

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.255 of 2019

MACA Nos.255 of 2019 & 351 of 2021

***Itishree Rout and Others* (In MACA No.255/2019)**

***The Sr. Divisional Manager,
M/s. National Insurance Co. Ltd.* (In MACA No.351/2021)**

.... Appellants

Mr. D.C. Dey, Advocate (in MACA No.255/2019)
Mr. P.K. Mahali, Advocate (in MACA No.351/2021)

-versus-

***Sarat Chandra Swain and Another* (In MACA No.255/2019)**

***Itishree Rout and Others* (In MACA No.351/2021)**

.... Respondents

Mr. B.N. Udgata and Mr. P.K. Mahali, counsel for
Respondent No.2 (in MACA No.255/2019)

Mr. D.C. Dey, counsel for Respondents 1-3
(in MACA No.351/2021)

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

**ORDER
30.3.2022**

Order No.

- 09.
1. Heard Mr. D.C. Dey, learned counsel for the claimants and Mr. P.K. Mahali as well as Mr. B.N. Udgata, learned counsels for the insurer.
 2. Both these appeals have been filed challenging the same judgment dated 15th January, 2019 of learned 3rd MACT, Cuttack

passed in MAC Case No.175 of 2014 wherein compensation to the tune of Rs.28,50,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 10th March, 2014 has been granted on account of death of deceased namely Ranjan Rout in the motor vehicular accident dated 16th January, 2014.

3. MACA No.255 of 2019 has been preferred by the claimants for enhancement of compensation, whereas MACA No.351 of 2021 has been preferred by the insurer for reduction of the same.

4. The case of the claimants is that in the motor vehicular accident dated 16th January, 2014 the deceased sustained grievous injuries including fracture of his waist, spinal cord, left and right hand femur, elbow joint and other multiple injuries. The deceased undergone treatment as an indoor patient from 16th January, 2014 to 22nd February, 2014, then 8th August, 2014 to 13th August, 2014 and thereafter shifted to his residence and was under treatment till his death on 31st May, 2017. It is submitted on behalf of the claimants that grant of Rs.8,30,000/- by the tribunal towards medical treatment of the deceased is on lower side and at least Rs.15 lakhs should have been granted on that count. This is the main bone of contention of the claimants.

5. Conversely, it is submitted on behalf of the insurer that the monthly income of the deceased as taken by the learned Tribunal at Rs.15,000/- is without any support of documentary evidence except one purported salary certificate under Ext.21, which is not a document admissible in evidence.

6. Before delving into the contentions of both parties, first dealing with the challenge advanced by the insurer in MACA No.351 of 2021, it is important to note that the appeal was filed with delay of 915 days, from which if the COVID period is excluded, then the delay still remains for 315 days. The explanation offered in the limitation petition, i.e. I.A. No.808 of 2021 towards the reason for delay is that, due to shifting of divisional office to a newly constructed office the file was misplaced and as such the delay occurred in filing the appeal. It is to be noted here that in the connected appeal, i.e. MACA No.255 of 2019 though the same insurer had entered appearance on 3rd June, 2020, but the appeal by him was filed on 16th October, 2021. Therefore it becomes clear that the Appellant in MACA No.351 of 2021 did not wake up timely even after receipt of notice in MACA No.255 of 2019. However the grounds explained in I.A. No.808 of 2021 filed by the insurer to condone the delay, as stated above, are not found satisfactory and as such I am not inclined to condone the delay. Resultantly, MACA No.351 of 2021 is dismissed on the ground of limitation.

7. Next coming to the challenge advanced by the claimants in MACA No.255 of 2019, their main contention is for enhancement of the compensation amount under the head of medical expenses. It reveals from para-12 of the judgment of the learned tribunal that whatever documents were filed by the claimants with regard to medical treatment and expenses incurred thereof under Ext.23 series coupled with the evidence of wife of the deceased, the aforesaid sum of Rs.8,30,000/- was granted for the same. Thus no reason is found to disturb this finding of the learned Tribunal. Accordingly the challenge

for enhancement by the claimants are rejected and MACA No.255 of 2019 is also dismissed.

8. In the result, both the appeals are dismissed. The insurer – National Insurance Company Ltd. is directed to deposit the awarded compensation amount of Rs.28,50,000/- (twenty-eight lakh fifty thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 10th March, 2014 within a period of ten weeks from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion as contained in the judgment of learned Tribunal.

9. It goes without saying that the penal interest of 12% is waived.

10. The statutory deposit made by the insurer – Appellant in MACA No.351 of 2021 before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge