**IN THE HIGH COURT OF ORISSA AT CUTTACK**
**MACA No.218 of 2020**

***New India Assurance Co. Ltd., represented by its Manager-cum-Constituted Attorney, T.C. Cell, Badambadi, Cuttack*** .... ***Appellant***

Mr. Nirmal Chandra Mohanty, Advocate

*-versus-*

***Rajanirani Rout and Others*** .... ***Respondents***

Mr. P.K. Mishra, counsel for Respondents 1 to 3

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

**ORDER**
**13.12.2022**

**Order No.**

09. 1. The matter is taken up through hybrid mode.

2. Heard Mr. N.C. Mohanty, learned counsel for the insurer – Appellant and Mr. P.K. Mishra, learned counsel for claimant – Respondents 1 to 3.

3. Present appeal by the insurer is against the impugned judgment dated 20th August, 2019 of the learned 1st MACT, Dhenkanal passed in MAC No.211 of 2017, wherein compensation to the tune of Rs.9,80,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 18th October, 2017 has been granted on account of death of deceased Balaram Rout in the motor vehicular accident dated 29th July, 2017.

4. The challenge of the insurer is of two-fold. Firstly, Mr. Mohanty contends that the deceased being an insured person within the meaning of Employee's State Insurance Act (for short ESI Act),

the present claim application under Section 166 of the MV Act is not maintainable. Secondly, Mr. Mohanty questions the quantum of compensation by disputing the multiplier factor.

5. Mr. Mishra, learned counsel for the claimant – Respondents submits in reply that though undisputedly the deceased is an insured person within the meaning of Section 2(8) of the ESI Act, but the accident is no way related to his employment either directly or incidentally. Therefore, the objection with regard to maintainability of the claim application under MV Act is without merit.

6. This court in the case of ***The Divisional Manager, M/s. National Insurance Company Ltd. v. Anushaya @ Anasuya Biswal and Others*** (MACA No.75 of 2021, disposed of on 16th September, 2022), while deciding a similar issue, has held that unless the injury or death is anyway related to the employment within the sweep of the ESI Act, the claim for compensation under Section 166 of the MV Act is not barred.

7. So, keeping in view the principles decided in the aforesaid case, the objection raised by the insurer with regard to maintainability of the claim application is rejected.

8. Next coming to the question of quantum of compensation, it is seen that the deceased was aged about 55 years as per his service records. But the tribunal has erroneously applied multiplier ‘14’ taking the age of the deceased as 44 years. The age of the deceased as per his service record remains undisputed by the claimants before this court. So, the appropriate multiplier would be ‘11’. Further, the extent of future prospectus on the income is reduced to 15%, instead of 25%.

9. Mr. Mishra, learned counsel for the claimants here submits that the tribunal has taken the income of the deceased at a reduced amount of Rs.6,500/-, instead of Rs.8045/-, against the evidence adduced by the claimants. However, such submission raised by Mr. Mishra is not entertained in absence of any appeal filed from the side of the claimants. This court refrains from entering into such dispute in absence of any express challenge in that regard from the side of the claimants.

10. Mr. Mishra further submits that parental consortium which was not granted in favour of the children of the deceased should be added while modifying the compensation amount.

11. Upon hearing both parties on the question of quantum of compensation and considering all such challenges, a reduced compensation of Rs.9,00,000/- along with 6% interest is proposed to the parties. This is agreed by Mr. Mishra, learned counsel for the claimant – Respondents and Mr. Mohanty, learned counsel for the insurer leaves it to the discretion of the court. Accordingly the compensation amount is fixed to the said extent.

12. In the result, the appeal is disposed of with a direction to the Appellant – insurer to deposit a reduced compensation amount of Rs.9,00,000/- (nine lakhs) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 18th October, 2017, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents on such terms and proportion to be decided by the learned tribunal.

13 The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

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

M.K.Panda