filing of the claim application has been granted on account of death of deceased Narayan Behera in the motor vehicular accident dated 19th February, 2006.
4. Mr. Mishra, learned counsel submits on behalf of the insurer that the offending vehicle, i.e. Tata Sumo bearing registration number OR-22-0699 was never insured with them at any point of time. In

support of his submissions he takes support from the evidence of O.P.W.1 and 2 as well as Ext.A, Ext.B and Ext.C.

5. Mr. Panigrahi, learned counsel on the other hand submits for the claimants that the insurance policy bearing No.3001/1312336/00/000 was issued by present Appellant in respect of the offending vehicle as per the seizure list prepared by police. Therefore, it is proved that the insurer is denying their liability without any basis.

6. As seen from record, it is the specific case of the insurer that the aforementioned policy was issued in respect of one Ramesh Parasuraman for a Toyota Corolla vehicle on 11th January 2006. Here in the present case, the offending vehicle is a Tata Sumo and the name of its owner is Mrs. Mina Palaur. The copy of policy No.3001/1312336/00/000 issued in the name of Ramesh Parasuraman has been produced in evidence as Ext.A and Ext.B in support of the contention of the insurer by O.P.W.1. Further, O.P.W.1 and 2 have categorically stated in their evidences that the alleged policy stated to have been seized by police is a fake one and no such insurance policy in respect of the present offending vehicle or in the name of Mrs. Mina Palaur had ever been issued either in the month of January 2006 or on any such date covering the date of accident. It is also the specific evidence of the opposite party witnesses that no policy has been issued by the company in the name of Mrs. Mina Palaur at any point of time.

7. As usual, the owner did not come to contest and remained *ex-parte*.

8. The tribunal in the impugned judgment has held that, since the insurer – Appellant has filed a petition under Section 170 of the MV

Act seeking permission to take all such grounds on their behalf, therefore, it is admitted to be valid insurer of the offending vehicle. Such observation of the tribunal is completely erroneous and disapproved by this court. When the insurer has adduced evidence specifically saying that the offending vehicle was not insured with it and its alleged owner had not taken any policy at any point of time from the company and adequate materials have been produced to substantiate the same, the insurer has discharged its burden to justify their contention that they are not valid insurer of the vehicle. In such circumstances no liability can be fixed on the insurer to indemnify the claim amount. As such, the insurer is exempted from its liability for absence of adequate material.

9. In the result the appeal is allowed and the Appellant – insurer is exempted from its liability. It is open for the claimant – Respondents to realize the compensation amount from the owner as per law.

10. The statutory deposit made by the insurer – Appellant before this court along with accrued interest be refunded on proper application.

11. The copies of insurance policies as produced by Mr. Mishra are kept on record.

12. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

Signature Not Verified
Digitally Signed
Signed by: MANAS KUMAR PANDA
Designation: Senior Steno
Reason: Authentication
Location: OHC, Cuttack
Date: 01-Aug-2023 16:22:01

