

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.603 of 2016

***Divisional Manager,
The New India Assurance Co. Ltd.***

Appellant
.....
Mr.A.A.Khan, Advocate

-versus-

Mst.Tusarkanti Bari and another ***Respondents***
Mr.K.K.Jena on behalf of Mr.P.K.Nayak,
Advocate for Respondent No.1

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
15.12.2022**

Order No.

14.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Khan, learned counsel for the Appellant-Insurer and Mr.Jena on behalf of Mr.Nayak, learned counsel for claimant-Respondent No.1.
3. Present appeal by the Appellant is against the judgment dated 10th February, 2016 of the Addl. District Judge-Cum-3rd MACT, Jharsuguda, in M.A.C.Case No.8 of 2013, wherein compensation to the tune of Rs.17,01,079/- has been granted along with interest @7.5% per annum with effect from the date of

filing of the claim application on account of death of the deceased, namely, Gadadhar Barik in the motor vehicular accident on 17th February, 2007.

4. Mr. Khan submits for the Appellant that the vehicular accident took place on 17th February, 2007 and the deceased died on 29th August 2009. He further submits that according to the claimant, the deceased died due to fall in a stone quarry when he had been there to attend call of nature and therefore, there is a no nexus between his death and the accident. But the Tribunal by connecting the both unreasonably has directed for payment of compensation with the conclusion that the deceased died due to motor vehicular accident.

5. Mr. Jena, submits for the claimant that the deceased after the accident was under continuous medication and due to the effect of injury sustained in the accident he remained drowsy all the time, which resulted his fall while attending the call of nature. Therefore, it is not correct to say that the deceased did not die due to injuries in the accident.

6. It is seen that on 17th February, 2007 the deceased sustained injuries in the motor vehicular accident involving the

offending vehicle i.e., the Truck bearing registration No. OR-23-A-1086. In the said accident he sustained one aberration and one laceration over the occipital area of the scalp as per the injury report prepared under Ext.3. Subsequently due to such injury sustained by him on the head he was under continuous treatment and as per the evidence of P.W.1 – the claimant, the deceased was under continuous treatment due to the effect of injuries on his head sustained in the accident. His head was reeling continuously.

7. It is further seen that, Brajarajnagar P.S. Case No. 40 dated 17th February, 2007 was registered concerning the accident, wherein police submitted that charge-sheet against the driver of the offending vehicle for commission of offence under Sections 279/337/338 of the IPC and concerning his subsequent death, Brajarajnagar U.D. P.S. Case No. 29th August, 2009 was registered, wherein police submitted the report upon completion of inquiry that the deceased died due to fall from height and hitting to the hard and pointed surface. It is now required to examine the nexus between his death due to fall subsequently on 29th August, 2009 and effect of injury sustained in the accident

dated 17th February, 2007. As per the report under Ext.3, it is mentioned that the patient remained drowsy and did not respond to any command. Admittedly, except P.W.1, the widow (claimant) of the deceased, no other witnesses has been examined to support the claim. The claimant though did not bother to examine any treating doctor, but under Exts.16 & 17, several bills and treatment papers of the deceased in Kalinga Hospital have been filed.

8. Here Mr. Khan submits that the deceased was an employee of Mahanadi Coalfields Limited and after his accident on 17th February 2007, he used to attend his office regularly. In this regard, Misc. Case No. 1302 of 2016 has been filed praying to adduce the information supplied by Mahanadi Coalfields Limited about availing of 51 days leave by the deceased during February 2007 to August 2009, as additional evidence. The same is taken on record accepting the prayer.

9. Perusal of Ext.3 and other medical papers under Ext.16 series reveals that the deceased was under continuous treatment for the injury sustained by him in the accident dated 17th February, 2007. It is not disputed that the deceased was also attending his normal work during such period. The effect of

injury resulting head reeling often is clearly established from Ext.3 and Ext.16. It is also true that knowing his condition, the deceased had been to an outer open place, that too the premises of stone quarry which is a risky and vulnerable place, to defecate. It is not that, the deceased could not have avoided such risky place, particularly keeping in view his health condition. So it can safely be opined that, for the cause of fall of the deceased in the stone quarry resulting his death, not only the effect of injury sustained in the accident but also the deceased himself is responsible. In other words, the deceased contributed for the cause of his own death. Such contribution, in the opinion of this court, is to the extent of 50%. Therefore the conclusion arrived at by the Tribunal to attribute entire cause to the injuries sustained in the motor vehicular accident is found unjustified.

10. However, present insurer does not dispute his liability to indemnify the owner in terms of the policy. Accordingly the amount of compensation is required to be quantified. Taking note of the expenses incurred by the deceased for his medical treatment, a sum of Rs.94,509/- as assessed by the Tribunal, is liable to be granted in favour of the claimant. So far as the loss of

dependency is concerned, 50% of the amount as calculated by the Tribunal is liable to be granted in favour of the claimant. The Tribunal has computed a total loss of dependency to the tune of Rs.14,61,570/- and 50% of the same comes to Rs.7,30,785/-. Further adding Rs.35,000/- towards consortium and general damages, the total compensation amount is determined at Rs.8,60,294/-, payable along with interest @6% per annum.

11. The appeal is thus disposed of with a direction to the Insurer-Appellant to deposit the compensation of Rs.8,60,294/- (Eight lakhs sixty thousand two hundred ninety four) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on such terms and proportion to be fixed by the Tribunal.

12. 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.

13. Copies of exhibits filed by Mr.Khan in course of hearing are kept on record.

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

(B.P. Routray)
Judge

C.R.Biswal

