

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.138 of 2022

M/s.New India Assurance Co. Ltd. *Appellant*
Mr. S.S. Rao, Advocate

-versus-

Pramila Palai and others *Respondents*
Mr. P.K. Mishra, Advocate for Respondent Nos.1 & 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
15.11.2022

Order No.

03.

1. Heard Mr. S.S. Rao, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 07.10.2021 of learned 1st M.A.C.T., Kendrapara in M.A.C. Case No.78 of 2017 wherein compensation to the tune of Rs.60,92,500/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e. 05.09.2017 on account of death of the deceased in the motor vehicular accident dated 20.01.2017.

3. Mr. S.S. Rao, learned counsel contends for the Appellant that the offending vehicle, i.e. Maruti Alto Car bearing Registration No.OR-02-S-8655 was not involved in the accident, but has been implanted to manage the compensation. In support of his contention, it is submitted by Mr. Rao that the accident took place on 20.01.2017 and the FIR was lodged on 28.01.2017 and in the

inquest report, it is stated that the accident was caused by an unknown vehicle.

4. It reveals from the impugned judgment that no evidence has been adduced from the side of the insurer. So, for the mere reason that the FIR was lodged eight days after the accident, it would not be appropriate to hold that the vehicle has been implanted. Moreover, the owner has admitted registration of Police case due to the accident against him and did not deny involvement of the offending car in the accident. The Police have submitted charge-sheet against the driver of the offending car upon completion of investigation. Therefore no point is seen to disbelieve the involvement of the offending car in the accident and as such, the contention of Mr. Rao is rejected.

5. With regard to the quantum of compensation, it is submitted by Mr. Rao that filial consortium to the extent of Rs.1,20,000/- and grant of further Rs.1,00,000/- towards loss of love and affection are erroneous. Again, the treatment expenses and hospitalization charges to the tune of Rs.1,93,300/- and Rs.11,000/- respectively have been assessed exorbitantly.

6. After hearing Mr. P.K. Mishra, learned counsel for Respondent Nos.1 & 2 – claimants and upon perusal of the computation of compensation amount, several flaws have been noticed. It is seen that the statutory tax amount has been deducted erroneously and the extent of personal expenses have been deducted at a lesser amount, i.e. $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$.

7. In view of the same, the amount of compensation is recomputed afresh.

8. There is no dispute in the monthly income and age of the deceased. The deceased was serving as a Clerk in Odisha Gramya Bank and getting Rs.64,048/- per month just before his death. Thus his annual income comes to Rs.7,68,576/-. Deducting professional tax of Rs.2500/- and income tax to the tune of Rs.65,715/-, at the applicable rate prevalent on the date of accident, the balance amount remains Rs.7,00,361/-. Adding future prospects to the extent of 15% thereof, it comes to Rs.8,05,415/-. Deducting 1/3rd towards personal expenses and applying multiplier '9', the total loss of dependency comes to Rs.48,32,490/-. It needs to be mentioned here that the wife and son of the deceased are the claimants. But the learned Tribunal has added the married daughters with them without any basis and such approach of the Tribunal is set aside being found erroneous without any claim raised from either side.

9. The total loss of dependency derived as above to the tune of Rs.48,32,490/- to be added with Rs.80,000/- towards loss of consortium to the wife and son and general damages of Rs.30,000/-.

10. With regard to treatment expenses, it is seen that the deceased remained as indoor patient for seven days in AMRI Hospital, Bhubaneswar. In the impugned judgment, the learned Tribunal has though mentioned that the claimants have filed medicine bills of AMRI Hospital, Bhubaneswar to the tune of Rs.1,93,300/-, but

no such document is seen to have been brought on record by marking exhibits. Perusal of copy of the evidence of P.W.1 (Appellant No.2-claimant) reveals that he has said in his evidence to have spent Rs.1,93,300/- for the treatment of the deceased in AMRI Hospital, Bhubaneswar. Though in the examination-in-chief, it is stated that the bills/receipts of AMRI Hospital, Bhubaneswar has been filed, but no such document has been marked in exhibit by the learned Tribunal. It is also seen from the cross-examination that nothing has been asked to him by the insurer disputing such amount of expenses incurred for the treatment of the deceased. Therefore, keeping in view the statement of P.W.1, which remains unchallenged, and considering the undisputed period of treatment of the deceased in AMRI Hospital, Bhubaneswar for seven days as indoor patient, the amount of treatment expenses to the tune of Rs.1,93,300/- counted by the learned Tribunal is confirmed. There being no other material regarding further expenses of Rs.11,000/- towards hospitalization charges, the same is discarded. Accordingly, the total compensation amount is determined at Rs.51,35,790/-, i.e. Rs.48,32,490/- + Rs.80,000/- + Rs.30,000/- + Rs.1,93,300/-.

11. In the result, the appeal is disposed of with a direction to the Appellant – Insurance Company to deposit the total compensation of Rs.51,35,790/- (rupees fifty-one lakhs thirty-five thousand seven hundred ninety) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 05.09.2017 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants-

Respondent Nos.1 & 2 on such terms and proportion to be fixed by the Tribunal.

12. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

13. Copies of the evidences and other documents filed by Mr. S.S. Rao, learned counsel for the Appellant in course of hearing are kept on record.

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

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