

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1272 of 2015

MACA No.1272 of 2015 & 309 of 2016

***The Legal manager, ICICI Lombard
General Insurance Company Ltd. (in MACA No.1272/2015)***

Seema Agrawal @ Jalan & Anr. (in MACA No.309/2016)

Appellants

....
Mr. A.A. Khan, Advocate (in MACA No.1272/2015)

Mr. P.K. Nayak, Advocate (in MACA No.309/2016)

-versus-

Seema Agrawal @ Jalan & Others (In MACA No.1272/2015)

Sudhansu Kumar Hota and Others (In MACA No.309/2016)

Respondents

....
Mr. P.K. Nayak, counsel for Respondents 1&2
Mr. G.P. Dutta, counsel for Respondent No.5
(in MACA No.1272 of 2015)

Mr. A.A. Khan, counsel for Respondent No.2
Mr. G.P. Dutta, counsel for Respondent No.4
(in MACA No.309 of 2016)

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

**ORDER
20.10.2022**

Order No.

14. 1. The matters are taken up through hybrid mode.
2. Heard Mr. A.A. Khan, learned counsel for the insurer, i.e. ICICI Lombard General Insurance Company, Mr. P.K. Nayak, learned counsel for the claimants and Mr. G.P. Dutta, learned counsel for Respondent No.5 – IFCO TOKYO General Insurance Company.

3. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.

4. Both the appeals are against the same impugned judgment dated 21st September, 2015 of learned 3rd MACT, Bargarh passed in MAC Case No.62/72 of 2010-14, wherein compensation to the tune of Rs.30,69,996/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 1st July, 2010 has been granted on account of death of deceased Sunil Kumar Agrawal @ Jalan in the motor vehicular accident dated 10th April, 2010.

5. In MACA No.1272 of 2015, the insurer has questioned the award. MACA No.309 of 2016 has been preferred by the claimants praying for enhancement of the compensation amount.

6. Misc. Case No.802 of 2016 has been filed by the insurer in MACA No.1272 of 2015 praying to adduce additional evidence. The documents sought to be adduced by way of additional evidence are the same documents already brought on record through the evidence from the side of the claimants under Ext.1 and Ext.3. Therefore, no need is felt to bring those same documents again by way of additional evidence. As such, the prayer to adduce additional evidence is rejected.

7. Misc. Case No.537 of 2016 has been filed in MACA No.309 of 2016 praying to condone the limitation. Upon hearing all the parties and considering the grounds mentioned in the miscellaneous petition, the delay in filing the appeal, i.e. MACA No.309 of 2016 is condoned.

8. Mr. Khan, learned counsel while advancing his submissions for the insurer contends that the accident is the result of head-on-collision between the bus bearing registration number OR 15M 4532 and the Bolero bearing registration number OR 15J 3801. He submits that as per the MVI report the Bolero vehicle capsized on the road due to mechanical failure of the steering and then the bus dashed against it. Mr. Khan therefore contends that the accident is due to the negligence of the driver of the Bolero vehicle and not of the driver of the bus and such finding of the tribunal to saddle entire negligence on the part of driver of the bus is illegal.

9. Mr. Dutta, learned counsel for Respondent No.5, the insurer of the Bolero vehicle replies in his submission that the capsizing of the Bolero on the road was due to mechanical failure and admittedly, the driver of the bus could have applied the brake to avoid the accident. Therefore, the conclusion of the tribunal to attribute entire negligence on the driver of the bus is justified.

10. Neither Mr. Khan nor Mr. Dutta disputes their liability on the ground of invalidity of insurance policy of either vehicle. The only dispute is relating to negligence between two vehicles. As per the MVI report the Bolero while going at a speed of 70 kilometer per hour, suddenly got over-turned due to mechanical failure in the steering of the vehicle. Thereafter the bus which was coming from the front side dashed against the Bolero and dragged it to some distance. Two occupants of the Bolero vehicle with its driver died in the accident. The police upon completion of investigation submitted charge-sheet against the driver of the bus for negligent driving. P.W.1, the widow of the deceased was an eye-witness to the accident as she

was travelling in the same Bolero vehicle along with the deceased. In her evidence she has stated that the accident happened due to rash and negligent driving of the drivers of both the vehicles. As per the MVI report under Ext.1, which formed the basis for conclusion of the tribunal, it speaks that the Bolero capsized on the road due to its mechanical failure before the accident. It is not brought on evidence from how much distance the driver of the bus could see the overturning of the Bolero vehicle on the road and no MVI report in respect of the bus has been produced. Therefore, the conclusion of the tribunal that the driver of the bus could have applied break had he been vigilant on the road, is found justified and moreover, the driver of the Bolero vehicle died on the spot. Therefore the conclusion of the tribunal to attribute entire negligence on the driver of the bus cannot be faulted with. As such, the same is confirmed and the contention to the contrary raised by Mr. Khan is rejected.

11. On the question of quantum, Mr. Khan contends that the income of the deceased to the tune of Rs.3,34,038/- per annum is a faulted one since the income tax return filed for the Assessment Year 2010-11 was after the death of the deceased and as such, the same cannot be taken into account for consideration.

12. Mr. Nayak, learned counsel for the claimants submits that the tribunal has faulted in not adding future prospects and thereby the annual income of the deceased should have been counted with higher income.

13. It is seen that the deceased was a regular Income Tax Assessee. The tribunal has assessed the income based on the income tax returns

(ITR) filed for the Assessment Year (AY) 2008-09, 2009-10 and 2010-11 and taking mean average of the same. The comparison of income shown in those IT returns filed under Ext.2/3, 2/4 and 2/5 does not reveal any unusual hike of income in the subsequent years. It may be true that the IT return for the year 2010-11 was filed after the death of the deceased, but the same does not reveal any unusual difference of income to suggest any conclusion that the income of the deceased has been deliberately hiked to an unusual extent for the purpose of claim. It needs to be mentioned here that the income shown for the AY 2008-09 was Rs.2,61,619/-, for the AY 2009-10 was Rs.2,81,141/- and for AY 2010-11 was Rs.3,10,980/-. Therefore, the approach of the tribunal to take into consideration all such IT returns to derive the mean annual average income to the tune of Rs.2,84,580/- is found appropriate and as such confirmed.

14. The income of the deceased from the Hindu Undivided Family is not been disputed and the same is based on the IT returns filed on that aspect. The tribunal has also proceeded to derive the mean annual income from Hindu Undivided Family in respect of the deceased to the tune of Rs.49,458/- and the same is also confirmed. In absence of any material produced with regard to source of such HUF income, no opinion can be formed as to reduction or continuance of same income upon death of the deceased. Therefore, the finding of the tribunal with regard to income of the deceased to the tune of Rs.3,34,038/- is found justified and does not require any interference.

15. The tribunal while computing compensation has forgotten to add future prospects as seen from page 12 of the impugned judgment. In terms of the principles decided in the case of *National Insurance*

Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680, future prospects to the extent of 25% is found to be added since the deceased was aged about 48 years on the date of accident. Thus adding 25% of Rs.3,34,038/-, it comes to Rs.4,17,547/-.

16. There being no further dispute regarding application of multiplier and deduction towards personal expenses, the annual loss of dependency derived is Rs.2,78,365/- and the total loss of dependency becomes Rs.36,18,745/- (Rs.2,78,365/- x 13). Adding general damages of Rs.30,000/- and consortium of Rs.40,000/- to each of the claimants, the total compensation comes to Rs.37,28,745/-. The rate of interest payable is reduced to 6% from 7.5%.

17. In the result, both the appeals are disposed of with a direction to the insurer of the bus, i.e. ICICI Lombard General Insurance Co. Ltd. to deposit the modified compensation amount of Rs.37,28,745/- (thirty-seven lakh twenty-eight thousand seven hundred forty five) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 1st July, 2010, 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 learned tribunal.

18. The statutory deposit made by the insurer in MACA No.1272 of 2015 before this court along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

19. The copies of exhibits filed in course of hearing by Mr. Nayak are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda

