

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.93 of 2022 & MACA No.262 of 2022

In MACA No.93 of 2022

Bijayalakhmi Jena and others ***Appellants***
Mr. D.C. Dey, Advocate

-versus-

Surendra Barla and another ***Respondents***
Mr. P.K. Mahali, Advocate for Respondent No.2
Mr. R. Behera, Advocate for Respondent No.1

In MACA No.262 of 2022

The D.M., M/s.National Insurance Co. Ltd. ***Appellant***

Mr. P.K. Mahali, Advocate

-versus-

Bijay Lakhimi Jena and others ***Respondents***
Mr. D.C. Dey, Advocate for Respondent Nos.1 to 4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
23.11.2022

Order No.

MACA No.93 of 2022 and MACA No.262 of 2022

05. 1. Heard Mr. D.C. Dey, learned counsel for the claimants, Mr. P.K. Mahali, learned counsel for the Insurance Company and Mr. R. Behera, learned counsel for the owner.
2. Both the appeals being arise out of the same judgment dated 20.01.2022 of the learned 3rd MACT, Cuttack in M.A.C. Case No.570 of 2015, wherein compensation to the tune of Rs.1,13,71,994/- has been granted along with simple interest

@6% per annum to the claimants from the date of filing of the claim application, i.e. 24.08.2015 on account of death of the deceased in a motor vehicular accident dated 25.06.2015, are heard together and disposed of by this common order.

3. MACA No.93 of 2022 has been filed by the claimants praying for enhancement and MACA No.262 of 2022 has been preferred by the Insurance Company challenging the award.

4. Mr. P.K. Mahali, learned counsel submits for the insurer that the offending vehicle, i.e. TATA Magic bearing Registration No.OD-16-3043 has been implanted in the accident to manage the compensation. He further submits that initially in the FIR no such mention of the offending vehicle, but the Police submitted the charge-sheet against the said vehicle upon collusion with the claimants.

5. It is seen that the FIR was lodged immediately after the accident stating that one four wheeler vehicle was negligent for the cause of accident. Subsequently the Police upon investigation have collected the registration number of the offending vehicle and accordingly submitted the charge-sheet for commission of offences under Sections 279/337/338/304-A, I.P.C. along with Section 187 of the M.V. Act against the driver of the offending vehicle.

6. P.W.2 is the eye-witness of the accident, who was also injured in the accident. He has categorically said in his evidence regarding negligent driving of the driver of the offending vehicle

and his evidence has been left un-rebutted. Therefore, keeping in view the evidence of P.W.2 and the Police investigation report, the involvement of the offending vehicle in the accident is established and as such, the contention raised by the Insurance Company against the same is rejected.

7. Next coming to the quantum of compensation, according to Mr. Mahali, learned counsel for the insurer, the same is erroneous and liable to be reduced. As per Mr. Dey, learned counsel for the claimants, the amount of compensation needs to be enhanced by adding parental consortium to the son of the deceased.

8. It is seen that the deceased was aged about 52 years on the date of accident and he was serving as Manager (Civil) under Odisha Power General Corporation, IB Thermal Power Station, Banaharpali, Jharsuguda. He was getting monthly salary of Rs.1,14,500/-. The learned Tribunal calculated his income based on the amount mentioned in Form-16 for the financial year 2014-15 after deducting statutory amount. According to the submission of Mr. Mahali, the amount received towards thermal allowance, fuel allowance, medical reimbursement, manager allowance and newspaper allowance, totaling to Rs.78,672/- per annum is liable to be deducted from the income of the deceased.

9. Mr. Mahali, learned counsel for the insurer relies on the decisions of the Supreme Court in the cases of *Sebastiani Lakra and others vs. National Insurance Company Ltd., 2018 (4) T.A.C. 367 (SC)* and *Kalpanaraj and others vs. Tamil Nadu State Transport Corporation, (2015) 2 SCC 764*.

10. The submission of Mr. Mahali is found without merit. It is for the reason that the learned Tribunal has calculated the income based on the amount mentioned in Form-16. It is well-known that the amount mentioned in Form-16 is for the income tax purpose where all such allowances, except for the purpose of income, are not added. The learned Tribunal has deducted the income tax to the tune of Rs.1,82,139/- and professional tax of Rs.2500/- from the total amount of income mentioned in Form-16 under Ext.26. So, no illegality is seen in said computation of income of the deceased.

11. It is next contended by Mr. Mahali, learned counsel for the insurer that as per the admission of P.W.4, the representative of the employer of the deceased, an amount of 40% of the basic pay along with other benefits has been released in favour of the widow of the deceased as rehabilitation benefit. According to Mr. Mahali, the same is liable to be deducted from the compensation amount. Again this is found without merit since the said rehabilitation benefits amounts to family pension in terms of the evidence of P.W.4 and the death benefits granted to the family members of the deceased upon death of the deceased is not liable to be deducted unless it is shown to have been paid as pecuniary benefit only for the reason of death due to motor vehicular accident. Therefore, said submission of Mr. Mahali is also rejected.

12. So far the contention raised by Mr. Dey that parental consortium has not been granted to the son, it is seen that the

learned Tribunal has added Rs.40,000/- towards spousal consortium for the widow and Rs.30,000/- towards general damages only. Therefore, adding another Rs.40,000/- to the total compensation amount, the same is enhanced to Rs.1,14,11,994/-.

13. At this stage, Mr.Mahali submits that the offending vehicle did not have valid fitness certificate on the date of accident and in support of his contention he files a copy of the certificate granted by the Regional Transport Officer, Sundargarh regarding fitness history of the offending vehicle.

14. Perusal of the same reveals that the fitness was valid for the period from 18th March, 2013 to 17th March, 2015 and again from 10th August, 2015 to 9th August, 2016. That means the fitness was not obtained for the period from 18th March, 2015 to 9th August, 2015.

15. Mr. R. Behera, learned counsel for the owner is unable to answer regarding the missing fitness of the offending vehicle on the date of accident as pointed out by Mr. Mahali. Accordingly, in absence of any answer from the side of the owner, it is presumed that the offending vehicle did not have a valid fitness on the date of accident and as such, the Insurance Company is granted with right of recovery of the compensation amount from the owner in accordance with law.

16. In the result, both the appeals are disposed of with a direction to the Insurance Company-National Insurance Co. Ltd. to deposit the modified compensation amount of Rs.1,14,11,994/- (rupees

one crore fourteen lakhs eleven thousand nine hundred ninety-four) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e. 24.08.2015 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal. However, the penal interest @12% per annum as directed by the learned Tribunal is waived.

17. On deposit of the award amount by the insurer before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made in MACA No.262 of 2022 before this Court with accrued interest thereon shall be refunded to the insurer.

18. The copies of exhibits and depositions filed in course of hearing are kept on record.

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

(B.P. Routray)
Judge