IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.84 of 2019

National Insurance Co. Ltd. .... *Appellant*
Mr. A. Das, Advocate

-versus-

Mayadhar Rath and others .... *Respondents*
Ms. D. Mohapatra, Advocate for Respondent Nos.1 & 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
08.09.2022

Order No.	
07.	1. Heard Mr. A. Das, learned counsel for the Appellant-Insurance Company as well as Ms. D. Mohapatra, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 09.10.2018 of learned 5th M.A.C.T., Khurda in M.A.C.T. Case No.48 of 2013 wherein compensation to the tune of Rs.15,99,950/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.17.05.2013 on account of death of the deceased in the motor vehicular accident dated 03.02.2013.

3. Mr. A. Das, learned counsel contends on behalf of the Appellant that first of all the amount of treatment expenses to the tune of Rs.7,44,000/- added by the Tribunal to the compensation is erroneous since original bills were not produced by the claimants.

4. Upon hearing Ms. D. Mohapatra, learned counsel for the claimants-Respondent Nos.1 & 2 and perusal of the impugned judgment, it reveals that the original bills were lost as per the claimants and so they produced the duplicate bills. Admittedly the treatment of the deceased from 3.2.2013 to 21.2.2013 in Kar Clinic and Apollo Hospital, Bhubaneswar is not disputed by the insurer. In support of such expenses incurred for treatment of the deceased, they have examined one independent witness as P.W.6.

5. On the other hand, it reveals from copy of deposition of P.W.1 that the insurer even did not put any denial suggestion to the same in their cross to P.W.1 that no such expenses were either incurred or the original bills have been utilized otherwise to reimburse the amount. Thus in absence of any material evidence in support of the contention raised by Mr. Das, the same is not found acceptable because the treatment of the deceased for such period in Apollo Hospital, Bhubaneswar is never disputed.

6. It is next contended that addition of future prospects to the income of the deceased, who admittedly was a non-earning person being a student aged about 17 years only is illegal. Here also Mr. Das fails in his contention in view of the law settled in the case of ***Kirti and another vs. Oriental Insurance Company Ltd., (2021) 2 SCC 166***.

7. The notional income assessed by the learned Tribunal to the tune of Rs.4500/- per month being not questioned, which is otherwise found reasonable in the circumstances, no reason is seen to interfere with the award amount granted by the Tribunal.

However, the rate of interest as directed to be paid is reduced to '6%' from '7%'.

8. In the result, the appeal is disposed of with a direction to the Appellant – Insurance Company to deposit the entire compensation amount of Rs.15,99,950/- (rupees fifteen lakhs ninety-nine thousand nine hundred fifty) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 17.05.2013 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion contained in the direction of the Tribunal.

9. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

10. The certified copy of the depositions filed by Ms. D. Mohapatra are kept on record.

(B.P. Routray)
Judge

B.K. Barik