IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.996 of 2017

National Insurance Company Limited .... ***Appellant***
Mr. D.K. Patra, Advocate on behalf of Mr. G. Mishra, Senior Advocate

-versus-

Kuni Sahu and others .... ***Respondents***
Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
23.11.2022

Order No.	
10.	1. Heard Mr. D.K. Patra, learned counsel on behalf of Mr. G. Mishra, learned Senior Advocate for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for the Respondent Nos.1 to 3-claimants.

2. Present appeal by the insurer is directed against the judgment dated 10.05.2017 of learned 2nd M.A.C.T. (Southern Division), Berhampur, Ganjam in M.A.C. Case No.10/2016 (171/2015-GDC), wherein compensation to the tune of Rs.44,08,124/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e. 18.06.2015 on account of death of the deceased in the motor vehicular accident dated 30.03.2015.

3. Mr. D.K. Patra, learned counsel submits on behalf the insurer that the procedure adopted by the Tribunal in determining the loss

of dependency is faulty one and further, no deduction towards personal expenses has been made.

4. Upon hearing Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 to 3 and perusal of the impugned judgment, it reveals that the deceased was 44 years of age at the time of accident and according to the claimants, he was earning Rs.25,000/- per month. However, P.W.1-the widow, has stated in her evidence that her husband was earning Rs.40,000/- to Rs.50,000/- per month having rice (broken rice) business and also from the share towards running of a rice hauler machine along with his brothers.

5. The documents produced under Ext.9 series and 10 are the LIC bonds. It is revealed there-from that, that an amount of Rs.2,37,366/- were paid per annum towards premium of those LIC policies. What the learned Tribunal did is, he took such total amount of premium to the tune of Rs.2,37,366/- paid per annum towards loss of annual dependency and added Rs.40,000/- to it derived from the share of running of the hauler machine. For deriving income and loss of dependancy from hauler machine, the Tribunal concluded about monthly income of Rs.5000/- from the share towards hauler and deducted 1/3rd from the said income only. The Tribunal thus confined the loss of dependency to Rs.40,000/- per annum from the source of hauler machine. As stated earlier, Rs.2,37,366/- paid towards LIC premium by the deceased, has been directly counted towards loss of dependency without determining the actual income of the deceased. Such

approach and procedure adopted by the learned Tribunal appears erroneous and needs interference.

6. It is true that no documentary evidence has been adduced regarding income of the deceased. As per evidence of the widow (P.W.1), the deceased was earning Rs.40,000/- to Rs.50,000/- per month. Her evidence regarding payment of LIC premium of Rs.2,37,366/- is supported with documents. Her evidence towards receipt of Rs.5000/- per month from the brothers of the deceased from the rice hauler machine is confirmed in her cross-examination. Therefore, her evidence regarding income of the deceased to the tune of Rs.40,000/- to Rs.50,000/- per month is though not proved, but keeping in view such materials brought in course of her evidence coupled with the place of residence of the deceased and other circumstances, the income of the deceased can be assessed at Rs.35,000/- per month by doing some guess work. Accordingly, the income of the deceased is fixed at Rs.35,000/- per month.

7. The number of dependants being three, 1/3rd of the income is liable to be deducted towards personal expenses. Thus, the annual loss of dependency is counted at Rs.2,80,000/-. Applying multiplier '14', total loss of dependency comes to Rs.39,20,000/-. It needs to be mentioned here that though future prospects is liable to be added to the income of the deceased, but in absence of any appeal from the side of the claimants, the same is not granted. Adding Rs.1,20,000/- towards consortium for the widow and two children and general damages to the tune of Rs.30,000/-, the total

compensation amount is determined to Rs.40,70,000/-, payable along with interest @6% per annum.

8. With regard to liability, the insurer-Appellant has filed I.A. No.890/2018 by adducing the copy of DL of the accused-driver with submission that he was not authorized to drive the offending vehicle, which was a heavy goods carriage vehicle. The copy of the DL of the accused-driver, namely, Md. Jabbar, reveals that he was authorized to drive LMV (commercial) only on the date of accident. As such, violation of policy conditions being seen, the insurer is granted with right of recovery of the compensation amount from the owner in accordance with law.,

9. In the result, the appeal is disposed of with a direction to the Appellant – Insurance Company to deposit the modified compensation amount of Rs.40,70,000/- (rupees forty lakhs seventy thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 18.06.2015 within a period of two months from today.

10. The entire compensation amount shall be disbursed among the claimants-Respondents No.1 to 3 in equal share and 70% of the amount fall due to the share of Respondent No.1-Kuni Sahu and Respondent No.2-Rakesh Kumar Sahu be kept in fixed deposits separately in any nationalized Bank for a period of five years and the entire amount fall due to the share of minor Respondent No.3-Roshan Kumar Sahu be kept in fixed deposit in any nationalized Bank till he attains majority or for a period of five years, whichever is later.

11. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

12. The copies of the depositions and documents filed by Mr. Patra in course of hearing are kept on record.

13. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik