

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1100 of 2017 & MACA No.1380 of 2017

In MACA No.1100 of 2017

Sasmita Mohanty and others ***Appellants***

Mr. D.K. Mohapatra, Advocate

-versus-

***Oriental Insurance Co. Ltd. and
another*** ***Respondents***

Mr. A.A. Khan, Advocate for Respondent No.1

In MACA No.1380 of 2017

M/s.Oriental Insurance Co. Ltd. ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Sasmita Mohanty and others ***Respondents***

Mr. D.K. Mohapatra, Advocate for Respondent Nos.1 to 5

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

12.12.2022

Order No.

I.A. No.868 of 2020 arising out of MACA No.1380 of 2017

13. 1. Learned counsel for the Appellant-insurer does not want to press this I.A.

2. Accordingly, the I.A.is dismissed as not pressed.

MACA No.1100 of 2017 and MACA No.1380 of 2017

3. Heard Mr. D.K. Mohapatra, learned counsel for the claimants and Mr. A.A. Khan, learned counsel for the Insurance Company.

4. Both the appeals being arise out of the same judgment dated 16.9.2017 of learned 1st MACT, Jagatsinghpur in M.A.C. Case No.33 of 2012 (120/2015), wherein compensation to the tune of Rs.10,47,000/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application, i.e. 12.03.2012 on account of death of the deceased in a motor vehicular accident dated 14.1.2012, are heard together and disposed of by this common order.

5. MACA No.1100 of 2017 has been filed by the claimants praying for enhancement of the compensation amount mainly on the ground for non-addition of future prospects to the income of the deceased. MACA No.1380 of 2017 has been filed by the Insurance Company challenging the award.

6. Mr. A.A. Khan, learned counsel for the Insurance Company while advancing his challenge in MACA No.1380 of 2017 submits that the name of owner of the offending vehicle has been wrongly mentioned in the claim application and therefore, in absence of real owner of the vehicle, the claim application is not maintainable. He further submits that the amount of compensation is swelled by including other allowances in the income of the deceased, which needs to be reduced. It is also submitted by Mr. Kahn that the driver of the offending vehicle did not have a valid driving license on the date of accident.

7. It is seen that one Bidyadhar Dalbehera (present Respondent No.2 in MACA No.1100 of 2017) has been arrayed as Opposite Party No.1 in the claim application in the capacity of the owner of

the offending vehicle. There is no dispute that said Bidyadhar Dalbehera is not the real owner, but one Sreedhar Pesnia was the real owner of the offending vehicle, i.e. Tipper bearing Registration No. OR-08-G-3695 on the date of accident. However it is seen from the LCR that an amendment petition to that effect was filed by the claimants to implead Sreedhar Pesnia in place of Bidyadhar Dalbehera as the owner of the offending vehicle and the learned Tribunal by its order dated 25.8.2015 allowed the amendment and the consolidated petition filed by the claimants has been accepted on record by order dated 11.1.2016. Despite all such orders passed by the Tribunal allowing the amendment, the same were not taken note of at the time of passing of the impugned judgment, where the impugned judgment still reflects the name of Bidyadhar Dalbehera. The claimants as Appellants in MACA No.1100 of 2017 have also filed I.A. No.1008 of 2021 praying for correction of the error in the name of the owner-Respondent No.2 in the impugned judgment of the learned Tribunal. On the face of such apparent facts on record, no merit is seen in the submission of Mr. Khan regarding maintainability of the claim application in absence of real owner. The said objection raised by Mr. Khan on behalf of the insurer is thus rejected and the name of Opposite Party No.1 as reflected in the impugned judgment is corrected accordingly, so also the name of Respondent No.2 & 6 in the present memorandum of appeals respectively.

8. Next coming to the submission with regard to invalid driving license of the driver, it is seen that no evidence has been adduced from the side of the insurer to dispute validity of license of the

driver. On the other hand, Ext.6, the copy of zimanama, reveals that the driver of the offending vehicle had valid driving license bearing No.OR-08-2008005874. So in view of this specific evidence brought from the side of the claimants that the driver had a valid license on the date of accident, the entire contention put-forth by Mr. Khan to dispute the same is rejected in absence of any rebuttal evidence.

9. Coming to the challenge with regard to quantification of compensation amount, according to the claimants no future prospects has been added to the income of the deceased. According to Mr. Khan, learned counsel for the Insurance Company, the allowances received by the deceased towards washing allowance, shoe allowance and entertainment allowance are liable to be excluded from the count.

10. It is seen that the deceased was serving as a Supervisor in Orissa Stevedores Ltd. at Lanjigarh in the district of Kalahandi. As per Ext.7, the certificate issued by the employer, the deceased was getting gross salary of Rs.5878/- per month including all such allowances. Since personal expenses to specified extent is deducted from the income, such allowances included in the gross salary of the deceased, which are also meant for personal expenses, need not be deducted further. It is also well settled that the entire amount received towards salary minus statutory deductions is to be counted towards income except such specific allowances that are attached to the post for such peculiar nature of job. In the instant case, keeping in view the nature of allowances the deceased was getting, no requirement is found to deduct such

allowances from the count of income. So, the assessment done by the Tribunal in deriving the monthly salary of the deceased at Rs.5878/- is found justified. The same is confirmed by this Court.

11. It is further seen from the impugned judgment that no future prospect has been added to income of the deceased though he was aged about 34 years on the date of accident. Thus for the purpose of loss of dependency, the computation is made afresh. The annual income comes to Rs.70,536/-. Adding future prospects to the extent of 50%, it becomes to Rs.35,268/-. Mr.Khan, learned counsel for the insurer raises objection to the effect that the deceased was not in permanent employment and therefore, the extent of future prospects should be counted up-to 40%. This submission of Mr.Khan is not found correct in view of the evidence adduced by P.W.3. It is true that P.W.3 has said in his evidence that the deceased was initially appointed on temporary basis and no document relating to confirmation of his service has been filed. But this statement of P.W.3, the authorized representative of the employer, is not sufficient to treat the deceased as a temporary employee. The deceased was employed much prior to the accident in the consolidated salary of Rs.3000/- and in course of time his salary was increased to Rs.5878/- in place of the initial consolidated amount. It is further seen from the evidence of P.W.3 that the deceased was expected to get higher amount shortly. So, no trace of doubt is found from the evidence produced on record regarding temporary status of his employment and therefore, as held in the case of *National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680*, future prospects to the extent of 50% is liable to be added to

the income of the deceased. Accordingly, the annual income comes to Rs.1,05,804/-. Deducting 1/4th there-from towards personal expenses, the annual loss of dependency comes to Rs.79,353/-. Applying multiplier “16”, the total loss of dependency becomes Rs.12,69,648/-. Adding consortium of Rs.40,000/- each to the widow, namely, Sasmita Mohanty and the minor child, namely, Sambit Mohanty and further adding Rs.30,000/- towards general damages and Rs.20,000/- towards transportation of dead-body from Kalahandi to his native village, the total compensation amount is determined at Rs.13,99,648/-, rounded to Rs.14,00,000/-, payable along with interest @6% per annum.

12. In the result, both the appeals are disposed of with a direction to the insurer, i.e. Oriental Insurance Company Limited (Appellant in MACA No.1380 of 2017) to deposit the modified compensation amount of Rs.14,00,000/- (rupees fourteen lakhs) along with interest @6% per annum from the date of filing of the claim application, i.e. 12.03.2012 before the Tribunal 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.

13. At this stage, it is submitted that the insurance company, i.e. Oriental Insurance Co. Ltd. has also deposited an amount of Rs.18,46,234/- excluding the statutory amount of Rs.25,000/- pursuant to the direction of this Court dated 05.05.2022 passed in MACA No.1380 of 2017.

14. On deposit of the award amount by the insurer before the Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit as well as the amount deposited, as per the direction of this Court dated 05.05.2022 passed in MACA No.1380 of 2017, before this Court with accrued interest thereon shall be refunded to the insurer.

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

