IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.105 of 2022

The Divisional Manager, M/s.Oriental Insurance Co. Ltd.	....	***Appellant***

Mr.S.K.Mohanty, Advocate

-versus-

Surendra Nayak and others	....	***Respondents***

Mr.Ashok Das, Advocate for Respondent Nos.1 to 5

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
26.8.2022

Order No.

04. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.Mohanty, learned counsel for the Appellant-Insurer and Mr.Das, learned counsel for claimants-Respondent Nos.1 to 5.

3. Present appeal by the Insurer-Appellant is against the judgment dated 23rd December, 2021 of the Member, 2nd MACT (SD), Berhampur in MAC Case No.178 of 2018 (185/2010-GDC), wherein compensation to the tune of Rs.6,19,960/- has been granted along with interest @6% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident on 25th March, 2010.

4. It is submitted on behalf of the Appellant that for the delay in pendency of the claim application, the Insurer is not

liable to pay the interest amount. Secondly, the Tribunal has committed error in accepting the income of the deceased at Rs.3,300/- per month, which should be limited to Rs.2,700/- taking the minimum rate of wages at Rs.90/- per day for an unskilled labourer.

5. Having heard Mr.Das, learned counsel for the claimants-Respondents and upon perusal of the impugned award, it reveals that the Tribunal has though said at paragraph-7 of the impugned judgment that the claim application was kept pending from the year 2010 till 2018 but no such reasons could be attributed on the claimants for such pendency. Further, no such material could be placed on record to show any negligence on the part of the claimants for delayed disposal of the claim application. Thus the contention made to waive the interest is rejected.

6. Next coming to the challenge raised with regard to quantum of compensation, it is seen that as per the claim of the applicants the deceased was earning Rs.6,000/- per month from vegetable business, but the Tribunal disbelieving such contention of the claimants in absence of any proof has fixed his monthly income notionally at Rs.3,300/- per month at the rate of Rs.110/- per day as unskilled labourer. But the fact remains that as per Notification dated 6272 dated 13th July 2009, the prescribed minimum wages for unskilled labourer on the date of accident i.e., 25th March 2010, was Rs.90/- per day. Thus on such ground the approach of the Tribunal is found erroneous and accordingly, the income of the deceased is fixed at Rs.2,700/- per month at the rate of Rs.90/- per day.

7. Therefore, the total amount of compensation is liable to be reduced. Upon computation of loss of dependency with addition of 40% towards future prospects and deducing 50% towards personal expenses and further adding loss of filial consortium to Claimant nos.1 & 2 to the tune of Rs.40,000/- each with Rs.30,000/- towards general damages, the total compensation is modified to Rs.5,18,240/-, rounded to Rs.5,20,000/-(Five lakhs twenty thousand).

8. In the result, the appeal is disposed of with a direction to the Appellant-Insurer to pay the modified compensation of Rs.5,20,000/- (Five lakhs twenty thousand) with interest @6% per annum from the date of filing of the claim application within a period of two months from today, which shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

9. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

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

(B.P. Routray)
Judge

C.R.Biswal