



IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.55 of 2009

CNR No. ODHCO10017512009

1) Sumati Panda		Appellants
2) Prasanna Jeeta @ Prasenjeet Panda		Represented by Adv. –
3) Dikhyarani Panda		Mr. Biranchi Narayan
4) Sikhyarani Panda		Rath
5) Mahadevi Panda		

-versus-

1) Mrs. Renubala Acharya		Respondents
2) Divisional Manager,		Represented by Adv. –
New India Assurance Co. Ltd.,		Mr. Netaji Sabyasachi
Berhampur, Ganjam.		Ghose, Advocate for
		Respondent No.2

CORAM:

MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER

02.09.2026

Order No.

I.A. No.1443 of 2023

- 05.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This interlocutory application has been filed at the instance of the Appellants-Claimants with a prayer for condonation of delay of 2 days in filing of the appeal.
 3. Heard the learned counsel for the Appellants as well as learned counsel for the Respondent No.2-Insurance Company.
 4. Considering the grounds taken in the interlocutory application, the delay of 2 days in filing of the appeal is hereby condoned.



5. The I.A. is disposed of.

MACA No.55 of 2009

6. Heard the learned counsel for the Appellants-Claimants as well as the learned counsel for the Respondent No.2-Insurance Company.

7. By filing the present appeal under Section 173(1) of the Motor Vehicles Act, 1988, the Appellants-Claimants have approached this Court thereby challenging the impugned award dated 20.10.2008 passed by the learned 2nd Additional District Judge-cum-M.A.C.T., Berhampur in M.A.C. Case No.55 of 2007.

8. By virtue of the impugned award dated 20.10.2008, the Tribunal has awarded a total compensation of Rs.2,65,000/- as has been determined in para-8 of the common judgment dated 20.10.2008. The Appellants-Claimants being aggrieved by such quantum of compensation have approached this Court by filing the present appeal.

9. The brief fact of the case leading to filing of the preset appeal, in short, is that the Appellants-Claimants are legal heirs of the deceased Kali Charan Panda. On 10.11.2001 at about 11.00 P.M. the deceased Kali Charan Panda was travelling with one Rabindra Kumar Panda, Claimant in M.A.C. Case No.54 of 2007. While they were travelling from Bhubaneswar to Berhampur in a Marshal vehicle bearing registration No.OR-02-J-0808, they met with an accident near Narayani Chhak, as a result of which, the deceased Kali Charan Panda died at the spot due to severe head injury and the other injured Rabindra Kumar



Panda sustained compound fracture and grievous head injuries. The injured was initially shifted to S.C.B. Medical College and Hospital, Cuttack for treatment. Accordingly, the legal heirs of the deceased Kali Charan Panda, who are the Claimants, had approached the Tribunal by filing an application under Section 166 of the M.V. Act claiming a total compensation of Rs.25,00,000/-. The present claim application is in respect of M.A.C. No.55 of 2007. Both the appeals were disposed of vide a common judgment dated 20.10.2008.

10. Being aggrieved by the judgment dated 20.10.2008 passed in M.A.C. Case No.55 of 2007 passed by the learned Second Additional District Judge-cum-Motor Accident Claims Tribunal, Berhampur thereby awarding of a total compensation of Rs.2,65,000/- along with 6% interest per annum, the Appellant-Claimant approached this Court with a prayer for enhancement of the compensation amount on the ground that such compensation amount is too low.

11. Learned counsel for the Appellants-Claimants, at the outset, contended that the deceased Kali Charan Panda was having a monthly income of Rs.30,000/- and he was the Managing Director of Lucky Offset Private Limited as well as of daily newspaper "Anupam Bharat" and "Lucky Furnitures". He further submitted that the learned Tribunal has not taken into consideration the aforesaid facts while assessing the income of the deceased at the time of his death due to motor accident. He further submitted that the Tribunal, only on the basis of the I.T. ReturnS, has assessed the income of the deceased @ Rs.24,800/-



per annum and as rounded up the same to Rs.25,000/- and on the basis of such annual income of Rs.25,000/-, the total compensation has been calculated.

12. Learned counsel for the Appellants-Claimants seriously disputed the method adopted by the learned Tribunal while assessing the monthly as well as annual income of the deceased. In the aforesaid context, learned counsel for the Appellants-Claimants referred to the fact that the deceased was the Managing Director of a Printing Press as well as daily newspaper and a furniture shop. On such ground, learned counsel for the Appellants-Claimants contended before this Court that the income of the deceased has not been correctly assessed. It was also contended that future prospects have also not been considered as laid down by the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Ors*, reported in (2017) 16 SCC 680. So far as the general damages awarded by the learned Tribunal is concerned, learned counsel for the Appellants-Claimant contended that since there are five Claimants, the damages should have been awarded at Rs.2,00,000/- whereas the Tribunal has committed an error by granting only Rs.9,500/-.

13. While disputing the income assessed by the learned Tribunal while determining the total compensation amount, learned counsel for the Appellants-Claimants did not dispute the multiplier applied by the learned Tribunal. However, learned counsel for the Appellants-Claimants seriously disputed the deduction of $\frac{1}{3}^{\text{rd}}$ towards the expenses which the deceased



incurred while maintaining himself and his family. In view of the aforesaid factual position as well as taking this Court through the various materials on record and the finding of the learned Tribunal in the impugned judgment, the learned counsel appearing for the Appellant-Claimants contended before this Court that the income of the deceased would have been much more at the time of accident and that he had a bright future ahead. Since the Tribunal has not taken into consideration the aforesaid aspect while determining the monthly as well as the annual income of the deceased, the learned counsel for the Appellants-Claimants contended that the amount which has been awarded by the learned Tribunal is not only grossly erroneous, but also highly illegal and not in conformity with the law laid down by the Hon'ble Supreme Court and by this Court in similar nature of cases. In such view of the matter, learned counsel for the Appellants-Claimants contended that the impugned judgment of the Tribunal is liable to be interfered with.

14. Learned counsel appearing for the Respondent No.2- Insurnace Company, on the other hand, supported the impugned judgment of the Tribunal. While supporting the judgment of the Tribunal and fixation of the total quantum of compensation, learned counsel for the Respondent No.2-Insurance Company submitted before this Court that the Tribunal has acted on the basis of the evidence on record and, accordingly, on the basis of the Income Tax Return of the deceased, the learned Tribunal has arrived at Rs.25,000/- as annual income of the deceased at the



time of the accident. While doing so, the learned Tribunal has not committed any illegality. He further contended that the claim of the Appellants-Claimants for enhancement of the compensation amount is not based on the evidence on record. On such ground, learned counsel for the Respondent No.2-Insurance Company submitted before this Court that the present appeal being devoid of merit, is liable to be dismissed.

15. Having regard to the submissions made by the learned counsels appearing for the respective parties, further on a careful consideration of the rival contention, on a close scrutiny of the impugned judgment as well as the materials on record, this Court found that there exists no dispute with regard to the factual aspects of the matter. The bone of contention between the Appellants and the Insurance Company is with regard to the fixation of the total quantum of compensation. It is also not disputed that the deceased, at the time of his death due to motor accident, was the Managing Director of the Printing Press as well as the local daily newspaper and that he was having income from furniture business also. That said, the evidence adduced with regard to the income of the deceased does not give a clear picture of his income and although the Claimants-Appellants have claimed higher compensation, they are unable to bring evidence on record to justify the same, especially the evidence with regard to the actual income of the deceased at the time of accident. Therefore, the learned Tribunal has taken into consideration the Income Tax Returns of the deceased and, accordingly, arrived at a sum of Rs.25,000/- as his annual



income.

16. This Court, on a careful analysis of the entire factual scenario as well as the evidence led by the Claimants with regard to the avocation of the deceased, is of the view that the Tribunal misdirected itself by entirely relying upon the Income Tax Returns of the deceased. While calculating the annual income of the deceased, the learned Tribunal should have also taken into consideration the activities of the deceased and the avocation which he was involved in. It was also contended by the learned counsel for the Appellants-Claimants that the deceased had taken a loan for the purpose of his business. Therefore, his Income Tax Return does not give a clear picture with regard to his income. In the aforesaid factual background, this Court is of the view that the compensation awarded by the learned Tribunal in the preset case is definitely on the lower side and the same does not reflect the correct income of the deceased at the time of the accident.

17. Therefore, this Court is now required to assess the correct income of the deceased at the time of his death. Although the avocation of the deceased has been mentioned, however, there is no clear evidence with regard to the monthly or annual income of deceased, except the Income Tax Returns filed on behalf of the Claimants. The Income Tax Returns cannot form the sole basis for consideration of the income of the deceased at the time of his death. In view of the aforesaid factual position, this Court is of the view that it would be desirable to dispose of the matter amicably, with the permission of the parties, in the spirit of Lok



Adalat, especially considering the fact that the appeal is of the year 2009.

18. Accordingly, this Court requested the learned counsel for the parties to settle the dispute amicably. Learned counsel for the Appellants-Claimants contended that the Appellants-Claimants would be happy if they are paid a further consolidated sum of Rs.5,00,000/- taking into consideration the income of the deceased and the loss of future prospects. Learned counsel appearing for the Respondent No.2-Insurance Company, on the other hand, left the matter to the discretion of this Court and submitted that taking into consideration the evidence adduced by the Claimants with regard to the income of the deceased, whatsoever amount is decided by this Court would be accepted by the Respondent No.2-Insurance Company.

19. Taking into consideration the offer given by the learned counsels appearing for both the sides, further on a careful examination of the factual background of the present case, this Court is of the view that the total consolidated amount of Rs.4,50,000/-, if paid by the Insurance Company to the Appellants-Claimants, would be just, fair and proper and the same would be in the larger interest of justice.

20. Accordingly, the appeal is being disposed of by modifying the awarded amount by directing payment of a further consolidated amount of Rs.4,50,000/- (Rupees four lakhs fifty thousand) in addition to the amount already awarded, which is stated to have been paid to the Claimants. The further consolidated amount of Rs.4,50,000/- be deposited by the



Respondent No.2-Insurance Company with the Tribunal within a period of eight weeks. After such deposit, the same shall be disbursed in favour of the Appellants-Claimants in terms of the judgment of the learned Tribunal. The right of recovery granted by the learned Tribunal is hereby affirmed.

21. With the aforesaid modification, the appeal stands partly allowed.

(A.K. Mohapatra)
Judge

Debasis

Signature Not Verified

Digitally Signed
Signed by: DEBASIS AECH
Designation: SECRETARY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 09-Sep-2026 11:03:26

