IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1260 of 2016

Mukta Sanda and Another .... ***Appellants***

Mr. P.K. Nayak, Advocate

-versus-

Somanath Swain and Others .... ***Respondents***

Mr. B.P. Das, counsel for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
16.8.2022

Order No.

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

2. Heard Mr. P.K. Nayak, learned counsel for the Appellants and Mr. B.P. Das, learned counsel for insurer – Respondent No.2.

3. Present appeal by the claimants is against the impugned judgment dated 8th August, 2016 of the learned 3rd MACT, Rourkela passed in MAC Case No.350 of 2015 wherein compensation to the tune of Rs.9,06,790/- along with interest @ 6% per annum from the date of filing of the claim application has been granted on account of death of deceased Ashok Sanda in the motor vehicular accident dated 4th December, 2015.

4. It is submitted by Mr. Nayak, learned counsel for the claimants that the tribunal while fixing the negligence has observed that the deceased contributed to the extent of 70% towards the cause of accident, which is completely erroneous.

5. Mr. Das, learned counsel for the insurer on the other hand submits that since the deceased by riding the motor cycle dashed behind the offending Bolero vehicle, the tribunal has rightly contributed 70% negligence on the deceased.

6. Upon hearing both parties and perusal of the impugned judgment it reveals that no eye-witness of the accident was examined from either side. The claimants examined one witness only, who is the wife of the deceased and not an eye witness. No further evidence except the copies of F.I.R. and police papers were produced before the tribunal in support of the cause of accident. The insurer did not adduce any evidence. But the tribunal fixed 70% negligence on the deceased only for the reason that the deceased dashed the offending vehicle from behind.

7. The case of the claimants is to the effect that at the time of accident as the offending Bolero suddenly stopped on the road before a hump, the deceased who was riding the motor cycle dashed against it by losing his balance. The F.I.R. story goes in the same line that the offending vehicle stopped by applying sudden brake. Here it is submitted by Mr. Das that the deceased rider of the motor cycle was not maintaining safe distance from the Bolero and therefore the accident happened. Such contention of Mr. Das is not found convincing in absence of any evidence adduced from the side of the insurer. Admittedly charge-sheet has been submitted against the driver of the offending Bolero in the police case for criminal prosecution under Section 279/304-A of I.P.C. This fact is not disputed and the evidence of the wife of the deceased suggests that the accident was the

result of entire negligence on the part of the driver of the offending Bolero as it suddenly stopped on the road after overtaking the motor cycle of the deceased. Thus, considering all such evidence brought on record, particularly the evidence of the wife of the deceased supported with the contention of the FIR and the charge-sheet submitted against the driver of the Bolero, the finding of the tribunal regarding attribution of composite negligece on the deceased to the extent of 70% is unsustainable. It is reiterated here that in absence of any material to shift composite negligence on the deceased, the tribunal has committed gross error in concluding about 70% negligence on the part of the deceased. As such, the finding of the tribunal to that effect is set aside.

8. Accordingly it is concluded that the driver of the offending Bolero vehicle had the entire negligence for the cause of accident.

9. Since the income aspect of the deceased is not disputed, who was an employee of South-Eastern Railway, this court accepts the calculation of income made by the tribunal at paragraph 9 of the impugned judgment and the loss of dependency determined thereof. The tribunal has calculated the total loss of dependency to the tune of Rs.26,05,968/-. But while doing so, it has not added future prospects. So recalculating the same by addition of Rs.3,90,895/- towards future prospects to the extent of 15%, and further sum of Rs.2,40,000/- towards consortium to the claimants and Rs.30,000/- towards general damages, the total compensation is determined at Rs.32,66,863/-.

10. It is submitted at the Bar that Rs.9,06,790/- along with interest @ 6% per annum in terms of the direction of the tribunal has already

been paid to Claimant No.1 and 3. But no compensation has been paid to claimant Nos.2, 4, 5 and 6 as in the opinion of the tribunal they are not the dependents of deceased being married son and daughters. Such finding of the tribunal that claimant Nos.2, 4, 5 and 6 are not entitled for any compensation is set aside being found untenable in view of the law settled on the issue {see: *National Insurance Company Limited vs- Birender and others*, **(2020) 11 SCC 356**}. It is thus held that all the claimants are entitled for compensation.

11. In the result, the appeal is disposed of with a direction to the insurer – Respondent No.2 to deposit the balance compensation amount of Rs.23,60,073/- (twenty-three lakh sixty thousand seventy-three) 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 all the claimants equally on such terms and proportion to be decided by the Tribunal.

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

(B.P. Routray)
Judge

M.K.Panda