

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.83 of 2021

MACA Nos.83 of 2021 & 437 of 2020

Prananath Nayak and Others (In MACA No.83/2021)

***Orissa State Road Transport
Corporation represented by its
Chairman-cum- Managing Director (In MACA No.437/2020)***

.... Appellants

Mr. T.C. Mohanty, Sr. Advocate (in MACA No.83/2021)
Mr. B.K. Sahoo, Advocate (in MACA No.437/2020)

-versus-

***Chairman-cum-Managing Director,
OSRTC (In MACA No.83/2021)***

Prananath Nayak and Others (In MACA No.437/2020)

.... Respondents

Mr. B.K. Sahoo, Advocate (in MACA No.83/2021)
Mr. T.C. Mohanty, Sr. Advocate (in MACA No.437/2020)

**CORAM:
SHRI JUSTICE B. P. ROUTRAY**

**ORDER
6.9.2022**

Order No.

- 08.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. T.C. Mohanty, learned senior counsel for the claimants and Mr. B.K. Sahoo, learned counsel for Orissa State Road Transport Corporation (hereinafter referred as 'the Corporation').
 3. Both the appeals being arise out of same judgment, are heard together and disposed of by this common order.

4. Both the appeals are against the same impugned judgment dated 21st January, 2020 of learned 4th MACT, Cuttack passed in MAC Case No.32 of 2010 / 262 of 2017 wherein compensation to the tune of Rs.7,94,800/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 27th January, 2010 has been granted on account of death of the deceased Ajit Kumar Nayak in the motor vehicular accident dated 31st December. 2009.

5. MACA No.83 of 2021 has been preferred by the claimants praying for enhancement of the compensation amount, whereas MACA No.437 of 2020 has been preferred by the Corporation challenging the award.

6. Mr. Sahoo, learned counsel for the Corporation submits that the accident being a head-on-collision and the deceased without having a valid driving licence, was negligent for the cause of accident and as such, the Corporation is not liable to pay any compensation. It is submitted that the finding of the tribunal against the Corporation regarding negligence is completely erroneous.

7. On the other hand Mr. Mohanty, learned senior counsel contends on behalf of the claimants that taking the profession of the deceased as a supervisor and the prevalent rate of minimum wages, his income should be fixed at Rs.8000/- per month.

8. First dealing with the challenge advanced by Mr. Sahoo, perusal of the impugned judgment reveals that the claimants are the parents and siblings of the deceased. The deceased was unmarried. On the date of accident, i.e. 31st December, 2009 when the deceased was going in a motor cycle, the offending bus bearing registration number

OR 05 Z 3215 belonging to the Corporation, dashed him from the front resulting sustenance of serious grievous injuries and the deceased succumbed to the same in the hospital. Admittedly, the driving licence of the deceased was not produced by the claimants despite repeated directions by the tribunal. His father – P.W.1 also stated in his cross-examination that he cannot say if the deceased had any driving licence. Therefore, the presumption taken against the deceased that he was driving the motor cycle without a valid driving licence is substantiated with.

9. The next question is that, whether entire negligence would liable to be attributed against a driver towards the cause of accident for he not having the licence? The answer is 'no'. I fail to agree with such submission of Mr. Sahoo. It is true that when the driver of a motor vehicle fails to produce his driving licence, the presumption goes against him that he did have the requisite authority to drive a motor vehicle on public road. Driving license is required to drive a motor vehicle on public road. This does not mean that a person, who does not have the license, does not know driving a motor vehicle. Negligence in driving as the cause of accident is always a matter of fact and needs to be proved on record. It is an issue of fact. First, it needs to be proved that he was driving negligently and such proof of negligence would be bolstered by absence of the required license.

Now looking to the facts in the instant case where such initial presumption taken against the deceased has been sufficiently rebutted by the evidence of P.W.2, the eye witness, that the accident was the result of negligent driving of the driver of the bus and the F.I.R. was lodged stating the same thing and the police upon investigation has

submitted charge-sheet against the driver of the offending bus for commission of offences under Sections 279/304-A of I.P.C. substantiating such contention. Nowhere is it stated nor has anything been brought on record to suggest that the deceased was negligently driving the motor-cycle. Moreover, it is the categorical evidence of P.W.2 that as the driver of the offending bus suddenly swerved to its right, the accident caused. Nothing could be elicited from the mouth of said eye witness against the negligence told by him in respect of the driver of the bus. Also no suggestion was put in course of his cross-examination by the Corporation to suggest anything that the deceased was driving the motor cycle negligently or he did not have enough experience in driving the motor cycle. Therefore, the initial presumption against the deceased for not having the licence to drive a motor cycle is sufficiently rebutted and the negligence on the part of the driver of the bus to cause the accident has been proved. Considering all such factors and the evidence adduced on record, the contention raised by Mr. Sahoo on behalf of the Corporation is thus rejected.

10. Next coming to the submissions made by Mr. Mohanty, learned senior Advocate that the amount of compensation needs to be enhanced by taking the higher salary of the deceased, it is submitted by Mr. Sahoo for the Corporation that the amount granted by the tribunal taking the monthly income of the deceased at Rs.4000/- is at higher side in absence of any proof with regard to income.

11. Truly no document in support of income of the deceased has been produced on record. it is the only oral evidence of P.W.1, the father of the deceased that he was working as a Supervisor in ARSS

Company at Berhampur and getting salary of Rs.4000/- per month. The tribunal in absence of any documentary proof with regard to income of the deceased fixed the same based on the rate of minimum wages prevalent on the date of accident. As per notification No.6272 dated 13th July 2009, the rate of minimum wages prescribed for unskilled labourer was Rs.90/- per day, Rs.103/- for semi-skilled labourers, Rs.116/- for skilled and Rs.129/- for highly skilled labourers. Thus, in absence of any material proof with regard to the income of the deceased, his income as unskilled labourer can well be taken against the contention of the claimants to fix the same at Rs.8000/- per month. It is needless to reiterate that despite such claim of higher income of the deceased no material has been produced in support of the income of the deceased. As such, this court comes to the opinion that the income of the deceased can be assessed at the rate of Rs.90/- per day prevalent in respect of an unskilled daily-wager on the date of accident. Accordingly, the monthly income is counted at Rs.2,700/-. The age of the deceased as 23 years being not disputed, the applicable multiplier would be '18'. Again adding 40% towards future prospects, the annual income of the deceased is assessed at Rs.45,360/-. Since the deceased was an unmarried boy, deducting 50% towards his personal expenses, the annual loss of dependency comes to Rs.22,680/-. Applied with multiplier '18' the total loss of dependency is computed at Rs.4,08,240/-. Adding Rs.40,000/- each towards filial consortium to claimant Nos.1 and 2, who are the parents, and adding Rs.30,000/- towards general damages, the total sum determined is Rs.5,18,240/-, payable along with interest @ 6% per annum.

12. In the result both the appeals are disposed of with a direction to the OSRTC to deposit the total reduced compensation of Rs.5,18,240/- (five lakh eighteen thousand two hundred forty) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 27th January, 2010 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 tribunal. However, the penal interest as directed by the Tribunal is waved, as submitted by Mr. Sahoo.

13. The statutory deposit made by the Corporation – Appellant in MACA No.437 of 2020 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.

14. The copies of depositions of P.W.1 and P.W.2, as filed by Mr. Mohanty, are kept on record.

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

(B.P. Routray)
Judge