

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1 of 2019

(From the judgment dated 24th September, 2018 passed by Sri Ananda Chandra Behera, LL.B., Member, 2nd MACT (Southern Division), Berhampur, Ganjam in M.A.C. Case No.232 of 2012 [157/2012-GDC])

**The Divisional manager, New India
Assurance Company Limited**

.....

Appellant

Versus

Brushadhwaja Gouda and Another

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant : Mr. G.P. Dutta, Advocate

For Respondents : Mr. D.C. Dey, Advocate for
Respondent No.1

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT

13th July, 2022

B.P. Routray, J.

1. The insurance company has preferred this appeal against the impugned judgment dated 24th September, 2019 of the learned 2nd M.A.C.T., Berhampur passed in M.A.C. Case No.232 of 2012 (157/2012-GDC).

2. The facts of the case reveal that the deceased namely, Sabitri Gouda, a woman aged about 66 years died in the motor vehicular accident on 2nd November, 2011 when the offending truck bearing registration number AP-31-X-6273 dashed against her while she was going by walk in the morning at around 8.30 am on NH-5 near village Agastinuagaon under Ganjam Police Station.

3. The claimant who is present Respondent No.1 filed the claim application for compensation. The learned Tribunal upon adjudication, directed for payment of compensation to the tune of Rs.2,15,000/- along with interest @ of 7% per annum, calculated at Rs.65,000/-. The Tribunal has further directed not to deduct any amount of income tax from the interest amount.

4. Present Appellant who is the insurer of the offending truck, without denying its liability to indemnify the compensation amount, has come up in appeal to challenge the award mainly on three grounds;

- i) First, it is contended that counting of the amount of monthly income at Rs.3000/- of the deceased on the date of accident is erroneous;

- ii) Secondly, the claimant being the nephew of the deceased Sabitri Gouda, i.e. her husband's brother's son, is not a dependent and as such is not entitled for getting compensation; and
- iii) Thirdly, the direction of the learned Tribunal not to deduct income tax from the interest amount is against the statutory provisions contained in Section 194 A of the Income Tax Act, and as such is not sustainable in the eye of law.

5. With regard to the first ground of challenge about income of the deceased, as it is seen from the impugned judgment that, the Tribunal in absence of sufficient material towards proof of income of the deceased, took her as a non-earning person and based on the principles decided in the case of *Laxmi Devi and Others v. Mahammad Tabbar and Another, 2008 (2) TAC 394* fixed the income at Rs.3000/- per month. Therefore, no illegality is seen in the approach of the learned Tribunal in counting the income of the deceased at such rate of Rs.3000/- per month and the contention of the Appellant against the same is rejected.

6. With regard to dependency of the claimant, it is contended by the insurer that he admittedly not being son, daughter or spouse of the

deceased, but being the son of the brother of the husband of the deceased, is no way connected with the deceased for any dependency.

Before answering to such contention, the law propounded in the case of *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*, AIR 1987 SC 1690 needs to be reproduced, which is as follows:-

“Every legal representative, who suffers on account of death of a person due to a motor vehicular accident; should have a remedy for realization of compensation. The provisions of M.V. Act, for realization of compensation are in consonance with the principles of Law of Torts that, every injury must have a remedy. But it is for the Tribunal to decide the compensation which appears to it to be just and to specify the person or persons to whom the compensation shall be paid.”

7. In the case of *National Insurance Company Ltd. V. Birender and Others*, (Civil Appeal Nos.242 & 243 of 2020 disposed of on 13th January, 2020 the Supreme Court has held as follows:-

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal

representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the facts whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. xxxxx.”

8. Further in the case of *N. Jayashree and Others v. Choramandalam Ms General Insurance Company Ltd., AIR 2021 SC 5218* where one of the claimant was the mother-in-law of the deceased, the Hon’ble Supreme Court has observed that, “*we have no hesitation to hold that there is a legal representation under Section 166 of the MV Act and is entitled to maintain the claim petition.*”

9. In the instant case it is the specific evidence of the claimant that the deceased being issueless was staying in the common mess with the claimant and was contributing to the family out of her earning from milk business. The further evidence is to the effect that the claimant performed the obsequies ceremony of the deceased and also been observing the ‘Shradha’ ceremony in every year after death of the deceased. Therefore the facts in evidence are clear to the extent that the claimant is the legal representative and dependent of the deceased.

Therefore, the finding of the learned Tribunal in favour of the claimant in this regard cannot be faulted with.

10. Regarding direction of the Tribunal not to deduct income tax amount on the interest payable on the compensation amount, it is seen that the learned Tribunal relied on the theory that it will be unjust and cruel to ask the helpless victims to first pay the income tax on the interest of the awarded amount, which is given on account of delayed payment, for which the claimants are not responsible and then to file the income tax return and claim the refund.

11. It is important here to refer Section 194-A of the Income Tax Act. As per Section 194-A, tax is to be deducted at the time of payment or credit of interest. Clause (ix) of sub-section (3) of Section 194-A which came into force with effect from 1st June, 2003, reads as under:-

“to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amount of such income credited or paid during the financial year does not exceed fifty thousand rupees.”

12. Thus, the provisions of Section 194-A of the Income Tax Act have been specifically made applicable to the interest payable on the amount of compensation awarded by the Motor Accident Claims Tribunal. In other words, the provision is clear to the effect regarding payment of income tax on the interest amount payable on the compensation amount. When tax is payable by operation of the statutory provision, there is no illegality in deducting the same by the payer at the time of payment. As such, the direction of the learned Tribunal not to deduct the income tax amount appears unwholesome and the same is set aside.

13. In the result the direction for payment of compensation of Rs.2,15,000/- along with interest @ 7% per annum is confirmed, but the direction of the Tribunal not to deduct income tax amount by the insurer on the interest payable is set aside. The appeal is allowed to the above extent and the insurer-Appellant is directed to deposit the awarded amount along with interest before the Tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on such terms and proportion as directed by the Tribunal in the impugned judgment.

14. The statutory deposit made by the Insurer-Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

(B.P.Routray)
Judge



M.K.Panda/Sr. Steno