

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.104 of 2021**

***The Divisional Manager, Legal, M/s.  
The New India Assurance Co. Ltd.*** ....

***Appellants***

Mr. Somanath Roy, Advocate

***-versus-***

***Asish Ranjan Mishra and Others*** ....

***Respondents***

Mr. Pradeep Kumar Mishra, counsel for Respondents 1 & 2

**CORAM:**

**SHRI JUSTICE B. P. ROUTRAY**

**ORDER**  
**04.01.2022**

**Order No.**

**I.A. No.246 of 2021**

03. 1. In view of office note the I.A. has become infructuous.

**MACA No.104 of 2021**

04. 2. Heard Mr. S. Roy, learned counsel for the Insurer – Appellant and Mr. P.K. Mishra, learned counsel for claimant – Respondents.

3. The present appeal by the insurer is directed against the judgment dated 3<sup>rd</sup> December, 2020 of learned 1<sup>st</sup> MACT, Cuttack in MAC Case No.346 of 2016.

4. The learned tribunal upon adjudicating the dispute has directed to grant compensation to the tune of Rs.81,15,261/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 20<sup>th</sup> May, 2016 on account of death of the deceased in a motor vehicular accident on 7<sup>th</sup> April, 2016.

5. The case of the claimants is that the deceased was serving as Lecturer in Sanskrit in Bijay Chand Sanskrit College, Kujanga and

drawing salary of Rs.85,800/- per month. She was aged about 54 years on the date of accident.

6. It is submitted by the insurer that learned Tribunal has forgotten to deduct the statutory tax amount from income while determining the annual income of the deceased. As per the submission of the insurer if 30% towards income tax is deducted from the annual income of the deceased in terms of the discussion made at paragraph 13 of the impugned judgment, the actual income comes to Rs.7,20,720/- per annum instead of Rs.9,49,240/-. It is thus prayed to modify the amount of compensation accordingly.

7. Mr. Mishra, learned counsel for the claimant – Respondents submits that the calculation of deduction of income tax to the extent of 30% from the gross amount is not correct. He further submits that taking the admitted monthly income of the deceased at Rs.85,800/-, professional tax of Rs.2,500/- and income tax in the slab of 10%, 20% and 30% respectively is only liable to be deducted making the total deduction up-to Rs.1,33,130/- + Rs 2,500/- = Rs.1,35,630/-. Accordingly the income liable to be calculated comes to Rs.8,93,970, rounded to Rs.8,94,000/-. He thus prays to modify the amount of compensation accordingly.

8. Having heard both parties and upon perusal of the impugned judgment, it is seen from paragraph 13 that the monthly income to the tune of Rs.85,800/- of the deceased is not disputed. After deducting statutory tax liability towards professional tax and income tax to the extent mentioned at Paragraph-7 above, the total annual income of the deceased is taken at Rs.8,94,000/-. Considering the age of the deceased as 54, the appropriate multiplier in terms of the decision in the case of

**Sarla Verma vs- DTC, reported in (2009) 6 SCC 121**, would be '11'. But learned counsel for the Appellant here submits for applying split multiplier, as the deceased was due to superannuation at the age of 60. The said submission is rejected keeping in view the law settled in catena of decisions including the decision rendered in the case of **K.R. Madhusudhan and Ors. v. Administrative Officer and Anr., (2011) 4 SCC 689**. Accordingly applying multiplier as '11', the total income comes to Rs.8,94,000/- X 11 = Rs.98,34,000/-. Taking the number of dependents as '2', the total loss of dependency comes to Rs.5,96,000/- X 11 = Rs.65,56,000/-, i.e. after deduction of 1/3<sup>rd</sup> towards personal expenses.

9. After adding future prospects to the extent of 15% and other conventional heads, the amount of compensation is calculated as follows:-

| Sl. | Head                                                                                   | Compensation awarded                          |
|-----|----------------------------------------------------------------------------------------|-----------------------------------------------|
| i   | Annual income                                                                          | Rs.85,800/- X 12 =<br>Rs.10,29,600/-          |
| ii  | Total tax deduction                                                                    | Rs.2,500/- + Rs.1,33,000/- =<br>Rs.1,35,500/- |
| iii | After deducting 1/3 <sup>rd</sup> towards personal expenditure, annual income comes to | Rs.8,94,000/- X 2/3 =<br>Rs.5,96,067/-        |
| iv  | Applying multiplier '11' the loss of dependency comes to                               | Rs.5,96,067/- X 11 =<br>Rs.65,56,737/-        |
| v   | Future prospects                                                                       | Rs.9,83,510/-                                 |
| vi  | Other conventional heads including parental consortium                                 | Rs.1,10,000/-                                 |
|     | <b>Total</b>                                                                           | <b>Rs.76,50,247/-</b>                         |

11. The submission of learned counsel for the Appellant that the deceased was not drawing Rs.85,800/- but drawing Rs.62,193/- as per Ext.10, i.e. last pay certificate of the deceased is not found acceptable for the reason that admittedly the enhanced revised pay as per the report of 7<sup>th</sup> Pay Commission was already implemented with effect from 1<sup>st</sup> January, 2016 and this entitlement of the deceased with retrospective effect is not disputed. However it is the further admitted case of the parties that the LRs. of deceased received such benefits retrospectively with effect from 1<sup>st</sup> January, 2016.

12. The submission of the insurer with regard to delay in lodging the FIR to doubt involvement of the offending motorcycle in the accident is found without any merit for the reason that the driver of the offending motor cycle has been charge-sheeted for criminal prosecution by Police and as per the evidence of P.W.2 – the eye witness, the negligence on the part of the driver of the offending vehicle is well established on record.

13. Accordingly the amount of compensation is modified to the extent of Rs.76,50,247/- which shall carry interest @ 6% per annum from the date of filing of the claim application, i.e. 20<sup>th</sup> May, 2016.

14. The Appellant – Insurer is directed to deposit the aforementioned amount of Rs. 76,50,247/- (Rupees seventy six lakhs fifty thousand two hundred forty-seven only) along with interest before the learned Tribunal within a period of eight weeks from today; where-after the same shall be disbursed in favour of the claimants in appropriate proportion with condition to make fix deposit as deemed

proper by the learned Tribunal. It goes without saying that the penal interest as directed by the learned Tribunal is waived.

15. 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.

16. The appeal is accordingly disposed of.

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

*(B.P. Routray)*  
*Judge*

M.K.Panda

