IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.249 & 42 of 2018

From the Judgment / Order dated 11.10.2017 passed by the learned 1st Additional District Judge-cum-1st M.A.C.T., Cuttack in M.A.C Case No.238 of 2013.

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M/s. Oriental Insurance Co., Ltd., & Another …. **Appellants**

-versus-

Chinmayee Mohanty & Others …. **Respondents**

For Petitioner : M/s. Adam Ali Khan, S.K.Mishra and .K.Sahoo.

For Opp. Parties : M/s. A.K.Choudhury, B.Dash, K.Das and S.Das.

MACA No. 42 of 2018

Chinmayee Mohanty & Others …. **Appellants**

-versus-

M/s. Oriental Insurance Co., Ltd., & Another …. **Respondents**

For Petitioner : M/s. Ajit Kumar Choudhury, K.K.Das, B.Dash.

For Opp. Parties : M/s. A.A.Khan, S.K.Mishra, S.K.Sahoo.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 20.04.2022 and Date of Judgment:26.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. A. A. Khan, learned counsel for the Appellant in MACA No.249 of 2018 and Mr.K.Das, learned counsel for the Claimant-Respondent Nos.1 to 3.

3. Since both the appeals arises out of a common impugned judgment, both are heard analogously and disposed of by this common order.

4. MACA No.249 of 2018 has been filed by the Appellant-Company challenging the quantum of compensation along with interest vide impugned judgment passed in MAC No.238 of 2013 by the learned 1st Additional District Judge-cum-1st MACT, Cuttack in its judgment dated 11.10.2017.

5. MACA No.42 of 2018 has been filed by the Claimant-Respondent seeking enhancement of the compensation so passed in MACA No.238 of 2013.

6. Mr. Khan, while assailing the impugned judgment on various grounds mainly relied on the grounds taken in Ground Nos.3 & 5 of the memo of appeal.

7. It is submitted that even though stand was taken that no permit of the offending vehicle was seized and produced, learned Tribunal never considered the said stand in its proper perspective while directing payment of the compensation with interest.

8. It is also submitted that though the appellant-company disputed the monthly income of the deceased, but learned

Tribunal relying on the income tax return filed vide Ext.13 & 14 held the annual income of the deceased at Rs.2,13,450/-.

9. Accordingly, Mr. Khan, learned counsel for the Appellant prayed for interference of this Court in the impugned judgment.

10. Per contra, Mr. K. Das, learned counsel for the Claimant-Respondent/ Appellants in the connected MACA No.42 of 2018 submitted that learned Tribunal while passing the impugned judgment has not awarded any compensation towards future prospects and consortium.

11. Mr. Das, further submitted that taking into account the annual income determined by the learned Tribunal at Rs.2,13,450/-, future prospects should be added @ 25% i.e. Rs.53,362/- and consortium for all the dependants at Rs.1,60,000/-.

12. Accordingly, Mr. Das, learned counsel submitted that the claimant-respondent are entitled to get total compensation of Rs.30,31,526/-.

13. Mr. Das 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".

14. Mr. Das also relied on another decision of the Hon'ble Apex Court reported in the case of ***Magma General Insurance Company Limited vrs. Nanu Ram Alias Chuhru Ram and Others*** reported in ***(2018) 18 SCC 130.*** In the said reported decision, the Hon'ble Apex Court in Paras-21 and 22 has held as follows:-

*"**21.1**.Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation.*

21.2 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training.

21.3.Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22.*Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the* *parents is a compensation for loss of the love, affection, care and companionship of the deceased child".*

15. Mr. Das relying on the aforesaid decision of the Hon'ble Apex Court held that the learned Tribunal in the impugned judgment has not awarded any compensation towards future prospects and consortium and necessary amount as due and admissible on those two courts be awarded by this Court.

16. Accordingly, Mr. Das prayed for enhancement of the compensation by adding the required amount towards future prospects and consortium.

17. Mr. Khan, learned counsel appearing for the Appellant on being confronted with the aforesaid decision of the Hon'ble Apex Court though failed to provide any contrary decision, but submitted that since the Appellant-Company raised a point with regard to non-production of the permit of the offending vehicle, learned Tribunal while directing the Appellant-Company to pay the compensation should have allowed right of recovery as against the owner of the offending vehicle i.e. Respondent No.4.

18. In support of such stand Mr. Khan relying on the decision of the Hon'ble Apex Court reported in the case of ***Amrit Paul Singh and Another vrs. TATA AIG General Insurance Co., Ltd. and Others*** reported in ***2018 (3) T.A.C 1 (S.C.)***. In the said reported decision, the Hon'ble Apex Court in Para-23 of the judgment held as follows:-

> "**23.** *In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasize, are to*

> *be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle".*

19. Heard learned counsel for the Parties at length. Perused the materials available on record. Considering the materials available on record and submissions made by the respective counsels, this Court when came to a conclusion that the Claimant-Respondents are entitled to get total compensation of Rs.28,00,000/- with interest @ 6 % per annum payable from the date of application till its realization with right of recovery as against Respondent No.4. Mr. Das, learned counsel appearing for the Claimants-Respondents /Appellants in MACA No.42 of 2018 supported the view of this Court.

20. Mr. Khan, learned counsel for the Appellant/Respondent No.2 in MACA No.42 of 2018, left the said view to the discretion of this Court.

21. Taking into account the stand taken by the respective counsels and while interfering with the impugned judgment dated 11.10.2017, this Court held that since the learned Tribunal has not awarded any compensation towards future prospects and consortium, the Claimants - Respondents are entitled to get compensation on those two Counts. Accordingly, this Court directs the Appellant-Company to pay compensation of Rs.28,00,000/- with interest @ 6% per annum payable from the date of application till its payment within a period of eight weeks from today with right of recovery as against Respondent No.4.

22. It is observed that on deposit of compensation along with interest so assessed by this Court before the learned Tribunal within the period indicated above, learned Tribunal shall disburse the same in favour of the Claimants-Respondents proportionately and in terms of the earlier order passed on 11.10.2017.

23. It is further observed that if the Appellant-Company failed to deposit the amount of compensation along with interest so assessed by this Court within the time stipulated, the Claimants-Respondents will be entitled to get interest @ 9 % per annum, on completion of the period of eight weeks, till the payment is made by the Appellant-Company.

24. It is also observed that on filing of any such application by the appellant-Company for recovery, learned Tribunal shall proceed with the same strictly in accordance with law and by giving reasonable opportunity of hearing to Respondent No.4.

25. It is further observed that only after payment of the entire compensation amount along with interest so directed by this Court, the Appellant-Company will be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on proper identification.

26. With the aforesaid observations and directions, both the MACAs stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 26th of April, 2022/Subrat