

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1170 of 2015

The New India Assurance Co. Ltd.

Appellant

Mr. S.S. Rao, Advocate

-versus-

Lucyrani Ojha and others

Respondents

Mr. D. Mund, Advocate for Respondent Nos.1 to 4

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

27.10.2022

Order No.

13.

1. Heard Mr. S.S. Rao, learned counsel for the Appellant-Insurance Company as well as Mr. D. Mund, learned counsel for the Respondent Nos.1 to 4-claimants.

2. Present appeal by the insurer is directed against the judgment dated 13.07.2015 of learned 1st M.A.C.T., Koraput at Jeypore in M.A.C. Case No.57 of 2013, wherein compensation to the tune of Rs.58,00,000/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application, i.e.03.03.2013 on account of death of the deceased in the motor vehicular accident dated 20.01.2013.

3. Mr. Rao, learned counsel for the Appellant-insurer submits that the assessment of income of the deceased and the reason to

double that amount is completely erroneous and therefore, the impugned judgment is to be re-visited.

4. The claimants-Respondents have filed their cross objection against the finding of the Tribunal fixing 50% negligence on the deceased. Mr. Mund, learned counsel on behalf of the claimants, submits that in absence of evidence to the contrary, learned Tribunal is incorrect to attribute 50% negligence on the deceased.

5. First dealing with the negligence part, it is seen that the learned Tribunal upon presuming the fact that, since the accident took place in the middle of the road and it is a head-on-collision, there was negligence on the part of both the drivers.

6. Admittedly, no eye-witness to the accident has been examined from either side. P.W.1, the widow of the deceased in her evidence has taken support from the police investigation report. The deceased at the time of accident was driving a motorcycle and the offending vehicle is the Bus bearing Registration No.OR-10-J-1708. Neither any witness has been examined from the side of the insurer nor is any document produced to contradict the opinion of the Police Investigation Officer mentioned in the prosecution report where charge-sheet has been submitted against the driver of the offending Bus. So in absence of any evidence contrary to the evidence of P.W.1, which is supported with police reports, no justification is found on the part of the Tribunal to contribute 50% negligence on the deceased for the only reason that the accident took place on the middle of the road. The said

finding of the Tribunal is set aside and it is held that the driver of the Bus is entirely negligent for the cause of the accident.

7. With regard to the dispute on quantum of compensation, it is seen that the learned Tribunal has doubled the income of the deceased on the presumption that at the time of retirement, he would have received such an amount. The deceased was 35 years old on the date of accident and was serving as Senior Asst. in NALCO. The salary slips of the deceased have been brought on record through OPW-1, the witness produced from the side of the employer-cum-owner of the offending Bus and the same are not disputed. As per Ext.A, the salary slip of the deceased for the month of December, 2012, he received Rs.46,996/- towards pay plus DA. Accordingly the annual salary comes to Rs.5,63,952/-. Deducting income tax to the tune of Rs.37,790/- and professional tax of Rs.2500/- therefrom, the balance amount comes to Rs.5,23,662/-. Adding 50% future prospects thereto, it comes to Rs.7,85,493/-. Applying multiplier '15' and deducting 1/4th towards personal expenses, the total loss of dependency comes to Rs.88,36,796/-. Granting consortium to the tune of Rs.40,000/- to the wife and minor daughter and general damages of Rs.30,000/-, the total compensation determined is Rs.89,46,796/-.

8. Mr. Rao further contends that since the wife of the deceased has got rehabilitation appointment, therefore, the amount so received by her during her employment would be deducted from the compensation amount. Such submission advanced by Mr. Rao is not acceptable and it is settled that the benefits like pension, rehabilitation appointment etc attached with employment of the

deceased have no impact for determination of compensation in the motor accident case. As such, the contentions of Mr. Rao are rejected.

9. In the result, the appeal is disposed of with a direction to the Appellant-insurer to pay the total compensation of Rs.89,46,796/- (rupees eighty-nine lakhs forty-six thousand seven hundred ninety-six) to the claimants along with interest @6% per annum from the date of filing of the claim application, i.e. 03.03.2013 by depositing the same within a period of three months from today, where-after the same shall be disbursed among the claimants- Respondent Nos.1 to 4 in the following ratio:-

The wife and minor daughter, namely Lucyrani Ojha and Pragyan Bharati Nahak respectively, will get 70% of the total compensation amount in equal share. 25% amount shall be given to the mother, namely, Hemalata Nahak (Respondent No.3). Balance 5% amount shall be given to the father – Respondent No.4.

75% of the share of each Respondent Nos.1, 3 and 4 shall be kept in fixed deposit in any nationalized Bank for a period of 6 years with quarterly interest payable to the depositors. The entire amount fall to the share of minor daughter (Respondent No.2) shall be kept in fixed deposit till she attains majority.

10. 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.

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

(B.P. Routray)
Judge

