**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.1 of 2020**

| | | |
|---|---|---|
| ***The Divisional Manager, Oriental Insurance Company Ltd.*** | .... | ***Appellant*** |

Mr. Mohan Chandra Nayak, Advocate

*-versus-*

| | | |
|---|---|---|
| ***Smt. Sitamani Marandi @ Soren and Others*** | .... | ***Respondents*** |

Mr. Pratap Kumar Behera, counsel for Respondent Nos.1 to 3

**CORAM:**
**SHRI JUSTICE B. P. ROUTRAY**

**ORDER**
**07.02.2022**

**Order No.**

04. 1. Heard Mr. M.C. Nayak, learned counsel for the insurer – Appellant and Mr. P.K. Behera, learned counsel for the claimant – Respondent Nos.1-3.

2. The present appeal by the insurer is against the impugned judgment dated 3rd October, 2019 of the learned 1st MACT, Mayurbhanj, Baripada in MAC Case No.109 of 2017.

3. In the impugned judgment, learned tribunal upon adjudicating the dispute has directed for payment of compensation to the tune of Rs.13,61,248/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 5th December, 2017 on account of death of the deceased in the motor vehicular accident dated 11th March, 2017.

4. The case of the claimants is that while the deceased was returning to house, a motorcyclist coming in high speed with rash and negligent manner dashed against him resulting his death at the spot. It is further contended that the deceased was earning his livelihood by working as a mason.

5. Mr. Nayak, learned counsel for the insurer submits that in absence of proof of income of the deceased as a mason the learned Tribunal has calculated his monthly income at Rs.6,405/-, which is unacceptable. It is further argued that the driver of the offending motor cycle since had no license for driving the insurer cannot be saddled with any liability.

6. Upon hearing the parties, both the grounds as advanced by the Appellant are not found sustainable. It is for the reason that as seen from the impugned judgment, learned tribunal has calculated the monthly income taking the daily wage of the deceased as an unskilled labour prevalent during that relevant year and further, the tribunal has given right of recovery in favour of the insurer.

7. However, in course of hearing both parties agree to reduce the compensation to Rs.12,50,000/- with interest @ 6% per annum.

8. Accordingly the appeal is disposed of on the aforesaid terms with a direction to the insurer – Appellant to deposit a sum of Rs.12,50,000/- along with interest @ 6% per annum with effect from 5th December, 2017, i.e. the date of filing of the claim application within a period of two months from today, where-after the same shall be disbursed in favour of the claimants in such terms and conditions to be fixed by the learned Tribunal including the condition that 50% of

the entire amount shall be deposited in the name of Claimant No.2 – Kumari Saraka Marandi (the minor daughter) till she attains majority. The right of recovery granted in favour of the insurer by the learned Tribunal is left undisturbed.

9. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

***( B.P. Routray)***
***Judge***

M.K.Panda