

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.1130 of 2016

(From the judgment dated 20th August, 2016 of learned 3rd MACT, Jagatsinghpur passed in MAC Case No.197 of 2009)

Latika Sahoo and Others *Appellants*

-versus-

Ramesh Nayak and Others *Respondents*

Advocate(s) appeared in this case:-

For Appellants : Mr. D.K. Mohapatra, Advocate

For Respondents : None

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
12th April, 2023

B.P. Routray, J.

1. The matter is taken up through hybrid mode. ★
2. Heard Mr. D.K. Mohapatra, learned counsel for the claimant – Appellants. None appears on call for the Respondents despite a set of names of Lawyers are indicated in the list.
3. Present appeal by the claimant - Appellants is directed against the impugned judgment dated 20th August, 2016 of learned 3rd MACT, Jagatsinghpur passed in MAC Case No.197 of 2009, wherein the tribunal has dismissed the claim application filed under Section 166 of MV Act.

4. The facts of the case are that the alleged offending truck bearing registration number OR-H-3350 was moving loaded with grocery articles on 15th May, 2009 followed by another truck. The offending truck by negligent driving of its driver fell into a roadside ditch. Thereafter in order to retrieve the offending truck and the goods loaded therein, its driver requested the labourers of the second truck for help. The deceased, one of the labourer of the 2nd truck proceeded with other labourers to retrieve the 1st truck from the ditch and in the process of unloading the goods from the offending truck, it capsized resulting injuries on 2 persons including the present deceased. Both of them succumbed to the injuries in the hospital. The claimants are the dependents of deceased namely, Trilochan Sahoo, who have preferred the claim application for compensation under Section 166 of the MV Act.

5. Admittedly the offending truck was not insured with any insurance company on the date of accident. The owner of the offending truck did not come to adduce evidence and was set ex parte.

6. The tribunal considering the facts of the case came to the conclusion that the alleged accident resulting death of the deceased cannot be considered due to any negligent act of the driver of offending

truck since at the time of accident the offending vehicle was in static position.

7. In view of background facts of the case as stated above, the question falls for determination is that, whether in the circumstances the accident resulting death of the deceased can be said arising out of use of motor vehicle to maintain the claim application under Section 166 of the MV Act ?

8. The accident is dated 15th May, 2009. Section 166 of the MV Act authorizes a victim of an accident of the nature specified in Sub-Section (1) of Section 165 to claim for compensation. Explanation-I of Section 165 prescribes that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 and Section 163A also. The words to be emphasized here in Section 165 are “arising out of the use of motor vehicles”.

9. In the case at hand, admittedly the offending truck was in immobile condition as fell into the ditch. The driver of the offending vehicle was the owner and he requested the deceased to help him for retrieving the vehicle from the ditch. Hon’ble Supreme Court in the case

of *Shivaji Dayanu Patil and Another v. Smt. Vatschala Uttam More*, AIR 1991 S.C. 1769, where the offending truck was in a standing position on account of breakdown, have held that the death of the deceased falls within the purview of the clause “use of motor vehicle”.

In the case of *Kanhei Rana and another v. Gangadhar Swain and Others*, AIR 1993 Ori 89, this court have clarified that, the expression ‘use of a motor vehicle’ covers accidents which occur both when the vehicle is in motion and when it is stationary, and the word ‘use’ has a wider connotation to cover the period when the vehicle is not in motion and is stationary. The vehicle does not cease to be in use when it is rendered immobile on account of a breakdown or mechanical defect or accident.

10. In the case of *Branch Manager, National Insurance Co. Ltd. v. Khus Jahan and Others 2009 (1) T.A.C. 914 (Ori.)*, where the deceased, who is a motor mechanic, died while repairing a stationary truck, this court held that the accident is arising out of use of vehicle.

11. In the instant case at hand undisputedly the deceased was invited by the driver-cum-owner of the offending vehicle to help him for retrieving the offending vehicle from the ditch and in course of such

retrieval the accident took place as the offending truck capsized on the deceased. Therefore keeping in view the extended explanation of the clause “use of motor vehicle”, it is concluded that the deceased died out of such injuries arising out of the use of the offending truck bearing registration number OR-H-3350. The conclusion arrived by the tribunal to the contrary is set aside.

12. In the result the impugned award is set aside and the matter is remitted back to the tribunal for determination of the claim application afresh by adducing fresh opportunities of hearing to all the parties including present Respondent No.2, 3 and 5. The tribunal shall decide the matter in accordance with law as per the discussions made hereinabove on the point of negligence of the driver of the offending truck. The Appellants are directed to appear before the learned tribunal on 1st May, 2023 along with a certified copy of this order. The tribunal shall do well for disposing of the claim application as expeditiously as possible.

13. The appeal is accordingly disposed of.

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

(B.P. Routray)
Judge