

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.1231 of 2016**

***The Branch Manager, Oriental Insurance Company Limited*** .... ***Appellant***

Mr. A.A. Khan, Advocate

*-versus-*

***Bhagyasini Rana and others*** .... ***Respondents***

Mr. S. Sourav, Advocate for Respondent Nos.2 & 5

**CORAM:**

**JUSTICE B. P. ROUTRAY**

**ORDER**

**10.11.2022**

**Order No.**

07.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company as well as Mr. S. Sourav, learned counsel for the Respondent Nos.2 & 5-claimants.

2. Present appeal by the insurer is directed against the judgment dated 30.07.2016 of learned M.A.C.T. (III), Sonepur in M.A.C. Case No.23/12 of 2011-15, wherein compensation to the tune of Rs.7,25,000/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.24.11.2011 on account of death of the deceased in the motor vehicular accident dated 8.7.2009.

3. The main contention raised by Mr. A.A. Khan, learned counsel for the Appellant-insurer is to the effect that the deceased himself was operating the power tiller and therefore, he was negligent for his own death. It is further submitted that learned Tribunal has computed the compensation on higher side despite the fact that the deceased was a labourer at the time of accident.

4. Upon hearing Mr. S. Sourav, learned counsel for the claimants and perusal of the impugned judgment, it reveals that the Tribunal has come to the finding that Opposite Party No.1, the owner was driving the power tiller at the time of accident. Mr. Khan presses the evidence of OPW-1, the owner, to contend that the deceased was driving the power tiller.

5. Upon perusal of the copy of evidence of OPW-1, as produced by Mr. Khan, it reveals that the deceased was working as a labourer under him at the time of accident and operating the power tiller. But this evidence of OPW-1 is not found believable for the reason that the Police upon investigation has submitted the charge-sheet against the owner – O.P. No.1. The evidence of P.W.1 that the owner was operating the power tiller at the time of accident is getting support from police report. Thus the evidence of O.P.-1(owner) to the contrary is not believable. Therefore, the learned Tribunal has rightly approached to fix the negligence on the owner and as such, no merit is found to interfere with the same.

6. With regard to the submissions of the Appellant about quantum of compensation, it is seen that the Tribunal has assessed the income of the deceased at Rs.300/- per day to make his monthly income at Rs.9,000/-. In terms of the Notification No.293, dated 28.4.2007 valid at the time of accident, Rs.90/- was prescribed for skilled labourer and Rs.100/- was for highly skilled labourer. As such, fixation of Rs.9000/- as monthly income of the deceased by the Tribunal is found erroneous. Keeping in view the prescribed rate of minimum wages prevalent on the date of accident, i.e. on

8.7.2009, and completing all formalities on computation including addition of future prospects, a reduced compensation of Rs.4,80,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. Sourav, learned counsel for the claimants agrees to the same and Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

7. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.4,80,000/- (rupees four lakhs eighty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 24.11.2011 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

8. 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.

9. The MACA is disposed of with aforesaid directions.

10. An urgent certified copy of this order be granted on proper application.

**( B.P. Routray )**  
**Judge**