IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.917 of 2014 & MACA No.677 of 2014

In MACA No.917 of 2014

The Divisional Manager, The ICICI Lombard General Insurance Company Limited .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Smt. Basanti Patra and others .... ***Respondents***

Mr. J.J. Mohanty, Advocate for Respondent Nos.1 to 4

In MACA No.677 of 2014

Basanti Patra and others .... ***Appellants***

Mr. J.J. Mohanty, Advocate

-versus-

Bijay Kumar Sahu and another .... ***Respondents***

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

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
21.09.2022

Order No.

I.A. No.937 of 2022 arising out of MACA No.677 of 2014

12. **1.** Learned counsel for the Appellants wants to withdraw the I.A.

2. Accordingly, the I.A. is dismissed as withdrawn.

MACA No.917 of 2014 & MACA No.677 of 2014

3. Heard Mr. A.A. Khan, learned counsel for the Insurance Company and Mr. J.J. Mohanty, learned counsel for the claimants.

4. Both the appeals being arise out of the same judgment dated 25.06.2014 of the learned 1st MACT, Puri wherein compensation to the tune of Rs.5,20,000/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application, i.e.04.11.2009 on account of death of the deceased in the motor vehicular accident dated 9.4.2009, are heard together and disposed of by this common order.

5. MACA No.677 of 2014 has been filed by the claimants praying for enhancement of compensation amount and MACA No.917 of 2014 has been filed by the insurer challenging the award.

6. It is contended on behalf of the claimants that the Tribunal has not properly assessed the income of the deceased and also did not add future prospects and consortium to the compensation. It is also submitted that the treatment expenses of the deceased was also not counted by the learned Tribunal.

7. On the other hand, Mr. Khan, learned counsel for the insurer submits that the alleged offending motorcycle bearing Registration No.OR-05-AC-7073 is not involved in the accident, but has been implanted subsequently to manage the compensation. Mr. Khan also questions the quantum of compensation by submitting that the monthly income at Rs.5100/- counted by learned Tribunal is without any material.

8. First coming to the challenge with regard to the involvement of the offending motorcycle in the accident, Mr. Khan relies on the statement recorded at Column No.9 of the inquest report under Ext.A, wherein it is stated that a truck is involved in the accident. Such contention is also fortified with delay in lodging the FIR. It needs to be mentioned here that the accident took place on 9.4.2009 and the FIR was lodged on 22.12.2009. The copy of the FIR under Ext.2 reveals that pursuant to filing of the complaint case under Section 156 of the Cr.P.C. and the direction passed therein by the Magistrate, Satyabadi P.S. Case No.167, dated 22.12.2009 was registered and the Police submitted the charge-sheet stating no evidence against the alleged driver.

9. It reveals that three witnesses were examined on behalf of the claimants and among them P.W.1 is the widow of the deceased and P.W.2 is the eye-witness of the accident. As per P.W.2, the accident took place by the offending motorcycle and in the cross-examination by the insurer he confirms to have seen the accident caused by such motorcycle. On perusal of his evidence, it is found that nothing could be elicited from his mouth to disbelieve his evidence made in the examination-in-chief. Said P.W.2 has confirmed in his cross-examination that he was examined by the Police as a witness. The entire contention of Mr. Khan to disbelieve involvement of the motorcycle in the accident is based on the statement of the witness recorded in the inquest report. As per the inquest report under Ext.A, the name of the witness, who made such statement during inquest, is Niranjan Patra and further, Claimant No.1-Basanti Patra (widow) has signed at Column No.11. The insurer did not examine any witness on its behalf to prove such contents of the inquest report. Even in course of cross-examination of Basanti Patra (P.W.1), neither such contents of the inquest report was confronted to her nor was any question put to her regarding the same. Even no suggestion was put to P.W.1 regarding involvement of the truck in the accident and non-involvement of the motorcycle. As such, upon analysis of all such evidence brought on record, the contention of the insurer to disprove involvement of the offending motorcycle in the accident is found with any substance and thus rejected.

10. Here it needs to be mentioned that, since the Police did not register a case pertaining the accident despite registration of UD Case No.405/2009 by Mangalabag P.S., the complainant was compelled to approach the Magistrate under Section 156 of the Cr.P.C. at such belated stage.

11. Next coming to the question of quantum of compensation, it is seen that the learned Tribunal has accepted the income of the deceased as a mason at Rs.5100/- per month based on oral evidence adduced from the side of the claimants. But as per the Notification No.293, dated 28.4.2007 of Government of Orissa, minimum wages @ Rs.70/- per day was prevalent on the date of accident for unskilled labourer. In absence of any documentary evidence and reliable proof with regard to income of the deceased and considering his profession as a mason, it is found apposite to take his income at Rs.70/- per day as an unskilled labourer. Accordingly, the monthly income is computed at Rs.2100/- and adding 10% to the same towards future prospects, since the age of the deceased was 55 years, the annual income comes to Rs.27,720/-. Deducting 1/4th from the same towards personal expenses, the annual loss of dependency comes to Rs.20,790/-.

Applying multiplier '11', the total loss of dependency is determined at Rs.2,28,690/- and adding consortium of Rs.40,000/- to each of the claimants as well as Rs.30,000/- towards general damages, it comes to Rs.4,18,690/-, rounded to Rs.4,20,000/-. Thus the total compensation amount is determined at Rs.4,20,000/- payable along with interest @6% per annum.

12. So far as the expense of treatment of the deceased is concerned as per the contention of the claimants, the same is not proved on record through material evidence. No document has been produced to reveal any expense incurred by the claimants towards the treatment of the deceased in the hospital, who died on the next day of the accident. Moreover, the deceased was treated at SCB Medical College and Hospital, Cuttack which is a Government Hospital. Therefore, no amount towards the same is liable to be added to the compensation amount.

13. In the result, both the appeals are disposed of with a direction to the Insurance Company, i.e.ICICI Lombard General Insurance Company to deposit the modified compensation of Rs.4,20,000/- (rupees four lakhs twenty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.4.11.2009 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.

However, this Court has not disturbed the finding of the learned Tribunal regarding right of recovery granted in favour of the Insurance Company.

14. On deposit of the award amount before the Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court in MACA No.917 of 2014 with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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

(B.P. Routray)
Judge

B.K. Barik