

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.619 of 2018

The Divisional Manager, *Appellant*
United India Insurance Co. Ltd.

Mr.S.Satpathy, Advocate

-versus-

Jag Narayan Sharma and others *Respondents*
Mr.K.Panigrahi, Advocate for Respondent Nos.1 & 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
29.8.2022

Order No.

09.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Satpathy, learned counsel for the Appellant-Insurer and Mr.Panigrahi, learned counsel for claimants-Respondent Nos.1 & 2.
3. Present appeal by the Insurer-Appellant is against the judgment dated 28th February, 2018 of the 1st Additional District Judge-cum-IIIrd M.A.C.T., Rourkela in MAC Case No.220 of 2016, wherein compensation to the tune of Rs.43,45,000/- has been granted along with interest @6% per annum with effect from the date of filing of the claim application on account of

death of the deceased in the motor vehicular accident on 6th January, 2016.

4. Mr.Satpathy, learned counsel for the Appellant submits that the assessment of monthly income made by the Tribunal based on the appointment letter and salary certificate of the deceased under Exts. 14 and 15 are forged documents and have not been properly proved by the claimants. Therefore the income of the deceased to the tune of Rs28,200/- per month as taken by the Appellant is grossly illegal.

5. Upon hearing Mr.Panigrahi, learned counsel for the claimants and perusal of the impugned judgment, it reveals that the Tribunal has accepted the monthly income of the deceased at Rs.28,200/- accepting the contentions of the claimants that the deceased was working as an Office Assistant in Klean Facility Management Services, Noida (U.P.) and drawing salary of Rs.28,200/- per month. The original documents filed under Exts.14 & 15 are relied on by the Tribunal for the purpose. But the Insurer presently files I.A.No.52 of 2019 along with report of his investigator stating that such certificates allegedly issued in favour of the deceased are fake documents and the deceased was

never an employee of Klean Facility Management Services, Noida.

6. Such contention raised to treat Exts.14 & 15 as fake documents and that the deceased was not an employee of Klean Facility Management Services, Noida based on the report of the investigator of the Insurance Company is found unacceptable for the reason that the investigator's report has no evidentiary value who has no direct knowledge about the facts. At the same time it needs to be mentioned that if the onus is on the party who relies on such private documents under Exts.14 & 15 to prove the contents thereof by bringing the author of the documents to the witness box. The claimants did not examine the author of the documents and thus have failed to discharge their onus in proving the contents of Exts.14 & 15 and therefore complete reliance on the same by the Tribunal is found erroneous. Nevertheless, the qualification of the deceased as Bachelor in Computer Application course is never disputed. He was a young man aged about 28 years and therefore the presumption would be that he would have his own source of income. In commensurate to his qualification and by doing some guess work, the monthly income

of the deceased can safely be assessed at Rs.15,000/- irrespective of the income mentioned in Exts.14 & 15. Such assessment of the income at the rate of Rs.15,000/- per month by this Court is agreed by Mr.Panigrahi, learned counsel for the claimants and Mr.Satpathy does not seriously dispute that.

7. So computation of loss of dependency based on such income at Rs.15,000/- per month after adding 40% towards future prospects and deducting 50% towards personal expenses, the deceased being a bachelor, and applying multiplier 17 along with addition of Rs.1,10,000/- towards loss of consortium and general damages, comes to Rs.22,52,000/-(Twenty two lakhs fifty two thousand) payable along with interest at the rate of 6% per annum.

8. In the result, the appeal is disposed of with a direction to the Appellant-Insurer to deposit the reduced compensation amount of Rs.22,52,000/-(Twenty two lakhs fifty two thousand) along with interest @6% per annum from the date of filing of the claim application within a period of two months from today, which shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

9. The statutory deposit made by the Appellant 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.

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

(B.P. Routray)
Judge

C.R.Biswal

