IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.1076 & 753 of 2014

From the Judgment / Order dated 20.02.2014 passed by the learned 3rd M.A.C.T., Bhanjanagar in M.A.C Case No.137 / 2007.

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MACA No.1076 of 2014

Dandapani Panda & Others. .... **Appellants**

-versus-

Dandapani Jena & Others .... **Respondents**

For Appellant : M/s. Reena Nayak.

For Respondents : M/s. M.Ghose, N.S.Ghose, J.K.Rath & G.panigrahi.

MACA No. 753 of 2014

D.M., New India Assurance Co., Ltd. .... **Appellant**

-versus-

Dandapani Jena & Others .... **Respondents**

For Appellant : M/s. S.K.Swain, L.P.Swain & S.Sahu.

For Respondents : M/s. Reena Nayak.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 25.04.2022 and Date of Order:04.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Since both the appeals arises out of a common impugned judgment passed on 20.02.2014 in M.A.C Case No.137 / 2007 by the learned 3rd M.A.C.T., Bhanjanagar, both the appeals are taken up for analogous hearing and accordingly disposed of by this common order.

3. Heard learned counsel for the Parties appearing in both the appeals.

4. While MACA No.753 of 2014 has been filed by the Insurer-Appellant-Company challenging the award of compensation vide the aforesaid judgment, MACA No.1076 of 2014 has been filed by the Claimants seeking enhancement of the compensation on various grounds.

5. Mr. Swain, learned counsel appearing for the Appellant-Company in MACA No.753 of 2014 and Mr. Ghose, learned counsel appearing for the self-same company in MACA No.1076 / 2014 submitted that even though specific ground was taken by the Appellant-Company that no Driving Licence was produced nor was exhibited, but learned Tribunal while awarding compensation vide the impugned judgment never allowed the right of recovery as against the owner –Respondent No.1.

6. It is also submitted that the learned Tribunal while directing payment of compensation also directed for payment of penal interest @ 7 % per annum, which is on the higher side.

7. Accordingly, Mr. Swain as well as Mr. Ghose learned counsels appearing for the Appellant-Company / Insurer prayed for interference of this Court in the impugned judgment.

8. Ms. Reena Nayak, learned counsel appearing for the Claimants-Respondents on the other hand submitted that the learned Tribunal while passing the impugned judgment with awarding compensation of Rs.10,65,644/-, never awarded any compensation towards future prospects.

9. It is also submitted that in view of the monthly income arrived at by learned Tribunal coupled with the age of the deceased future prospects @ 40% should have been allowed by learned Tribunal.

10. Ms. Nayak, accordingly prayed for enhancement of the compensation amount by awarding compensation towards future prospects. Ms. Nayak in support of his aforesaid stand relied on the decision of the Hon'ble Apex Court reported in the case of ***National Insurance Company Limited vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680.*** In the said reported decision, Hon'ble Apex Court relying on the decision rendered in the case of ***Sarla Verma and Reshma Kumari*** held as follows in Para-40:-

*"**40**.The conclusions that have been summed up in Reshma Kumari are as follows: (SCC p.91, para 43)-*

"43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in Sarla Verma read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma.

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above."

In the said decision, Hon'ble Apex Court in Para-59 also held as follows:-

"***59***. *In view of the aforesaid analysis, we proceed to record our conclusions:-*

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years".

11. Heard learned counsel for the parties at length in both the appeals.

12. Perused the materials available on record and after going through the same, this Court finds that learned Tribunal though vide the impugned judgment awarded compensation of Rs.10,65,644/-, but in fact no compensation has been awarded towards future prospects. Therefore, in view of the decision as cited (supra), this Court is of the considered opinion that the Claimants are entitled to get compensation towards future prospects. But this Court also finds that learned Tribunal while awarding compensation has directed for payment of interest @ 7 % per annum, which is as per the view of this Court is on the higher side. Not only that learned Tribunal on the face of the non-production of the Driving Licence, should have allowed right of recovery as against the owner-Respondent No.1. Therefore, in view of aforesaid findings of this Court, this Court when came to a conclusion to enhance the compensation to Rs.14,00,000/- with interest @ 6 % per annum payable from the date of application i.e. 09.07.2007 till its realization with right of recovery as against the owner of the Respondent No.1, Ms. Nayak, learned counsel for the Claimants-Respondents supported the said view of this Court.

13. Mr. Swain as well as Mr. Ghose, learned counsels appearing for the Appellant-Company / Insurer in both the cases left the said view to the discretion of this Court.

14. In view of such stand taken by the respective counsels, this Court while disposing both the appeals directs the Appellant-Company to pay compensation amount of Rs.14,00,000/- with interest @ 6% per annum payable from the date of application i.e. 09.07.2007 till its realization within a period of eight weeks from the date of receipt of this order with right of recovery as against the owner-Respondent No.1.

15. It is directed that the Appellant-Company shall deposit the aforesaid compensation amount along with interest so arrived at by this Court before the learned Tribunal within the period indicated hereinabove.

16. It is further observed that on deposit of the compensation amount along with interest, learned Tribunal shall disburse the same in favour of the Claimants proportionately and in terms of the order earlier passed on 20.02.2014.

17. It is further observed that if the Appellant-Company fails to deposit the compensation along with interest so assessed by this Court within the time, the Appellant-Company shall be liable to pay interest @ 7% per annum on the compensation amount of Rs.14,00,000/- for the period starting from expiry of the period eight weeks till its payment.

18. Since this Court is allowing right of recovery as against the owner–Respondent No.1, it is observed that if any such application is filed by the Appellant-Company/Insurer for recovery of the amount, learned Tribunal shall proceed with the same strictly in accordance with law and by giving reasonable opportunity of hearing to the owner-Respondent No.1.

19. It is further observed that only after deposit of the compensation amount along with interest before learned Tribunal within the time indicated hereinabove, the Appellant-Company shall be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on proper identification.

20. With the aforesaid observations and directions, both the MACAs stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 4th of May, 2022/Subrat