IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.1036 of 2017

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

Mrs. P. Pattnaik, Advocate

-versus-

Satyabhama Rout and Another .... ***Respondents***

Mr. L. Bhuyan, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
28.11.2022

Order No.

08. 1. The matter is taken up through hybrid mode.

2. Heard Mrs. P. Pattnaik, learned counsel for the insurer - Appellant and Mr. L. Bhuyan, learned counsel for claimant – Respondent No.1.

3. Present appeal by the insurer is against impugned judgment dated 18th May, 2017 of learned 1st MACT, Keonjhar passed in MAC No.204 of 2015, wherein compensation to the tune of Rs.6,27,000/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 28th December, 2015 has been granted on account of death of the deceased Rabindra Kumar Rout @ Rabindra Rout in the motor vehicular accident dated 12th October, 2015.

4. Mrs. Pattnaik, learned counsel for the Appellant submits that determination of compensation by the tribunal is erroneous for the

reason that it has applied higher multiplier ignoring the age of the deceased as 59 years and secondly, future prospects to the extent of 15% has been applied instead of 10%. Thirdly, 50% of the income is liable to be deducted towards personal expenses instead of 1/3rd.

5. After hearing Mrs. Pattnaik and perusal of the impugned judgment, it reveals that the age of the deceased has been assessed by the tribunal based on the recording in the post mortem examination report under Ext.5. No rebuttal evidence has been adduced to dispute the age of the deceased, except placing reliance to the statement of P.W.1 to the effect that the deceased was 5 years older than her. Thus, the contention of Mrs. Pattnaik to reassess the age of the deceased at 59 years against the finding of the tribunal is found without merit and it is held that determination of age of the deceased as 52 years by the tribunal is without any fault. Accordingly, applicability of multiplier '11' is found justified. The next contention regarding deduction of 1/3rd from the income of the deceased towards personal expenses is rejected outright since the status of the deceased as a married person is not disputed and admittedly, the claimant is the wife of the deceased.

6. With regard to addition of 15% towards future prospects, as done by the tribunal, is not found justified in view of the avocation of the deceased as a agriculturist and vegetable vendor. Thus the same is liable to be reduced to 10% in terms of the principles decided in the case of ***National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680***. Thus, by determining the income afresh with addition of future prospects to the extent of 10%, without disturbing other findings, the annual loss of dependency comes to

Rs.52,800/-. Total loss of dependency thus becomes Rs.52,800 x 11 = Rs.5,80,800/-. Adding Rs.40,000/- towards spousal consortium and Rs.30,000/- towards general damages, the total compensation amount is determined at Rs.6,50,800/-, payable along with interest @ 6% per annum.

7. In the result, the appeal is disposed of with a direction to the insurer – Appellant to deposit the total compensation amount of Rs.6,50,800/- (six lakhs fifty thousand eight hundred) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2015, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on such terms and proportion to be decided by the learned tribunal.

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

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

(B.P. Routray)
Judge

M.K.Panda