

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.686 of 2008

MACA No.686 & 685 of 2008

***National Insurance Company Ltd.,
represented through its Officer-in-
Charge, Orissa Legal Cell, Cuttack (in MACA No.686/2008)***

Smt. Laxmi Behera and Others (in MACA No.685/2008)

.... Appellants

Mr. K.J. Prakash on behalf of Mr. S.K. Padhi, Advocate
(in MACA No.686/2008)

Mr. S.K. Mohanty on behalf of Mr. Sarat Kumar Mohanty,
Advocate (in MACA No.685/2008)

-versus-

Smt. Laxmi Behera and Others (In MACA No.686/2008)

Baikunthanath Sahoo and Another (In MACA No.685/2008)

.... Respondents

Mr. S.K. Mohanty on behalf of Mr. Sarat Kumar Mohanty,
counsel for Respondents 1-7 (in MACA No.686 of 2008)

Mr. K.J. Prakash on behalf of Mr. S.K. Padhi,
counsel for Respondent No.2 (in MACA No.685 of 2008)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

3.11.2022

Order No.

15. 1. The matters are taken up through hybrid mode.
2. Heard Mr. K.J. Prakash on behalf of Mr. S.K. Padhi, learned counsel for the insurer, i.e. National Insurance Company Ltd. and Mr. S.K. Mohanty, learned counsel for the claimants. None appears on call for the owner – Respondent despite the name of set of lawyers is indicated in the list.

3. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.

4. In MACA No.685 of 2008, the Appellants being claimants are exempted from payment of court fee for the time being.

5. Both the appeals are against same impugned judgment dated 14th August, 2008 of learned 1st MACT, Keonjhar passed in MAC Case No.129 of 1997, wherein compensation to the tune of Rs.90,120/- along with interest @ 9% per annum from the date of filing of the claim application has been granted on account of death of deceased Kirtan Behera in the motor vehicular accident dated 16th February, 1997.

6. In MACA No.686 of 2008, the insurer has questioned the award. MACA No.685 of 2008 has been preferred by the claimants praying for enhancement of the compensation amount.

7. It is submitted on behalf of the insurer that the deceased Kirtan Behera was a gratuitous passenger travelling in the offending truck bearing registration number OR 09 6341 at the time of accident. Since he was moving in the offending truck as a member of bride-groom party, the insurer is not liable to indemnify the compensation amount.

8. It is seen from the impugned judgment that no evidence has been adduced from the side of the insurer in this regard. The consistent case of the claimants is that the deceased was a Cooli (labourer) of the offending truck and the accident took place due to rash and negligent driving of the driver causing death of the deceased.

9. Two witnesses were examined from the side of the claimants and the copies of police papers under Ext.1 to 5 were filed in support of their stand. Perusal of the copies of evidence of P.W.1, the copy of which is produced by Mr. Prakash in course of hearing, reveal that the deceased was traveling in the offending truck as a Cooli at the time of accident. This has been categorically stated by both the witnesses and nothing is found from their cross-examination to disbelieve the same. Therefore, in absence of any rebuttal material against such stand of the claimants, no point is made in favour of the insurer to treat the deceased as a gratuitous passenger.

10. It is further seen that the tribunal treating the deceased as an unskilled labourer has counted his monthly income as Rs.1040/- at the rate of Rs.40/- per day (excluding four Sundays from the month). The date of accident being 16th February 1997, no illegality is found in such approach of the tribunal to compute the income and loss of dependency.

11. The claimants in their appeal have prayed to enhance the compensation amount by counting the income at Rs.3000/- per month. But no such material or reason is seen in support of the same. Moreover, when the case of the claimants is that the deceased was working as a Cooli, the assessment of monthly income arrived by the tribunal is found reasonable and logical. It is further seen that the tribunal has neither added any amount towards future prospects to the income of the deceased nor granted any amount towards consortium or general damages. However, without computing in detail, considering the date of accident and the present age of the claimants

who are wife, children and mother of the deceased, the insurance company is directed to pay a further consolidated sum of Rs.5,00,000/- in addition to the amount granted by the tribunal.

12. In the result, both the appeals are disposed of with a direction to the insurer, i.e. National Insurance Co. Ltd. to pay the entire compensation amount along with interest as directed by the Tribunal and further pay a consolidated sum of Rs.5,00,000/- (five lakhs), by depositing the same before the tribunal within a period of two months from today. The total amount shall be paid to the claimants in equal proportion by keeping 70% of the amount, fall to the share of each claimant, in fixed deposit in any nationalized bank for a period of five years.

13. The statutory deposit made by the insurer in MACA No.686 of 2008 before this court along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

14. The copies of depositions of P.W.1 and P.W.2 as filed by Mr. Prakash are kept on record.

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

(B.P. Routray)
Judge