

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.173 of 2016

MACA No.173 of 2016 & 568 of 2016

The Divisional Manager, Oriental Insurance Company Ltd. (in MACA No.173/2016)
Chandrama Perisika and Others (in MACA No.568/2016)
..... ***Appellants***

Mr. Mohan Ch. Nayak, Advocate (in MACA No.173/2016)
Mr. Ramesh Ch. Pradhan, Advocate (in MACA No.568/2016)

-versus-

Smt. Chandrama Perisika and Others (In MACA No.173/2016)
Jagannath Samantaray and Another (In MACA No.568/2016)

..... ***Respondents***

Mr. Ramesh Ch. Pradhan, counsel for Respondents 1 to 4
(in MACA No.173 of 2016)

Mr. Mohan Ch. Nayak, counsel for Respondent No.2
(in MACA No.568 of 2016)

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
21.12.2022

Order No.

- 07.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. M.C. Nayak, learned counsel for the insurer and Mr. R.C. Pradhan, learned counsel for claimants.
 3. Both the appeals being arise out of same impugned judgment, are heard together and disposed of by this common order.
 4. Both the appeals are directed against the impugned judgment dated 2nd November, 2015 of learned 7th MACT, Bhubaneswar passed

in MAC Case No.105/3203 of 2014, wherein compensation to the tune of Rs.8,16,500/- along with interest @ 9% per annum from the date of filing of the claim application has been granted on account of death of the deceased Sanyasi Perisika in the motor vehicular accident dated 23rd September, 2012.

5. In MACA No.173 of 2016 filed by the insurance company the impugned award has been challenged mainly on the ground that the accused driver did not have a valid licence on the date of accident to drive a commercial vehicle and secondly, the income of the deceased has been fixed at higher side.

6. The claimants have come up in appeal in MACA No.568 of 2016 praying for enhancement of the compensation amount on the ground that the age of the deceased has been wrongly taken as 57 years instead of 44 years. Further the tribunal did not add any future prospects to the income of the deceased. I.A. No.1067 of 2022 has been filed by the claimants to adduce the copy of the school admission register of the deceased obtained under the RTI Act, as additional evidence in support of age proof of the deceased. The same being found authentic as granted by the competent authority under the RTI Act and no objection raised the same, is accepted on record.

7. Mr. Nayak, learned counsel contends on behalf of the appellant that the driver though had a licence in respect of a light motor vehicle but did not have authorization to drive a commercial vehicle. This submission of Mr. Nayak to invalidate the DL of the accused driver has no force keeping in view the definition contained under Section 2(21) of the MV Act. The offending vehicle is an Ambassador car

bearing registration number OR 02 AD 9020 and therefore, the driving licence of the accused driver cannot be termed as invalid.

8. With regard to quantum of compensation, it is seen from the impugned judgment that in absence of any document adduced from the side of the claimants the tribunal relied on the entry recorded in the post mortem examination report to determine the age of the deceased as 57 years and before arriving at such conclusion the tribunal rejected the evidence given from the side of the claimants under Ext.7, i.e. the copy of the school leaving certificate, on the ground that the same is a Photostat copy. In view of the copy of school admission register produced before this court, the date of birth of the deceased is seen to be 3rd April, 1968. The date of accident being 23rd September, 2012, his age is thus was 44 years on the date of accident. Accordingly, the future prospect to the extent of 25% needs to be added to the income of the deceased and the multiplier would be '14'.

9. It needs to be mentioned here that the deceased is stated to be a hotelier having hotel business, But the same has been disbelieved by the tribunal in absence of any documentary evidence. It is true that the consistent case of the applicants is that the deceased was earning Rs.10,000/- per month from hotel business. P.W.2 has stated in his evidence that he was working as a helper in the hotel of the deceased. But no other details regarding hotel business of the deceased has either been stated by P.W.1, the son or by P.W.2. Therefore, the approach of the tribunal to fix his income at Rs.6000/- per month on guess work is not seen with any infirmity. Here the submission of Mr. Nayak, learned counsel for the Appellant to treat the deceased as an

unskilled labourer is rejected for the reason that in every case of failure to give details of income, the deceased cannot be treated as a labourer. When the specific case of the claimants is that the deceased was having hotel business, though the fact remains that his income could not be proved with certainty, and such evidence adduced from the side of the claimants is not rebutted by the insurer either in their cross-examination or through independent material, the fixation of income by guess work is permissible. Thus, keeping in view those evidences and the place of residence of the deceased, the extent of income of Rs.6000/- as assessed by the tribunal is confirmed.

10. It is further observed here that the extent of deduction towards personal expenses up-to $\frac{1}{3}^{\text{rd}}$ of the income by the tribunal on the ground that claimant No.2, Laxmikant is a major son of the deceased aged about 20 years on the date of accident, and therefore, he is not a dependent of the deceased, is found unjustified because the status of the son as a dependent on the income of father is not automatically changed upon attaining his majority. Specific evidence need to be adduced for opining someone as dependant on other or not. Moreover, the law is well settled that even the major sons and daughters of a deceased are to be treated as dependents. So, the appropriate deduction would be $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$, since there are four dependents of the deceased.

11. Accordingly the total loss of dependency is determined as Rs.9,45,000/-. Adding Rs.40,100/- thereto towards medical expenses as assessed by the tribunal and further adding Rs.1,60,000/- towards consortium to each claimant and Rs.30,000/- towards general

damages, the total compensation amount is determined at Rs.11,55,100/-, payable along with interest @ 6% per annum.

12. In the result both the appeals are disposed of with a direction to the insurance company, i.e. Oriental Insurance Co. Ltd. to deposit a total compensation of Rs.11,55,100/- (eleven lakhs fifty five thousand one hundred) 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 in favour of the claimants on such terms and proportion to be decided by the learned tribunal.

13. The statutory deposit made by the insurer before this court in MACA No.173 of 2016 along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

14. The copies of documents filed by Mr. Pradhan in course of hearing are kept on record.

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

(B.P. Routray)
Judge