

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.957 of 2012 & MACA No.1066 of 2012

In MACA No.957 of 2012

Rekha Parida and others ***Appellants***
None

-versus-

Bishnu Prasad Nath and another ***Respondents***
Mr. P.K. Mahali, Advocate for Respondent No.2

In MACA No.1066 of 2012

National Insurance Co. Ltd. ***Appellant***
Mr. P.K.Mahali, Advocate

-versus-

Rekha Parida and others ***Respondents***
None

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
21.09.2022

Order No.

MACA No.957 of 2012 & MACA No.1066 of 2012

- 06.
1. Heard Mr. P.K. Mahali, learned counsel for the Insurance Company. None appears on call for the claimants.
 2. Both the appeals being arise out of the same judgment dated 18.05.2012 of the learned 1st MACT, Dhenkanal wherein compensation to the tune of Rs.5,80,000/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e.2.4.2007 on account of death of the deceased in the motor vehicular accident dated 8.5.1998, are heard together and disposed of by this common order.

3. MACA No.957 of 2012 has been filed by the claimants praying for enhancement of the compensation amount on the ground to apply higher multiplier. MACA No.1066 of 2012 has been filed by the insurer challenging the award on the ground that the death is not connected to the injuries sustained in the accident.

4. Upon going through the memorandum of appeal and the impugned judgment in MACA No.957 of 2012, it reveals that the claimants contend that the monthly income of Rs.6000/- as assessed by the learned Tribunal is on lower side, the multiplier applied by the Tribunal is erroneous and the expenses of treatment has been improperly quantified.

5. So far as the contention raised by the insurer that the death of the deceased is unconnected to the injuries sustained in the accident, it is seen that the date of accident is 8.5.1998 and date of death is 9.5.2002. As per the injury report marked under Ext.5, a copy of which is produced by Mr. P.K. Mahali in course of hearing, it reveals that the deceased sustained two abrasions of size $\frac{1}{2}$ cm x $\frac{1}{2}$ cm and 3 cm x 2 cm on the left side face and right knee respectively, which are simple injuries. It is seen from the impugned judgment that the learned Tribunal has come to the finding that the deceased sustained two grievous head injuries in the accident, which is not found to be a fact on record.

6. Moreover, the medical papers under Ext.9 series, the copies of which are produced by Mr. Mahali in course of hearing, do not validate the finding of the Tribunal that the deceased died out of such injuries sustained in the accident. It is also seen that neither any post-mortem examination has been conducted over the dead

body of the deceased nor any material is brought to suggest connection of sustenance of two simple injuries in the accident to the treatment and death of the deceased in the hospital after four years. Therefore, in absence of definite materials to connect the cause of death with the nature of injuries sustained in the accident as per the injury report under Ext.5, the contention of the insurer is accepted to the effect that the death of the deceased does not arise out of the motor vehicular accident dated 8.5.1998.

7. In the result, MACA No.1066 of 2012 is allowed and the impugned judgment is set aside. The claimants are not entitled for any compensation due to death of the deceased and MACA No.957 of 2012 filed by the claimants is dismissed.

8. The statutory deposit made before this Court in MACA No.1066 of 2012 with accrued interest thereon shall be refunded to the Insurance Company.

9. The copies of the documents filed by Mr. Mahali are kept on record.

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

(B.P. Routray)
Judge