IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>MACA No.304 of 2019 And MACA No.265 of 2019</u>

<u>MACA No.304 of 2019</u>

The Divisional Manager, Legal TP Claim Cell, MAGMA HDI General Insurance Co. Ltd. .... ***Appellant***

Mr.A.A.Khan, Advocate

-versus-

Sukanti Mangaraj and others .... ***Respondents***

Mr.P.K.Mishra, Advocate for Respondent Nos.1 to 6

AND

<u>MACA No.265 of 2019</u>

Sukanti Mangaraj and others .... ***Appellants***

Mr.P.K.Mishra, Advocate

-versus-

Trupti Ranjan Patra and others .... ***Respondents***

Mr.A.A.Khan, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

<u>ORDER</u>
20.09.2022

<u>Order No.</u>

7. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.Khan, learned counsel for the Insurer and Mr.Mishra, learned counsel for the claimants.

3. Both the appeals arise out of the same judgment dated 27th February, 2019 passed by the learned Member, 5th M.A.C.T.,

Khurda in M.A.C.Case No.145 of 2016, wherein compensation to tune of Rs.27,79,575/- along with interest @6% per annum has been granted from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 25th June, 2016.

4. MACA No.304 of 2019 has been preferred by the Insurer challenging the compensation amount and MACA No.265 of 2019 has been filed by the claimants praying for enhancement of the compensation amount.

5. The main dispute involved in both the appeals is regarding quantum of compensation.

6. It is submitted by the Insurer that as per the evidence of widow of the deceased (P.W.1) and the I.T. returns filed under Ext.9 (series), no loss of income was sustained by the claimants upon death of the deceased. On the other hand, it is submitted by the claimants that reduction of the income of the deceased by the Tribunal to Rs.2,98,575/- per annum is erroneous keeping in view the I.T. returns filed prior to death of the deceased and after his death.

7. Perusal of the copy of the evidence of P.W.1 as produced in course of hearing reveals that the widow in her examination-in-chief has stated as follows:

> "xxx xxx xxx
>
> 5. That, my deceased husband was aged about 50 years at the time of accident and he was the owner of four numbers of trucks, and supplier materials to Mazda Company S.E.Rly. at Kaipadar road, medicine shop at Bajapur Bazar and proprietor-cum-owner of

South City Hospital, Khordha and was earning from all sources of Rs.70,000/- per month.

xxx xxx xxx”

Further, in her cross-examination, she has stated as follows:

“xxx xxx xxx

12. I have no direct knowledge regarding the affidavit filed today, I took the instruction of my Advocate for preparing the affidavit. Basing on the police papers, this case has been filed. My husband was moving in the vehicle of Manas Patra, who happens to be his friend. He was going to attend a marriage ceremony at Jankia. My husband started his journey at 10 AM from our house. I lodged F.I.R. Again says that my DIARA (younger brother of my husband) lodged the FIR. It is a fact that my affidavit evidence reflects that my husband had owned four trucks. The said four trucks are still under my ownership. I have not filed any Railway documents in respect of supply of materials by my husband to the said Railway. There was agreement in between the Railway authority and my husband for supply of materials to the Railway as a Contractor, but I have not filed any document in support of it. The medicine store was owned by my husband. Basing on the pharmaceutical license in the name of his younger brother, my husband was running the medicine store. The copy of the said certificate is not produced in the Tribunal.

13. The Bank Statement has not been authenticated by the signature of the Bank Manager. The Account lies in the name of Mangaraj Medicine Store, but not personally in the name of my husband. I have not filed any documents of Mangaraj Medicine store. It is not a fact that my late husband was not involved in any way with Mangaraj Medical Store. My husband was

involved with South City hospital and I have got certain documents to that effect, but the same are not filed in the Tribunal. No Assessment order is filed for the Assessment year 2015-16. I have filed the documents showing the income of my husband as Rs.70,000/-.

xxx xxx xxx"

8. It is thus clear from the aforesaid statements of P.W.1 that she did not file any document with regard to income of the deceased from contractor business under Railways and she did not file any document with regard to closure of transport business, medicine store and hospital after death of the deceased. But the fact remains, as admitted by her, that the trucks are with her so also the medicine store and the hospital.

9. Next coming to I.T. returns filed under Ext.9, the first one is for the Assessment year 2015-16 filed on 19th October, 2015. The second one is for the Assessment year 2016-17 filed on 31st December, 2016. The date of accident and death of the deceased is 25th June, 2016. In the ITR for AY 2015-16, the gross income was Rs.3,90,065/- and the same was filed by the deceased. In the ITR for AY 2016-17, the gross income of the deceased was Rs.4,52,043/- and same was filed by one Sunanda Mangaraj, the daughter of Dasarathi Mangaraj (deceased).

10. On comparison of both the amounts mentioned in the I.T. return for AY 2015-16 and AY 2016-17, the later is found enhanced one. A cumulative reading of the evidence of P.W.1 and the amounts of income mentioned in the I.T. returns gives the inference that upon death of the deceased, all such properties owned by him was maintained by the deceased and other family

members and the income arising therefrom did not substantially reduce. It is for the reason that no document regarding income of the deceased as Railway contractor was filed, and it is the admission of P.W.1 that the shop is maintained by the family members. So in such situation, prima facie presumption lies in favour of contention of the insurer that no such substantial loss of income happened due to death of the deceased. As such, the loss of dependency is to be counted keeping in view this specific evidence of P.W.1 regarding retention of the properties with the family members, which were the major source of income of the deceased. Accordingly, by doing the guess work taking note of the age of the deceased, his experience in the business and other relevant factors, the loss of income is assessed at Rs.2,00,000/- per annum. Adding future prospectus to the extent of 10% thereto, since the age of the deceased remains undisputed, the annual loss of income is determined at Rs.2,20,000/-. Deducting 1/5th there-from towards personal expenses, annual loss of dependency comes to Rs.1,76,000/- and total loss of dependency becomes Rs.1,76,000 x 11=19,36,000/-. Adding consortium as well as the general damages amounting to Rs.2,70,000/-, total compensation is determined at Rs.22,06,000/-, payable along with interest @6% per annum.

11. Resultantly, the Insurer is directed to deposit the reduced compensation of Rs.22,06,000/- (Twenty two lakhs six thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application 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 fixed by the Tribunal.

12. With aforesaid modification in the compensation amount, both the appeals are disposed of. Copies of the documents and evidence filed by Mr.Mishra, learned counsel for the claimants are kept on record.

13. The statutory deposit made by the Appellant in MACA No.304 of 2019 with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

14. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal