

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.366 of 2020

MACA Nos.366 & 512 of 2020

***The Divisional Manager, New India
Assurance Company Ltd***

(in MACA No.366/2020)

Sabita Mohapatra and Others

(in MACA No.512/2020)

Appellants

Mr. Subrat Satpathy, Advocate (in MACA No.366/2020)

Mr. B.N. Samantaray, Advocate (in MACA No.512/2020)

-versus-

Sabita Mohapatra and Others

(In MACA No.366/2020)

Sanjaya Parida and Another

(In MACA No.512/2020)

Respondents

Mr. B.N. Samantaray, counsel for Respondents 1-4
(in MACA No.366/2020)

Mr. Subrat Satpathy, counsel for Respondent No.2
(in MACA No.512/2020)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

1.8.2022

Order No.

- 05.
1. The matters are taken up through hybrid mode.
 2. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.
 3. Heard Mr. S. Satpathy, learned counsel for the insurer and Mr. B.N. Samantaray, learned counsels for claimant.

4. MACA No.366 of 2020 is filed by the insurer challenging the award whereas MACA No.512 of 2020 has been filed by the claimants praying for enhancement of the compensation amount.

5. Learned 1st MACT, Cuttack in the impugned judgment dated 24th December, 2019 passed in MAC Case No.286 of 2016 has directed on account of death of deceased Nabakishore Mohapatra in the motor vehicular accident dated 6th March, 2016 for payment of compensation in favour of the claimants to the tune of Rs.43,78,084/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 21st April, 2016.

6. Mr. Satpathy, learned counsel for the insurer submits while advancing his challenge that, the offending vehicle, i.e. Indica Car bearing registration number OR-05-W-1670 has been implanted in the accident to manage compensation though the same was not involved. It is further stated that since the deceased was serving as a Sub-Inspector of Police in Lalbag Police Station on the date of accident, police has successfully implanted the offending vehicle in the accident.

7. Mr. Satpathy further submits that with regard to quantum of compensation, the tribunal has committed error in granting future prospects in favour of the claimants because a vigilance case was pending against the deceased at the time of death. So, his further continuance in service was at stake and as such the claimants are not entitled for any future prospects. Mr. Satpathy further submits that since the son of the deceased has been employed under rehabilitation assistance scheme due to the death of deceased and the wife is also

getting family pension, no future prospects should be granted on that ground.

8. On the other hand Mr. Samantaray, learned counsel for the claimants submits in his reply, without disputing pendency of the vigilance case against the deceased, that, the said case abated upon death of the deceased and therefore the dependents cannot be deprived of the future prospects which they are entitled to on the income of the deceased. Mr. Samantaray further contends that getting provisional pension by the wife and employment under rehabilitation assistance scheme for the son would not disentitle the dependents from getting future prospects on the income of the deceased.

With regard to allegation of implication of the offending vehicle in the accident, he denies the same and further submits that in absence of any proof adduced on the part of the insurer to that effect, the same should be rejected.

9. Mr. Samantaray further contends that the learned tribunal while calculating the monthly income of the deceased has erroneously computed the same at Rs.41,258/-, which was pre-revised pay and the actual salary after revision of pay is Rs.55,200/-. On this ground Mr. Samantaray prays for enhancement of the compensation.

10. On the backdrop of such rival contentions of both parties, coming first to deal with the challenge with regard to alleged implantation of the offending vehicle in the accident, the same is based on some contents made in Ext.10. As per Ext.10, the outpatients slip of Aswini Hospital, it is mentioned therein that the alleged head injury in the road traffic accident is due to collision of motorbike to

the side fence of the road at Phulnakhara, BBSR. Admittedly, this entry in Ext.10 is made by a staff of Aswini Hospital, which is a private hospital. The author of said document, who has made such entry, has not been examined. It is also not known where from he got such knowledge. Admittedly no evidence has been adduced from the side of the insurer to substantiate such contention. Thus, in absence of any specific evidence regarding the same, such entry made in Ext.10 cannot be accepted as admissible evidence.

11. Mr. Satpathy further contends that the F.I.R. was lodged two days after the accident and as the deceased was a police officer, all such manipulations have been made showing involvement of the offending vehicle in the accident. These are without any substance. It is for the reason that those are all presumptions only and nothing has been mentioned to that effect either in the F.I.R. or in the police investigation report and admittedly, charge-sheet has been submitted against the accused driver to face the criminal prosecution. Therefore, all such contentions raised to disbelieve involvement of the offending vehicle in the accident are rejected.

12. Next coming to the question of grant of future prospects Mr. Satpathy harps on the pending vigilance case against the deceased to deprive the dependents from getting any addition of future prospects to the income. The information obtained under the RTI Act under Ext.F reveals that a vigilance case was pending against the deceased. Mr. Samantaray, learned counsel for the claimants does not dispute pending vigilance case against the deceased on the date of accident. The submission made on behalf of the claimants that the vigilance case has been abated upon death of the deceased, is not proved on

record. No such document or material is produced to reveal that the vigilance case has been abated. Nevertheless, the admitted fact remains that a vigilance case was pending against the deceased on the date of accident and on the date of his death. The principles on future prospects as discussed by Hon'ble Supreme Court in the case of *Sarla Verma v. DTC, (2009) 6 SCC 121* and *National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680*, is regarding increase of income in the career, where there is a permanent job, keeping in view the principles of certainty, stability and consistency. Admittedly, if a vigilance case was continuing against the deceased there is every chance of conviction against him which may have resulted termination of his service also. Such probability of termination in view of pendency of the vigilance case against the deceased would definitely operate as a hurdle against him not only for his future career progress but also his future continuance in service. So the probability of certainty and stability in future service career of the deceased is diminished. In such situation, addition of future prospects to the income of the deceased is not felt appropriate. Therefore, it is held that the claimants are not entitled for any addition of future prospects to the income of the deceased.

13. Next coming to the dispute with regard to income of the deceased, it reveals from Ext.8 that the pay of the deceased has been revised under ORSP Rules, 2017 fixing at Rs.55,200/- per month with effect from 1st January, 2016 and the next date of increment was 1st October, 2016. Therefore, the date of accident being on 6th march, 2016, it is established that the deceased was getting Rs.55,200/- per month on the date of his death. However, learned tribunal took the

monthly income of the deceased at Rs.41,258/-, which was in the pre-revised scale, by saying that on the date of death the pay of the deceased was not revised and he was getting Rs.41,258/- only. But it is clear from Ext.8 that he got Rs.55,200/- retrospectively upon revision of his pay on a later date, i.e. in January, 2018. Therefore, it is appropriate to take his salary at Rs.55,200/- per month for the purpose of determining his income.

14. As earlier stated, the deceased is not entitled for any future prospects and therefore his annual income comes to Rs.6,62,400/- (i.e. Rs.55,200/- X 12). Deducting Rs.2500/- towards professional tax and Rs.14,980/- towards income tax (as per the prevailing slab for the AY 2015-16), it comes to Rs.6,44,920/-. After deducting 1/4th towards personal expenses, the annual loss of dependency comes to Rs.4,83,690/-. Taking the age of the deceased in the age group of 51-55 years, which is not disputed by both parties, multiplier '11' is found applicable. Thus the total loss of dependency comes to Rs.53,20,590/-. Adding consortium of Rs.40,000/- to each of the claimants (for claimant No.1 spousal consortium and for other claimants parental consortium) and Rs.30,000/- towards general damages, the total compensation amount comes to Rs.55,10,590/-.

15. In the result the insurer, i.e. New India Assurance Co. Ltd. (Appellant in MACA No.366 of 2020 and Respondent No.2 in MACA No.512 of 2020) is directed to deposit total compensation of Rs.55,10,590/-(fifty-five lakhs ten thousand five hundred ninety) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 21st April, 2016 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 learned Tribunal.

16. However, this court has not disturbed the right of recovery as granted by the Tribunal in the impugned judgment.

17. The statutory deposit made by the insurer - Appellant in MACA No.366 of 2020 before this court along with accrued interest be refunded to the insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

18. Both the appeals are disposed of.

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

(B.P. Routray)
Judge

M.K.Panda

