

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.179 of 2019

***Divisional Manager, Oriental
Insurance Company Ltd.***

.... Appellant

Mr. G.P. Dutta, Advocate

-versus-

Gita Bishoi and Others

.... Respondents

Mr. Biranchi Narayan Rath, counsel for Respondents 1-4

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

14.02.2022

Order No.

07. 1. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant and Mr. B.N. Rath, learned counsel for claimant – Respondents 1 to 4.
2. The present appeal by the insurer is directed against impugned judgment dated 30th June, 2018 of the learned 1st MACT, Nayagarh in MAC No.78 of 2014 wherein compensation to the tune of Rs.10,38,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 15th December, 2014 has been awarded in favour of the claimant Respondent Nos.1 and 2 on account of death of the deceased in the motor vehicular accident dated 2nd December, 2014.
3. It is submitted by Mr. Dutta, for the Appellant that the Tribunal has committed error by not deducting 50% of the income since the

deceased was a bachelor. Secondly, the driver of the truck was not having license to drive hazardous goods vehicle for which the right of recovery should be granted in favour of the insurer.

4. Having heard both parties and upon perusal of the impugned judgment, it reveals that despite specific case of the insurer that the driver had no valid license to drive hazardous goods vehicle, the learned tribunal has fixed the burden on the insurer on the ground that it failed to produce the copy of the driving license of the driver. Admittedly, the claimants did not produce the copy of the driving license of the driver. On perusal of copy of seizure lists and zimanama as produced by the Appellant in course of hearing, the same do not reveal seizure of any driving license of the driver. The owner Respondent No.1 did not come to contest and was set ex-parte. In such background the contention of the insurer that the driver of the offending vehicle does not have a valid driving license to drive the hazardous goods vehicle cannot be denied. As such the right or recovery from the owner of the vehicle has to be granted in favour of the insurer.

5. In the case of *National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680* Hon'ble Apex Court have observed that, if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. In the present case only the parents i.e. claimant No.1 & 2 are found eligible to get the compensation as per the direction of the tribunal. But the tribunal has deducted 1/3rd towards personal expenses. As such, the contention raised by the

Appellant to deduct 50% of the income is accepted and accordingly the total loss of dependency is reduced to Rs.7,56,000/- resulting reduction of total compensation amount to Rs.7,86,000/-.

6. Here Mr. Rath, learned counsel for the claimants submits that the learned tribunal has failed to add any compensation towards filial consortium since the claimants are the parents. However, in absence of any appeal by the claimants, such prayer cannot be entertained.

7. Accordingly the total compensation is modified to Rs.7,86,000/-(seven lakh eighty six thousand) and the Insure – Appellant is directed to deposit the said amount before the Tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 15th December, 2014 within a period of two months from today, where-after the same shall be disbursed in favour of the claimants on such terms and conditions as directed in the impugned judgment.

8. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer 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