IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.873 of 2015

Rajiba Dalua and others .... ***Appellants***

Mr. D.K. Mohapatra, Advocate

-versus-

Samir Kumar Pradhan and another .... ***Respondents***

Mr. B.C.Singh, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

<u>ORDER</u>
11.10.2022

<u>Order No.</u>

07. 1. Heard Mr. D.K. Mohapatra, learned counsel for the Appellants-claimants as well as Mr. B.C. Singh, learned counsel for the Respondent No.2-Insurance Company.

2. Present appeal by the claimants is directed against impugned judgment dated 15.05.2015 of the learned 2nd MACT, Cuttack in Misc. Case No.31 of 2002, wherein compensation to the tune of Rs.5,33,000/- along with interest @7% per annum to the claimants from the date of filing of the claim application i.e.25.1.2002 has been granted on account of death of the deceased in the motor vehicular accident dated 3.11.2001.

3. Mr. Mohapatra, learned counsel for the Appellants-claimants submits that learned Tribunal has failed to add future prospects to the income of the deceased and no amount was granted towards

loss of consortium. It is further stated that instead of multiplier '18', the Tribunal has applied multiplier '17' erroneously.

4. Upon hearing Mr. Singh, learned counsel for Respondent No.2-insurer and perusal of the impugned judgment, it reveals that the Tribunal has computed the compensation amount by assessing the income of the deceased at Rs.3000/- per month. While doing so, the learned Tribunal applied multiplier '17' and added Rs.1,00,000/- towards love and affection. However, it is found that no amount towards future prospects has been added.

5. The claimants have prayed for enhancement of compensation amount. Admittedly, no challenge has been advanced from the side of insurer against the compensation amount. Thus the finding of the learned Tribunal regarding income of the deceased at Rs.3000/- is confirmed. In terms of the decision rendered in the case of ***National Insurance Company Limited vs. Pranay Sethi and others,(2017) 16 SCC 680***, the future prospects to the extent of 40% is liable to be added. Doing so, the annual income comes to Rs.50,400/-.

6. So far as the multiplier is concerned, admittedly the age of the deceased was taken as '30' years by the Tribunal based on the post mortem examination report. The age of the deceased so counted by the Tribunal is not disputed by the insurer. As per the case of ***Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, approved by the constitution Bench of the Supreme Court in *Pranay Sethi's* case

(supra), the applicable multiplier would be '18' if the age is taken as 30 years. Accordingly, the multiplier is modified as '18' against '17' as taken by the Tribunal. Therefore, total loss of dependency, after deducting 1/3rd towards personal expenses, is determined at Rs.6,04,800/-. Further adding Rs.40,000/- each to the Claimant Nos.2 and 3, who are the son and husband of the deceased, towards parental and spousal consortium, and further Rs.30,000/- towards general damages, the total compensation is determined at Rs.7,14,800/-, rounded to Rs.7,15,000/-.

7. At this stage, it is submitted that the entire compensation amount as per direction of the Tribunal has already been disbursed in favour of the claimants.

8. Keeping in view the same, the differential amount found is Rs.1.82.000/-. Calculating interest @6% per annum thereon from the date of judgment, the insurer is found liable to pay a further consolidated amount of Rs.2,60,000/-.

9. In the result, the appeal is disposed of with a direction to Respondent No.2-New India Assurance Co. Ltd. to pay a further consolidated amount of Rs.2,60,000/- (rupees two lakhs sixty thousand) to the claimants by depositing the same before the Tribunal within a period of two months from today, which shall be disbursed to the claimants on such terms and proportion to be decided by the learned Tribunal.

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

(B.P. Routray)
Judge

B.K. Barik