

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.665 of 2005

Sanyasi Behera and Another ***Appellants***

Mr. S.D. Das, Sr. Advocate

-versus-

Ravulapati Nageswar Reddy and Ors. ***Respondents***

Mr. N.B. Dash, counsel for Respondent No.2

Mr. G.P. Dutta, counsel for Respondent No.4

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
6.12.2022

Order No.

13. 1. The matter is taken up through hybrid mode.
2. Heard Mr. S.D. Das, learned senior counsel for the claimant – Appellant, Mr. N.B. Dash, learned counsel for Respondent No.2, i.e. Oriental Insurance Co. Ltd. and Mr. G.P. Dutta, learned counsel for Respondent No.4, i.e. New India Assurance Co. Ltd.
3. Present appeal by the claimants is against the impugned judgment dated 13th May, 2005 of the learned 2nd Additional District Judge-cum-MACT, Berhampur passed in MAC Case No.81 of 2004/MAC No.78/03-GDC, wherein compensation to the tune of Rs.59,850/- along with interest @ 6% per annum from the date of filing of the claim application has been granted on account of death of deceased Saroj Kumar Behera in the motor vehicular accident dated 4/5th July, 2002.
4. Mr. Das, learned Senior counsel submits on behalf of the claimant – Appellants that during pendency of the appeal, Appellant

No.2, namely Smt. Sakuntala Behera died and Appellant No.1 – Sanyasi Behera being the sole surviving dependent, there is no need for further substitution.

5. Mr. Das continues to submit that on the date of accident the deceased was a young man aged about 23 years, who was a bachelor, and serving as a sales man in the pharmaceutical company of P.W.5, namely, Bipra Charan Panda at Berhampur. But the tribunal against such evidence adduced on record, has taken the income of the deceased at Rs.1800/- per month only. He further submits that the multiplier applied needs to be enhanced and on the whole, the compensation amount needs to be revisited.

6. Admittedly, the question of negligence as well as liability of the insurance company having not been disputed, the tribunal has directed to equally distribute the amount of compensation among both the insurance companies.

7. Now coming to the challenge of the claimants with regard to quantum of compensation, it is seen that as per the evidence adduced on record the service of the deceased as a Salesman under P.W.5 is not disputed. According to P.W.5, he was paying Rs.4,500/- to the deceased and according to the claimants, the deceased was getting Rs.4000/- from P.W.5. However, considering the educational qualification of the deceased that he was a matriculate and the date of accident, i.e. 4/5th July, 2002, the income of the deceased can be assessed at Rs.3000/- per month.

8. It is further seen that deceased was a bachelor and the tribunal has taken average age of the parents to determine the multiplier. This

approach of the tribunal is found erroneous in view of the principles decided in the case of *Sarla Verma v. DTC, reported in (2009) 6 SCC 121* and *National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680*. Accordingly, the multiplier is re-fixed to '18' instead of '8'. Adding future prospect to the extent of 40% to the income of the deceased, the computation is made afresh as follows:-

- i) Annual income [$@ \text{Rs.}3000/-$ per month with addition of 40%, i.e. 4200×12] = $\text{Rs.}50,400/-$
- ii) Deducting 50% towards personal expenses = $\text{Rs.}25,200/-$
- iii) Total loss of dependency = $\text{Rs.}25,200/- \times 18 = \text{Rs.}4,53,600/-$
- iv) Adding $\text{Rs.}70,000/-$ towards parental consortium and general damages, the total compensation comes to $\text{Rs.}5,23,600/-$.

9. In the result the claimants are found entitled to $\text{Rs.}5,23,600/-$ towards compensation, payable along with interest @ 6% per annum, equally by both the insurance companies.

10. At this stage it is submitted by Mr. Dutta as well as Mr. N.B. Dash that in the meantime the amount of $\text{Rs.}59,850$ along with interest @ 6% per annum has been deposited by the insurers before the tribunal.

11. Mr. Das however submits that the amount deposited by the insurance companies has not been realized by the claimants yet. However, without entering into such dispute, both the insurance companies are directed to deposit before the tribunal the aforesaid compensation amount by adjusting the amount, if any, already paid

and realized by the claimants in the meantime, within two months from today and learned tribunal is directed to verify the fact and pass such further order if necessary. The tribunal is also directed to fix such terms and proportion for disbursement of the amount in favour of the present claimant – Appellant No.1, namely Sanyasi Behera.

12. With aforesaid observation and direction the appeal is disposed of.

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

M.K.Panda

