IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.845 of 2018 & MACA No.157 of 2019

In MACA No.845 of 2018

The Branch Manager, Reliance General Insurance Co. Ltd. .... ***Appellant***

Mr. S. Satapathy, Advocate

-versus-

Uri Naik and others .... ***Respondents***

Mr. B.N. Samantaray, Advocate for Respondent Nos.1 & 2

In MACA No.157 of 2019

Smt. Uri Naik and another .... ***Appellants***

Mr. B.N. Samantaray, Advocate

-versus-

Smt. Jayanti Patra and another .... ***Respondents***

Mr. S. Satapathy, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
10.10.2022

Order No.

MACA No.845 of 2018 & MACA No.157 of 2019

09. **1.** Heard Mr. S. Satapathy, learned counsel for the Insurance Company and Mr. B.N. Samantaray, learned counsel for the claimants.

2. Both the appeals being arise out of the same judgment dated 12.03.2018 of the learned 2nd MACT (Southern Division), Berhampur, Ganjam, wherein compensation to the tune of Rs.7,00,280/- has been granted along with simple interest @6%

per annum to the claimants from the date of filing of the claim application, i.e.05.08.2011 on account of death of the deceased in the motor vehicular accident dated 15.04.2010, are heard together and disposed of by this common order.

3. MACA No.845 of 2018 has been filed by the insurer challenging the award and MACA No.157 of 2019 has been filed by the claimants praying for enhancement of the compensation amount.

4. The main challenge in both the appeals is on the quantum of compensation.

5. Mr. S. Satapathy, learned counsel for the insurer submits that the learned Tribunal has taken income of the deceased on higher side, whereas the challenge of the claimants is that the Tribunal has reduced the income of the deceased without valid reason. In addition to his submission, Mr. Satapathy further contends that the Tribunal has deducted 1/3rd towards personal expenses instead of 50% since the deceased was a bachelor.

6. Upon hearing both the parties and perusal of the impugned judgment, it reveals that the Tribunal has assessed the income of the deceased at Rs.110/- per day, i.e. Rs.3300/- per month. As per the claimants, the deceased was working as a mason and earning Rs.12,500/- per month. Admittedly, except oral statement of Claimant No.1, the mother of the deceased, no other witness has been examined to suggest the said aspect. P.W.2 and 3 have not said anything on the income aspect of the deceased. So in absence of any substantial evidence with regard to avocation of the deceased and his income, the same can be assessed as per the prevalent minimum rate of wages. In terms of Notification No.6272, dated 13.7.2009, the rate of minimum wages prescribed for un-skilled labourer was Rs.90/- per day, Rs.103/- for semi-skilled labourer, Rs.116/- for skilled labourer and Rs.129/- for highly skilled labourer. As stated earlier, in absence of substantial proof, the contention of the claimants cannot be accepted to treat him as a mason or skilled labourer, but at the same time he can be treated as an unskilled labourer. Thus his income is assessed at Rs.90/- per day, i.e. Rs.2700/- per month. Adding future prospects to the extent of 40% on the income of the deceased and deducting 50% towards personal expenses, as it is the admitted case of the claimants that the deceased was a bachelor on the date of accident, the total loss of dependency is computed at Rs.4,11,840/-. Adding Rs.30,000/- towards general damages and Rs.40,000/- towards loss of consortium to each of the claimants, the total compensation is determined at Rs.5,21,840/-, rounded to Rs.5,22,000/- payable along with 6% interest. Since the liability of the insurer is not questioned, the insurer, i.e. M/s.Reliance General Insurance Company Ltd. is liable to pay the entire compensation amount.

7. In the result, both the appeals are disposed of with a direction to the Insurance Company to deposit the modified compensation of Rs.5,22,000/- (rupees five lakhs twenty-two thousand) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e. 05.08.2011 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 fixed by the Tribunal. However, the default interest as directed by the Tribunal is waived.

8. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court in MACA No.845 of 2018 with accrued interest thereon shall be refunded to the Insurance Company.

9. The copies of the depositions as produced by Mr. Satapathy, learned counsel for the Insurance Company are kept on record.

10. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik