

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.785 of 2015

National Insurance Company Ltd.
through its Officer-in-Charge ***Appellant***

Mr. J.R. Deo on behalf of G. Mishra, Sr. Advocate

-versus-

B. Venkata Ramana and Others ***Respondents***

Ms. S. Das, counsel for Respondents 1-3

Mr. Kalpataru Panigrahi, counsel for Respondents 6 & 7

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
5.9.2022

Order No.

10. 1. The matter is taken up through hybrid mode.
2. Heard Mr. J.R. Deo on behalf of Mr. G. Mishra, learned senior counsel for the insurer – Appellant, Ms. S. Das, learned counsel for claimant – Respondent Nos.1-3 and Mr. K. Panigrahi, learned counsel for claimant – Respondents 6 & 7.
3. It is submitted that Respondent No.5, the father of the original deceased who died in the accident, died in the meantime during pendency of the appeal. Further Respondent No.4 did not chose to appear despite service of valid notice on her.
4. Present appeal by the insurer is directed against the impugned judgment dated 22nd November, 2014 of the learned ADJ-cum-MACT, Jeypore passed in MAC Case No.96 of 2010 wherein compensation to the tune of Rs.62,12,688/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 31st

August, 2006 has been granted on account of death of deceased B. Sarveswar Rao in the motor vehicular accident dated 4th March, 2006.

5. Originally the claim application was filed by the parents, widow and minor son of the deceased. During pendency of the claim application the mother died and she was substituted by her major sons and daughter, who were married and they are present Respondent Nos.1 to 4 in the appeal. During pendency of the appeal before this court, present Respondent No.5, the father also died. The tribunal while granting compensation, directed for apportionment of the compensation amount in certain shares in favour of present Respondent Nos.1 to 4. However, no compensation was granted in favour of Respondent No.5.

6. Mr. Deo, learned counsel contends on behalf of the Appellant – insurer that while assessing income of the deceased, the tribunal has committed gross error by taking the salary for the month of February, 2006 only leaving the entire income per annum from the fray, which was brought on record by the claimants.

7. Mr. Panigrahi, learned counsel has filed a cross-objection on behalf of Respondent Nos.6 & 7, who are the widow and minor child of the deceased, on the ground that apportionment of the compensation amount in favour of the married brothers and sister of the deceased who were not the original claimants but have been added by substitution upon death of the mother, is not permissible.

8. First dealing with the challenge advanced by the insurer with regard to quantum of compensation, it is seen that the entire annual income of the deceased from the month of March, 2005 to February,

2006 has been brought on record by the claimants. The said annual income comes to the tune of Rs.2,31,500/-. But the tribunal leaving the same without any discussion, has picked up the salary paid for the month of February, 2006 under Ext.4 and determined the monthly income to the tune of Rs.40,078/-. He then accordingly proceeded to determine the loss of dependency.

9. The subject of challenge to the same by the insurer is to the effect that such salary for the month of February, 2006 includes payment of commission to the tune of Rs.27,498/- which is not fixed for every month and varies from Rs.1200/- onwards for different months. Therefore, it would be apposite to calculate the annual income which is available on record. This submission is found with substance. It is for the reason that as per Ext.4 the basic pay is Rs.6,530/- and the commission is Rs.27,498/-. The fact of annual income of the deceased from March, 2005 to February, 2006 to the tune of Rs.2,31,500/- is admitted by the claimants. The aforesaid amount of annual income is excluding the income tax. In other words, if said annual income is divided by 12 to determine the monthly income, it comes to Rs.19,291/- and against the same, the tribunal has calculated the monthly salary at Rs.40,078/- without any valid reason. Therefore, the same needs to be interfered with and to be modified. Accordingly, by calculating the annual income at Rs.2,31,500/- and adding 40% thereto towards future prospects in terms of the principles decided in the case of *National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680*, it comes to Rs.3,24,100/-. It is relevant to note here that in the instant case where the salary of the deceased is not fixed and varies due to grant of commission granted to

him in each month, the future prospects to the extent of 40% needs to be added despite he was having a fixed job.

10. Accordingly deducting 1/3rd towards personal expenses, the loss of annual dependency comes to Rs.2,16,066/-.

11. Here it is important to discuss about the contention raised by Mr. Panigrahi on behalf of Respondent No.6 and 7 that other claimants are not entitled for any share in the compensation. Admittedly, the substituted respondents, viz., Respondent Nos.1 to 4 are the married brothers and sister of the deceased and they were not dependent on the income of the deceased. They may be entitled to succeed their mother in her property but as she died during pendency of the claim application, therefore, these substituted respondents have no right to get any share in the compensation due to death of the deceased in a motor vehicular accident. It is accordingly held that Respondent Nos.1 to 4 are not entitled for any compensation in their share. Further, no compensation has been awarded in favour of the father – Respondent No.5 who also died during pendency of the appeal. As such the dependents being confined to the widow and minor child, i.e. Respondent Nos.6 and 7, the amount deductible towards personal expenses is counted as 1/3rd in terms of the principles decided in the case of *Pranay Sethi* (supra).

12. Adding Rs.40,000/- each towards consortium to Respondent Nos.6 and 7, Rs.30,000/- towards general damages after determining total loss of dependency by applying multiplier '17', the total compensation is determined at Rs.37,83,122/- (i.e. Rs.2,16,066 x 17 + Rs.1,10,000/-).

13. Since no dispute with regard to liability of the insurer is raised, the aforesaid amount is liable to be paid by the insurer – Appellant along with interest @ 6% per annum.

14. In the result, the appeal is disposed of with a direction to the insurers – Appellant to deposit the total compensation amount of Rs.37,83,122/- (thirty-seven lakh eighty-three thousand one hundred twenty-two) along with interest @ 6% per annum from the date of filing of the claim application, i.e. 31st August, 2006 before the tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent Nos.6 & 7, namely Smt. B. Sirisha and Master B. Gopal Krishna @ B. Gopi Chand, represented by his mother guardian B. Sirisha, on such terms and proportion to be decided by the learned Tribunal.

15. The statutory deposit made by the insurer - 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

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

(B.P. Routray)
Judge