IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.679 of 2012

Khulana Mahana .... ***Appellant***

Mr. Dillip Kumar Mohapatra, Advocate

-versus-

Surendra Kumar Sahu and Another .... ***Respondents***

Mr. S.K. Mohanty, Advocate for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
5.9.2022

Order No.

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

2. Heard Mr. D.K. Mohapatra, learned counsel for the claimant – Appellant and Mr. S. K. Mohanty, learned counsel for insurer-Respondent No.2.

3. Present appeal by the claimant is against the impugned judgment dated 20th March, 2012 of the learned 2nd Additional District Judge-cum- MACT, Cuttack passed in MAC Case No.393 of 1999 wherein compensation to the tune of Rs.1,09,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 13th May, 1999 has been granted on account of death of the deceased Fakir Mahana in the motor vehicular accident dated 28th March, 1998.

4. Mr. D.K. Mohapatra submits on behalf of the Appellant that the tribunal erroneously holding against validity of insurance policy of the offending vehicle has exempted the insurer from the liability. Further

the Appellant questions the quantum of compensation on the ground that the deceased was 45 years of age on the date of accident and having income of Rs.4000/- per month from the barber shop.

5. Concerning the first ground of challenge relating to the validity of insurance policy, it is seen that the insurer has contested by adducing evidence before the tribunal including the affidavit filed by the Senior Divisional Manager that upon thorough verification of all the records no such policy issued in favour of the offending vehicle, i.e. car bearing registration number OR 04 7194 could be found from record. The claimant could not be able to dispute such fact in his evidence before the tribunal nor could able to produce any material before this court suggesting existence of valid insurance policy in respect of the offending vehicle on the date of accident. As such, no flaw is seen on the part of the tribunal in exonerating the insurer from the liability and the same is confirmed.

6. With regard to quantum of compensation against the contention of the claimant, the tribunal took the age of the deceased as 58 years mentioned in Ext.4 and Ext.5 which are the bed-head ticket and discharge certificate respectively. Those documents are filed by the claimants and the age mentioned therein has more reliability over his own contention since no document was produced by the claimant to suggest age of the deceased as 45 years. Therefore the conclusion of the tribunal that the deceased was aged about 58 years on the date of accident is also confirmed by this court.

7. The tribunal has assessed the income of the deceased at Rs.1,500/- per month based on the oral evidence in absence of any documentary evidence. When the claimant says that the deceased was a Barber by profession, such assessment of the tribunal regarding income of the deceased at Rs.1500/- per month cannot be faulted with as irrational. However, in view of the decision rendered in the case of ***National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680,*** future prospects to the extent of 10% is liable to be added in the income of the deceased. A further sum of Rs.40,000/- is also liable to be paid to the sole claimant towards loss of spousal consortium and another sum of Rs.30,000/- towards general damages. This court is not in favour of disturbing the amount granted by the tribunal towards medical expenses of the deceased.

8. Accordingly the compensation amount is enhanced to Rs.1,79,000/- in total, payable along with interest @ 6% per annum.

9. It needs to be mentioned here that the owner-Respondent No.1 did not contest the claim before the tribunal. He also did not appear before this court despite valid service of notice.

10. In the result, the appeal is disposed of with a direction to the owner – Respondent No.1 to deposit the total compensation amount of Rs.1,79,000/- (one lakh seventy-nine thousand) along with interest @ 6% per annum from the date of filing of the claim application, i.e. 13th May, 1999 before the tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the

claimant – Appellant on such terms and proportion to be decided by the learned Tribunal.

11. It is made clear that failing to deposit the amount, the Appellant will be at liberty to take appropriate legal course of action against the owner before the tribunal in accordance with law.

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

(B.P. Routray)
Judge

M.K.Panda