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IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1292 of 2017 & MACA No.88 of 2018

In MACA No.1292 of 2017

Prem Sagar Pandey and others .... ***Appellants***
Mr. P.K. Mishra, Advocate

-versus-

Tapan Kumar Tripathy and another .... ***Respondents***
Mr. D.K. Patra, Advocate on behalf of Mr. G. Mishra, Senior Advocate for Respondent No.2

In MACA No.88 of 2018

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

-versus-

Prem Sagar Pandey and others .... ***Respondents***
Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
24.11.2022

Order No.

MACA No.1292 of 2017 and MACA No.88 of 2018

08. **1.** Heard Mr. D.K. Patra, learned counsel on behalf of Mr. G. Mishra, learned Senior Advocate for the Insurance Company and Mr. P.K. Mishra, learned counsel for the claimants.

2. Both the appeals being arise out of the same judgment dated 13.11.2017 of learned 1st MACT, Cuttack in M.A.C. No.340 of 2011, wherein compensation to the tune of Rs.32,32,672/- has been granted along with simple interest @6% per annum to the claimants from the date of filing of the claim application, i.e. 20.06.2011 on account of death of the deceased in a motor vehicular accident dated 17.03.2011, are heard together and disposed of by this common order.

3. MACA No.1292 of 2017 has been filed by claimants for enhancement of compensation. MACA No.88 of 2018 has been preferred by the Insurance Company challenging the award mainly on the ground that the accident took place within the premises of Lanco Infratech Limited, a private place and the offending vehicle is the tracker Excavator-Model-JS-200.

4. Admittedly the offending vehicle is a motor vehicle within the sweep of Section 2 (28) of the M.V. Act and the policy is in terms of Section 147 of the M.V. Act.

5. The facts reveals that the rear wheels of the vehicle crushed over the deceased, who was working as an engineer in the same project, when he was getting down from it. The place of accident is within the premises of the project site and as submitted by both the parties, Lanco Infratech Limited is a construction company engaged for laying of Gas Pipeline.

6. '**Public Place**' is defined in Section 2 (34) of the M.V. Act. It means a road, street, way or other place, to which the public have a right of access, and includes such places where passengers are picked up or set down by a stage carriage.

7. The definition of ‘public place’, as explained by the Full Bench of Bombay High Court in the case of ***Pandurang Chimaji Agale v. New India Life Insurance Co. Ltd., 1988 ACJ 674 (Bombay),*** is as follows:-

> “The definition of 'public place' under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose.”

8. The same concept is also explained by our High court in the case of ***M.K. Bhoumik vs- Sukura Singh and others, AIR 2011 Orissa 144.***

9. In the instant case, no evidence has been brought on record by the insurer to say the place of accident is anyway restricted to public access. It is not that the place of accident is a place where the access of public has been restricted or denied for any other reason. What is seen from the copy of the Police papers that the place of accident is the road side of Cuttack-Paradeep road. P.W.1, the Executive H.R. of Lanco Infratech Limited, has stated in his cross-examination that the work site, where the deceased was working, had no access of public and it is a private area. This statement of P.W.1 made in his cross-examination is not a valid or authenticated statement since neither any document has been produced to support his contention nor he is the appropriate authority to say the place is restricted from access of public.

10. Moreover, the deceased is an Engineer working in the site and the offending Excavator is a motor vehicle. No quarrel is there on such factual aspects. Considering the fact that the spot of accident is on the road side, the same cannot be termed as a private area denied from public access, notwithstanding the fact that it was a construction site for laying Gas pipelines. Therefore, the contention raised on behalf of the insurer to deny the place of accident as a public place is rejected being found incorrect.

11. The further contention put-forth to the effect that the deceased got down from the running Excavator is not found supported from evidence adduced on record. Neither P.W.1 nor P.W.2 nor the Police papers suggest anything that at the time of alighting by the deceased, the vehicle was in running condition. Conversely, it is the case of the claimants that after the deceased get down from the vehicle, it moved suddenly to cause the accident. Therefore, the submission advanced to contribute negligence on the deceased towards cause of the accident is also rejected.

12. On the question of quantification of compensation, the insurer as well as the claimants disputes the same. As per the insurer, the same is liable to be reduced, whereas according to the claimants, the same needs to be enhanced.

13. No reason is seen to support the contention of the insurer for reduction of the compensation amount. But the contention of the claimants for enhancing the same is found with force. It is seen that the learned Tribunal taking the income of the deceased at Rs.20,917/- per month only, i.e. by taking the basic pay and special allowance, has arrived at such amount. From Ext.16, which are salary slips for the months of December, 2010, January, 2011 and February, 2011, it reveals that the deceased got Rs.52,844/-, Rs.36,733/- and Rs.36,733/- for those respective months. The date of accident is 17.3.2011. Thus taking the monthly salary given to the deceased for the month of February, 2011, which amounts to Rs.36,733/-, the income of the deceased can be very well assessed. Taking the same as monthly income, the annual incomes comes to Rs.4,40,796/-. Deducting professional tax of Rs.2500/- and income tax of Rs.23,510/- there-from, the net annual income becomes to Rs.4,14,786/-. Deducting 50% towards personal expenses and again adding 50% towards future prospects, keeping in view of the age of the decease as '25' years, and applying multiplier '18', the total loss of dependency comes to Rs.55,99,611/-. Adding Rs.80,000/- towards filial consortium and Rs.30,000/- towards general damages, the total compensation amount is determined at Rs.57,09,611/-, payable along with interest @6% per annum.

14. In the result, both the appeals are disposed of with a direction to the Insurance Company-National Insurance Co. Ltd. to deposit the modified compensation amount of Rs.57,09,611/- (rupees fifty-seven lakhs nine thousand six hundred eleven) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 20.06.2011 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal. However, the penal interest @12% per annum as directed by the learned Tribunal is waived.

15. On deposit of the award amount by the insurer before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made in MACA No.88 of 2018 before this Court with accrued interest thereon shall be refunded to the insurer.

16. The copies of depositions and documents filed in course of hearing are kept on record.

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

(B.P. Routray)
Judge

B.K. Barik