

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.320 of 2017

Kanta Munda

....

Appellant

Mr. P.K. Nayak, Advocate

-versus-

***Biplab Biswakalyan Mohanty and
others***

....

Respondents

Mr. K. Panigrahi, Advocate for Respondent Nos.3 & 5

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

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

10.11.2022

Order No.

08.

1. Heard Mr. P.K. Nayak, learned counsel for the Appellant, Mr. K. Panigrahi, learned counsel for the Respondent Nos.3 & 5 and Mr. S. Satapathy, learned counsel for the Respondent No.2.

2. It is submitted by Mr. K. Panigrahi, learned counsel for Respondent No.3 to 5 that Respondent No.4, namely, Gura Munda, the mother of the deceased, died on 13.7.2017 and she need not be substituted since all other LRs of the deceased are already on record including the Appellant, in case she is accepted to be the wife of the deceased.

3. Present appeal is directed by one Kanta Munda, stated to be the wife of the deceased (Santosh Munda).

4. Initially two claim applications bearing MAC No.86/2012 and MAC No.36/2012 were filed. MAC No.36/2012 was filed by

present Appellant-Kanta Munda without impleading present Respondent Nos.3 to 5 before learned 1st M.A.C.T., Sundargarh. MAC No.86/2012 was filed by present Respondents No.3 to 5 before the learned Additional District Judge-cum-3rd M.A.C.T., Rourkela without impleading Kanta Munda (present Appellant) as a party. Subsequently, both the claim applications were transferred to the court of 2nd Additional District Judge-cum-5th M.A.C.T., Rourkela to be tried together and the impugned judgment dated 3.12.2016 passed in both the cases has been impugned in the present appeal.

5. In the impugned judgment, learned Tribunal has granted compensation to the tune of Rs.4,32,000/- and the entire compensation amount was directed to be paid to present Respondents No.3 to 5. The learned Tribunal did not grant any compensation in favour of Kanta Munda (present Appellant) by disbelieving her to be the wife of the deceased. This is subject matter of challenge before this Court.

6. Mr. Nayak, learned counsel submits for the Appellant, namely, Kanta Munda, that, the learned Tribunal has passed the impugned award without applying mind despite materials are there showing Kanta Munda as the wife of the deceased. As per Mr. Nayak, refusal to grant any compensation in faovur of Kanta Munda is illegal and erroneous.

7. Mr. Panigrahi, learned counsel submits on behalf of the Respondents No.3 to 5 that the deceased was unmarried and the claim raised by the present Appellant is without any foundation.

8. As per submission of all the parties, the amount of compensation directed by the Tribunal in the impugned judgment has already been disbursed in favour of Respondent Nos.3 to 5.

9. It reveals that in MAC No.36/2012 filed by Kanta Munda (present Appellant), Gur Munda, mother of the deceased was examined as P.W.1 on 18.9.2014. In the said case, Gur Munda has admitted that her deceased son married to Kanta Munda and the marriage was solemnized one year prior to his death. But while being examined as P.W.1 again after transfer of MAC No.36/2012, i.e. in the joint proceeding, on 3.11.2014, she in her cross-examination has denied about marriage of Kanta Munda with her deceased son. The Tribunal relying on the subsequent statement of Gur Munda recorded in the joint proceeding concluded that the deceased was unmarried and accordingly, proceeded to determine the compensation amount by deducting 50% towards personal expenses.

10. Learned Tribunal did not consider the earlier statement of said Gur Munda made during her deposition in MAC No.36/2012, though both the records were tagged together and the common proceeding continued. Further, there was a direction issued by learned Tribunal to the local Tahasildar to conduct an enquiry regarding conflicting claim of Kanta Munda about her status as the wife of the deceased – Santosh Munda. The Tahasildar, Lahunipada in his Letter No.153 dated 28.1.2016 has given a report to learned Tribunal stating that Kanta Munda @ Basanti Munda is the wife of deceased – Santosh Munda and her

whereabouts is not known. The statement of Gur Munda made in MAC No.36/2012 if read along-with the inquiry report of the Tahasildar, it is established that she is the wife of the deceased-Santosh Munda, who died in the motor vehicular accident. But the Tribunal has failed to appreciate this part of evidence and simply discarded the claim of Kanta Munda, the Appellant, on the ground that she failed to contest the claim application. It is true that Kanta Munda did not come to contest the claim application before learned 5th M.A.C.T., Rourkela in the joint proceeding. But considering her status as a tribal lady residing at a remote place away from Rourkela, her non-appearance before the Tribunal at Rourkela could not be considered that material to discard her legitimate claim. Since it clear from the earlier evidence of Gur Munda (P.W.1) and the report of the Tahasildar that the deceased-Santosh Munda married to Kanta Munda prior to his death in the accident, no reason is found to deprive her (Kanta Munda) from getting share in the compensation.

11. As stated earlier, present Respondents No.3 to 5 have already received the entire compensation amount. However, it is seen from the impugned judgment that taking the deceased as bachelor, 50% was deducted from his income towards personal expenses. Now if Kanta Munda will be treated as his wife, then deduction of 50% amount from his income would not be justified. As stated above, Kanta Munda is the wife and the deceased is a married person. Therefore, deduction towards personal expenses should be to the extent of 1/4th considering his parents, wife and one dependant sister. The income of the deceased has been assessed at Rs.2600/- per month. Adding 40% towards future

prospects thereto, it comes to Rs.3640/- and the annual income comes to Rs.43,688/-. Deducting 1/4th there-from, it comes to Rs.32,768/-. Applying multiplier '18' (as the age of the deceased is not disputed), the total loss of dependency becomes Rs.5,89,824/-. Adding Rs.40,000/- towards loss of consortium to Kanta Munda and Rs.30,000/- for general damages, the total compensation amount is determined at Rs.6,59,824/-.

12. Since the entire compensation amount in terms of the direction of the learned Tribunal has already been paid in favour of Respondent Nos.3 to 5, the balance compensation amount liable to be paid is Rs.2,27,624/- and the Appellant is entitled to receive the balance amount of compensation.

13. In the result, the appeal is allowed and considering consequential interest @6% per annum on the enhanced amount of compensation from the date of filing of the claim application, Respondent No.2-Reliance General Insurance Company Limited is directed pay a consolidated sum of Rs.3,25,000/- (rupees three lakhs twenty-five thousand) to the Appellant by depositing the same before learned Tribunal within a period of two months from today, which shall be disbursed in favour of the Appellant-Kanta Munda @ Basanti Munda on such terms and proportion to be fixed by the Tribunal.

14. It goes without saying that, this Court has not disturbed the direction of the learned Tribunal regarding right of recovery granted in favour of the insurer.

15. The copy of the depositions and report of the Tahasildar filed by Mr. Nayak, learned counsel for the Appellant in course of hearing are kept on record.

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

(B.P. Routray)
Judge

