IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.257 of 2020

The Divisional Manager (Legal), M/s.Oriental Insurance Company Limited .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Sonali Sahoo and others .... ***Respondents***

Mr. P.K. Mishra, Advocate for Respondent Nos.1& 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
16.03.2022

Order No.
05.

1. Heard Mr. A.A. Khan, 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 19.7.2019 of learned 1st MACT, Jagatsinghpur in MAC Case No.88 of 2016 wherein the Tribunal has granted compensation to the tune of Rs.47,40,112/- along with 7% interest per annum to the claimants from the date of filing of the claim application, i.e.12.7.2016 on account of death of the deceased in the motor vehicular accident dated 26.4.2016.

3. Mr. A.A. Khan, learned counsel for the Appellant submits that acceptance of income of the deceased at Rs.28,212.50 paise per month by the Tribunal is not supported with sufficient evidence since any IT Return copy beyond assessment year 2013-14 has

not been produced. Further, as per the oral evidence of the claimants, the deceased was earning Rs.20,000/- per month. Therefore, the amount of compensation needs to be reduced to substantial extent.

4. Mr. P.K. Mishra, learned counsel for Respondent Nos.1 & 2 submits in reply that admittedly the deceased was the owner of a jewelry shop and he used to file IT returns since 2006-07 onwards till 2013-14. It is true that for some reasons, no IT return from 2013-14 onwards could be filed. Therefore, the assessment of the monthly income at Rs.28,212.50 paise as derived by the Tribunal based on the ITR of 2013-14 cannot be said as complete illegal.

5. It needs to be mentioned here that, the general presumption for non-filing of IT returns, particularly in respect of such a person who used to file his return regularly, is that he does not have that much of taxable income for the period he did not file the return.

6. However, considering the grounds advanced by both the parties, a reduced compensation to the tune of Rs.41,00,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 & 2 agrees to the same and Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

7. The Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.41,00,000/- (rupees forty-one lakhs)

along with interest @6% per annum from the date of filing of the claim application, i.e.12.7.2016 before the Tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the Tribunal. It goes without saying that the penal interest of 9% is waived.

8. 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.

9. The MACA is disposed of with aforesaid directions.

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

(B.P. Routray)
Judge

B.K. Barik