

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.72 of 2020

***The Manager (Legal), M/s. BAJAJ
Allianz General Insurance Co. Ltd.***

.... Appellant

Mr. G.P. Dutta, Advocate

-versus-

Bhanudei Mandhata and Others

.... Respondents

Mr. Pradeep Kumar Mishra, counsel for Respondents 1 & 2

CORAM:

SHRI JUSTICE B. P. ROUTRAY

**ORDER
21.02.2022**

Order No.

- 04.
1. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant and Mr. P.K. Mishra, learned counsel for claimant – Respondents.
 2. The present appeal by the insurer is against the impugned judgment dated 29th November, 2019 of the learned 4th MACT, Cuttack in MAC Case No.133 of 2014/309 of 2015 wherein compensation to the tune of Rs.10,17,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 22nd February, 2014 has been granted on account of death of the deceased in the motor vehicular accident dated 19th January, 2014.
 3. It is submitted on behalf of the Appellant that the offending vehicle, i.e. the Pickup Van bearing Registration No.OR 02 AQ 1145 is not involved in the accident. The same is substantiated from the fact that the F.I.R. was lodged 10 days after the accident and in the bed-

head ticket it was mentioned by the relative of the deceased that he died due to fall from the motor cycle.

4. Mr. Mishra, learned counsel for the claimants in reply submits that the bed-head ticket does not prove the contention of the Appellant conclusively as it is the case of the claimants that after the offending Pickup van hit the motorcycle from behind, the deceased fell down from it and died.

5. Having heard both parties and upon perusal of the impugned judgment it reveals that the learned Tribunal has discussed the same under Issue Nos.(i) and (v). Admittedly, Banpur P.S. Case No.28 dated 29th January, 2014 was registered concerning the accident and death, wherein charge-sheet has been filed upon completion of investigation against the driver of the Pickup van. Further the owner appeared before the Tribunal and admitted the accident resulting death of the deceased. In such view, contention of the insurer based on Ext.C & D to negate involvement of the offending vehicle in the accident is rejected.

6. Next on the question of quantum, it is contended on behalf of the insurer that the learned tribunal has assessed the monthly income to the tune of Rs.6000/- without sufficient proof which should not be more than Rs.4,500/- considering the minimum wages prevailing during the year 2014.

7. It reveals from the impugned judgment that it is the case of the claimants that the deceased was dealing with scrap business and earning Rs.10,000/- per month. However, the claimants could not produce any documentary proof in support of income of the deceased. So, drawing a balance between the prevalent minimum wages of the

relevant year and the nature of avocation of the deceased, in my opinion a monthly income of Rs.5000/- would satisfy the purpose since no definite proof is there on record to determine the exact income of the deceased.

8. Accordingly, working on the settled principle decided in the case of *National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680*, the total compensation comes to Rs.8,66,000/- i.e. (Rs.7,56,000/- + general damages to the tune of Rs.1,10,000/-).

9. The insurer – Appellant is directed to deposit total compensation of Rs.8,66,000/- (eight lakh sixty-six thousand) before the learned tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 22nd February, 2014 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.

10. It goes without saying that the penal interest is waived.

11. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

12. The appeal is disposed of.

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

(B.P. Routray)
Judge