IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.865 of 2017

Rita Sahoo and others .... ***Appellants***
Mr.P.K.Mishra, Advocate

-versus-

Bilash Chandra Rath and others .... ***Respondents***
Mrs.Nibedita Mohanty, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
18.10.2022

Order No.

3. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.Mishra, learned counsel for the Appellants and Mrs.Mohanty, learned counsel for the Insurer-Respondent No.2.

3. Present appeal by the Appellants is against the judgment dated 30th June, 2017 of the Additional DistrictJudge-Cum-4th MACT, Angul, wherein compensation to the tune of Rs.7,78,700/- has been granted along with interest @7% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 8th August, 2015.

4. Mr.Mishra, learned counsel for the claimants-Appellants contends that the Tribunal has committed mistake. First, by taking net salary of the deceased instead of gross salary

and secondly, deducted the family pension amount from the net salary.

5. It reveals that under Ext.A, the claimants have adduced salary particulars of the deceased for three months viz. May, June and July, 2015 and the Tribunal by taking the net average salary of three months has computed the compensation amount. No justification is found in such approach of the Tribunal. It is now well settled that the amount of salary received by the deceased minus statutory taxes payable, has to be calculated for the purpose of assessing the income. Accordingly, by taking average gross salary for three months as per Ext.A, which comes to Rs.18,572/-, the annual income becomes Rs.2,22,864/-. Deducting professional tax to the tune of Rs.2500/- there-from, the remaining amount left is Rs.2,20,364/-. Further adding 50% towards future prospects to the same, as the deceased was admittedly aged about 36 years, it comes to Rs.3,30,546/-. Deducting 1/4th (discarding the father as dependent of the deceased since he is getting pension) towards personal expenses, since the number of claimants are four, the annual loss of dependency comes to Rs.2,47,909/-. Applying multiplier 15, the total loss of dependency reaches to Rs.37,18,642/-. Adding consortium of Rs.40,000/- each to the wife and two children and further adding Rs.30,000/- towards general damages, the total amount comes to Rs.38,68,642/- along with interest @6% per annum. Accordingly, the compensation amount is fixed to the above extent.

6. At this stage, it is submitted that though the Insurance Company has deposited the awarded amount as per the direction of the Tribunal before it, but the same has not been disbursed yet.

7. In the result, the appeal is disposed of with a direction to the Insurer-Respondent No.2 to deposit the modified compensation amount of Rs.38,68,642/-(Thirty eight lakhs sixty eight thousand six hundred forty two) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today, where-after the same shall be disbursed to the present Appellants and the mother of the deceased (Respondent No.5) as per the following direction:-

The wife, two children and mother of the deceased will get equal share in the total amount and 75% of the shares fall to each (except father) shall be kept in fixed deposits separately in any Nationalized Bank for a period of five years from the date of deposit with quarterly interest payable to them respectively.

8. The Insurer is permitted to take back the earlier cheque deposited before the Tribunal.

9. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal