IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.263 of 2018

Bhumisuta Nayak and Another .... ***Appellants***

Mr. P.K. Mishra, Advocate

-versus-

Bhagawan Das Agrawal and Another .... ***Respondents***

Mr. N.K. Mohanty, counsel for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
22.9.2022

Order No.

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

2. Heard Mr. P.K. Mishra, learned counsel for the claimant - Appellants and Mr. N.K. Mohanty, learned counsel for insurer – Respondent No.2.

3. Present appeal by the claimants is against the impugned judgment dated 13th December, 2017 of learned District Judge-cum-MACT, Bargarh passed in MAC Case No.24 of 2016 wherein compensation to the tune of Rs.4,88,840/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 2nd February, 2016 has been granted on account of death of deceased Raju Nayak in the motor vehicular accident dated 22nd December, 2015.

4. It is contended on behalf of the Appellants that the tribunal has committed illegality by holding monthly income of the deceased at Rs.3000/- only and further reduced 20% towards contributory

negligence on the part of the deceased in absence of any evidence from the other side.

5. Mr. N.K. Mohanty, learned counsel for the insurer on the other hand contends that since three persons were traveling including the deceased in a motor cycle, part negligence was attributed towards the deceased and as such the tribunal has rightly deducted 20% from the compensation for contributory negligence.

6. Perusal of the impugned judgment reveals that no evidence was adduced from the side of the insurer and the owner did not come to contest the case. It reveals that, at the time of accident the deceased, his father and another person were going in the motor cycle bearing registration number OR-17E-1884 and the offending truck bearing registration number CG 04 JB 2278 dashed them coming from front side. The tribunal taking note of the fact that three persons were going in the motor cycle, based on the evidence of P.W.2, the eye-witness, has contributed 20% negligence on the deceased. This court does not agree with such conclusion of the tribunal because moving three persons in a motor cycle may be flouting the provisions of law but the same does not itself satisfy negligence aspect on the part of the driver of the motor cycle or its pillion riders. Penal provisions are provided under the MV Act and Rules for violation. But that never mean to presume negligence without specific evidence. Therefore, deduction of 20% from the compensation amount towards contributed negligence is not appropriate and accordingly set aside.

7. Next coming to the quantum of compensation, it is seen that the tribunal has accepted monthly income of the deceased at Rs.3000/-

against their claim of Rs.10,000/-. As per the evidence adduced from the side of the claimants the deceased was earning Rs.10,000/- from sweet business. Admittedly, no documentary proof could be produced in support of the same by the claimants and at the same time it is also proved that no rebuttal evidence to deny such fact could be produced by the insurer. In such situation some guess-work has to be done taking into account the prevalent rate of minimum wages prescribed on the date of accident. As per Notification No.1112 dated 24th July, 2015 of Government of Odisha, the prescribed rate of minimum wages for unskilled labourer was Rs.200/-, for semi-skilled Rs.220/-, for skilled Rs.240/- and for highly skilled Rs.260/-. Even in absence of any reliable proof if the deceased is considered to be an unskilled labourer, his income is required to be counted at daily wage rate of Rs.200/-. Accordingly his monthly income comes to Rs.6000/- and adding 40% towards future prospects thereon, since the deceased was aged about 20 years on the date of death, the annual income comes to Rs.1,00,800/-. Here the tribunal has committed a mistake by deducting 1/3rd which is corrected as the deduction should be 50% for the deceased being unmarried. So deducting 50% from the same, the annual loss of dependency comes to Rs.50,400/-. The applicable multiplier is '18'. Accordingly total loss of dependency is determined at Rs.9,07,200/-. Adding general damages of Rs.30,000/- and Rs.40,000/- towards consortium to the mother, i.e. claimant – Respondent No.1, the total compensation is determined at Rs.9,77,200/-.

8. At this stage it is submitted by the parties that the amount granted by the tribunal along with interest has been paid and disbursed

in favour of the claimants. Therefore the insurer – Respondent No.2 is found liable to pay the balance amount, i.e. Rs.9,77,200.00 – Rs.4,88,840/- = Rs.4,88,360/-, payable along with 6% interest.

9. In the result the appeal is allowed and the insurer – Respondent No.2 is directed to deposit the balance amount of Rs.4,88,360/- (four lakhs eighty-eight thousand three hundred sixty) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 2nd February, 2016, within a period of three months from today, where-after the same shall be disbursed in favour of the claimant – Respondents on such terms and proportion to be decided by the tribunal.

10. It goes without saying that this court has not disturbed the direction of the tribunal regarding right of recovery granted in favour of the insurer.

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

(B.P. Routray)
Judge

M.K.Panda