

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.71 of 2021

MACA Nos.71 & 85 of 2021

***Divisional Manager, National
Insurance Company Ltd.***

(In MACA No.71/2021)

Raebari Bariha and Another

(In MACA No.85/2021)

.... Appellants

Mr. P. Sinha, Advocate (in MACA No.71/2021)
Mr. B.N. Rath, Advocate (in MACA No.85/2021)

-versus-

Raebari Bariha and Others

(In MACA No.71/2021)

Madhavi Dei and Another

(In MACA No.85/2021)

.... Respondents

Mr. B.N. Rath, counsel for Respondents 1&2
(in MACA No.71/2021)

Mr. P. Sinha, counsel for Respondent No.2
(in MACA No.85/2021)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

11.05.2022

Order No.

- 08.
1. Heard Mr. P. Sinha, learned counsel for the insurer and Mr. B.N. Rath, learned counsel for claimants.
 2. The claimants have filed I.A. Nos.126 of 2021 and 125 of 2022 in MACA No.85 of 2021 praying for exemption from payment of deficit court fee and condonation of delay in filing the appeal respectively.

Considering the fact that the claimants are Appellants, they are exempted from payment of deficit court fee for the time being, payable at the time of disbursal of the compensation amount. Further the delay in filing MACA No.85 of 2021 is condoned considering the grounds mentioned in the petition.

3. Both the appeals are against the same impugned judgment dated 20th October, 2020 of learned 3rd MACT, Jharsuguda passed in MAC Case No.24 of 2016 wherein compensation to the tune of Rs.12,36,400/-along with interest @ 6% per annum from the date of filing of the claim application, i.e. 20th June, 2016 has been granted on account of death of the deceased in the motor vehicular accident dated 8th November, 2015.

4. MACA No.71 of 2021 has been preferred by the insurer challenging the award, whereas MACA No.85 of 2021 has been preferred by the claimants praying for enhancement of the compensation amount.

5. The challenges of both parties are with regard to quantum of compensation. It is submitted on behalf of the insurer that there is an error in the calculation by adding 40% towards future prospects over the whole income without deducting personal expenses. On the other hand the challenge by the claimants is to the effect that no filial consortium has been granted in respect of the younger sister of the deceased who is claimant No.2 before the tribunal, and the learned Tribunal did not take into account the actual income of the deceased as a mason along with his special skill in bamboo craft.

6. Perusal of the impugned judgment reveals that at paragraph 10 the learned Tribunal has though granted 40% over the annual income towards future prospects but added the same towards loss of dependency without deducting 50% of the same for personal expenditure which is liable to be corrected to the effect that after adding 40% towards future prospects over the annual income, 50% has to be deducted there-from towards personal expenditure.

7. Coming to the contention of the claimants, it is seen that under Exhibit-12 is a certificate granted by the concerned Councilor of Jharsuguda Municipality to the effect that the deceased was earning Rs.9000/- from masonry work and Rs.5000/- from bamboo craft skill. P.Ws.1 and 2 examined on behalf of the claimants have stated in their evidence that the deceased was a full time mason as well as part-time bamboo craftsman and was earning around Rs.14,000/- per month. The Tribunal has disbelieved such evidence adduced from the side of the claimants in absence of any conclusive documentary proof with regard to the occupation and avocation of the deceased and took the income of the deceased as an unskilled labourer at Rs.200/- per day.

8. It is true that it is difficult for a person working in an unorganized sector to prove their income with documentary evidence. In the instant case since the skill of the deceased to work as mason and bamboo craftsman brought in course of evidence from the side of the claimants has not been rebutted sufficiently by the other side, it is felt appropriate in the given facts to accept him as a skilled labourer on the date of accident. Considering the date of accident and death on 8th November, 2015, as per SRO No.150 dated 10th April, 2015 the rate prescribed for skilled labourer is Rs.240/- per day. Accepting the

same as the income of the deceased, the computation for compensation is modified as follows:-

i)	Annual income	Rs.240/- X 30 = Rs.7200/- X 12 = Rs.86,400/-
ii)	Adding 40% towards future prospects	Rs.86,400/- + Rs.34,560/- = Rs.1,20,960/-
iii)	Deducting 50% towards personal expenditure	Rs.1,20,960 x 1/2 = Rs.60,480/-
iv)	Applying multiplier '18', the total loss of dependency comes to	Rs.60,480/- X 18 = Rs.10,88,640/-
v)	Adding Rs.1,10,000/- towards general damages and consortium for both claimants, total compensation comes to	Rs.10,88,640/- + Rs.1,10,000 = Rs.11,98,640/-

9. It needs to be clarified here that the mother is entitled for filial consortium of Rs.40,000/-. For the sister – claimant No.2, in the given facts of the case where their father is pre-deceased and deceased was the elder brother of claimant No.2, keeping in view the role played by an elder brother in such situation for the younger sister, she is granted filial consortium of Rs.40,000/- also.

10. In the result, both the appeals are disposed of with direction to the insurer – Appellant in MACA No.71 of 2021, and Respondent No.2 in MACA No.85 of 2021 i.e. National Insurance Company Ltd. to deposit the modified compensation of Rs.11,98,640/- (eleven lakh ninety-eight thousand six hundred forty) before the tribunal along with interest @ 6% per annum from the date of filing of the claim

application, i.e. 20th June, 2016 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 to be decided by the learned Tribunal.

11. The statutory deposit made by the insurer – Appellant in MACA No.71 of 2021 before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda

