

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.67 of 2018

Executive engineer, TED, Appellants
Chainpal, CESU & Ors.

-versus-

Laxmipriya Sasmal & Anr. Respondents

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
27.10.2022

Order No

- 05.** 1.This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Bibudhendra Dash, learned counsel appearing for the Appellants and Mr. Basudev Barik, learned counsel appearing for the Respondent No. 1.
3. This appeal has been filed by the Appellants challenging the judgment and decree dtd.11.1.2017 passed by the learned Addl. District Judge, Talcher in RFA No.09 of 2017 and judgment and decree dtd.02.05.2016 passed by the learned Civil Judge, Sr. Division, Talcher in C.S. No.248 of 2014.
4. It is submitted that learned trial court vide its judgment and decree dtd.02.05.2016 while decreeing the suit filed by the Plaintiffs/Respondents, directed the Appellants to pay compensation amount of Rs.11,00,000/- (Rs. Eleven lakhs) with pendentilite interest @ 12% per annum and future interest @ 6% per annum till the date of actual realization.

5. It is submitted that challenging the said Judgment and decree passed by the learned Trial Court in C.S. No.248 of 2014 the Appellants preferred RFA No.09 of 2017. It is submitted that learned trial court without considering the grounds taken by the Appellants in its proper perspective while allowing the appeal in part, only interfered with the rate of interest so allowed by the learned Trial Court only.

6. It is submitted that learned 1st Appellate Court while upholding the compensation at Rs.11,00,000/- (Rs. Eleven lakhs), directed for payment of interest @ 7.5% per annum from the date of institution of the suit till its realization.

7. Even though the appeal in question has not yet been admitted, but on the consent of the learned counsel appearing for the Parties, the same was taken up for final hearing.

8. Learned counsel for the Appellants submitted that in view of the decision reported in *AIR 2011 SC (Civil) 164*, the assessment of compensation at Rs.2.5 lakhs towards loss of pleasure is not justified. It is also submitted that both the courts below did not take into consideration the principle of strict liability in its proper perspective and negligence on the part of the deceased was never taken into consideration.

9. It is also submitted that the rate of interest allowed ultimately by the learned 1st Appellate Court at Rs.7.5% per annum is on the higher side. It is also submitted that in view of the reported decision as cited (supra) the Respondents will be entitled to get an award of Rs.1,00,000/- (Rs. One lakh) towards loss of pleasure instead of 2.5 lakhs. Learned counsel for the Appellants accordingly submitted that the impugned judgment and decree passed by the learned trial

court and confirmed by the appellate court with certain modification with regard to rate of interest needs interference of this Court in the present appeal.

10. This Court after hearing the submission made by learned counsel for the Appellants when confronted the learned counsel appearing for the Respondents with regard to amount of compensation awarded towards loss of pleasure, learned counsel appearing for the Respondents submitted that this Court may reduce the same to Rs.1,00,000/- (Rs. One lakh). Learned counsel for the Respondents also gave his consent for reduction of the rate of interest as deem fit and proper by this Court.

11. Having heard learned counsel for the Parties and after going through the materials available on record as well as the submission made by the learned counsel for the Parties, this Court while interfering with the judgment and decree passed by the learned courts below held that the Respondents will be entitled to get compensation amount of Rs.9,50,000/- (Rs. Nine lakh fifty thousand) with interest @ 6% from the date of institution of the suit till its realization. Consequently the appeal is allowed in part without cost with the aforesaid modification.

12. Pronounced in the open Court, this appeal is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha