IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.186 of 2018

Ms. Sabita Agarwal and Others .... ***Appellants***

Mr. S.S. Mohanty, Advocate

-versus-

Khirod Bihari Sahu and Others .... ***Respondents***

Mr. P.K. Mahali, counsel for Respondent No.4

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
2.9.2022

Order No.

I.A. No.289 of 2018

09. 1. The matter is taken up through hybrid mode.

2. The substituted service of notice on Respondent No.3 is treated sufficient.

3. Heard Mr. S.S. Mohanty, learned counsel for the claimant – Appellants and Mr. P.K. Mahali, learned counsel for insurer – Respondent No.4.

4. Upon hearing both parties and considering the grounds mentioned in the application, the delay in filing the appeal is condoned.

5. The I.A. is disposed of.

MACA No.186 of 2018

10. 6. Heard Mr. S.S. Mohanty, learned counsel for the claimant – Appellants and Mr. P.K. Mahali, learned counsel for Respondent No.4

– National Insurance Company Ltd. None appears on call for Respondent No.2 – Oriental Insurance Company Ltd. despite name of a set of lawyers is indicated in the cause list.

7. Present appeal by the claimants is against the impugned judgment dated 30th August, 2017 of the learned 1st MACT, Deogarh passed in MAC Case No.04 of 2013 wherein total compensation to the tune of Rs.8,06,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 9th January, 2013 has been granted on account of death of the deceased Naresh Kumar Agrawal in the motor vehicular accident dated 22nd January, 2012, to be paid in equal proportion by Respondent Nos.2 and 4.

8. The owners, Respondent Nos.1 and 3 did not enter appearance despite valid service of notice.

9. The Appellants question the quantum of compensation mainly on the ground that the assessment of income of the deceased at Rs.6000/- per month made by the tribunal is grossly erroneous in view of the I.T. return filed by the claimants under Ext.18 and the oral evidence of P.W.1, the widow regarding income of the deceased.

10. Upon hearing Mr. Mohanty as well as Mr. Mahali it reveals from the impugned judgment that the tribunal at paragraph 9 while discussing about the income aspect of the deceased though had taken note of the Pan Card and income tax return of the deceased for the Assessment Year 2010-11, but has disbelieved the same saying that in absence of any documentary proof with regard to business of the deceased the statement made under Ext.18 is a self-declared statement

of the deceased regarding his income and the tribunal then *suo-motu* proceeded to fix the income at Rs.6000/- per month.

11. Such approach of the tribunal to disbelieve the income mentioned in the Income Tax return of the deceased is found unjustified. It is for the reason that the widow wife of the deceased in her oral evidence has supported such income of the deceased from Ayurvedic medicine shop and to support her oral evidence she relied on the PAN Card under Ext.17 and the I.T. return for the AY-2010-11 under Ext.18. Admittedly no evidence has been adduced from the side of the insurers to rebut these materials brought from the side of the claimants with regard to income of the deceased. The copy of I.T. Return under Ext.18 supports the oral evidence of the widow regarding income of the deceased which cannot be discarded in absence of any rebuttal evidence from the side of the insurer. Thus in absence of any evidence to the contrary led from the other side, the amount of taxable income as mentioned in Ext.18 which is to the tune of Rs.1,58,305/- is taken as income of the deceased.

12. The deceased was aged about 42 years 7 months as assessed by the tribunal and the same remains undisputed. Thus taking the deceased within the age group of 41-45 years, the applicable multiplier would be '14'. Adding 25% towards future prospects and deducting $1/4^{th}$ towards personal expenditure and applying multiplier '14', the total loss of dependency comes to Rs.20,77,753/- (annual loss of dependency @ Rs.1,48,410/-). Adding Rs.40,000/- each to the claimant Nos.1, 2 and 3 towards spousal consortium and parental consortium respectively, as well as Rs.30,000/- towards general damages, the total compensation amount comes to Rs.22,27,753/-

rounded to Rs.22,28,000/-, which is payable by both the insurers in equal proportion.

13. At this stage it is submitted by Mr. Mohanty, learned counsel for the claimants that entire award amount in terms of directions of the tribunal has already been received by the claimants. Therefore the insurers are found liable to pay the balance amount, i.e. Rs.14,22,000/- along with 6% interest in equal share.

14. In the result the appeal is disposed of with a direction to the Respondent No.2 – Oriental Insurance Co. Ltd. and Respondent No.4 – National Insurance Co. Ltd. to deposit further compensation amount of Rs.7,11,000/- (seven lakh eleven thousand) each before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 9th January, 2013 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Appellants on such terms and proportion to be decided by the learned Tribunal.

15. The copy of Ext.18 as filed by the Appellant is kept on record.

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

(B.P. Routray)
Judge

M.K.Panda