

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.918 of 2017

(From the judgment dated 31st July, 2017 passed by the Member, 7th M.A.C.T., Bhubaneswar in M.A.C. 352 of 2015)

**Manager, Claims (T.P.Cell),
M/s.New India Assurance Co. Ltd. Appellant**

Versus

Kunja Bihari Pradhan and others Respondents

Advocate(s) appeared in this case :-

For Appellant	:	Mr. P.K.Panda, Advocate
For Respondents	:	Mr.A.K.Jena, Advocate for Respondent Nos.1 to 4 & 6

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT

20th June, 2022

B.P. Routray,J.

1. The appeal is against the grant of compensation of Rs.17,70,000/- with interest @6% per annum by the learned Member, 7th M.A.C.T., Bhubaneswar in M.A.C. 352 of 2015.

2. The claimants are the parents, grandparents and sibling of the deceased who was an unmarried boy aged about 25 years. He died in the accident on 29th June, 2015 due to rash and negligent driving of the offending truck bearing Registration No.OR-05-AM-8857.

3. The Insurer has come up in challenging the award of compensation mainly concerning the income of the deceased. Though negligence and validity of the Insurance Company is not disputed, it is contended by the insurer that the deceased was a non earning person on the date of accident who of course was a student of B.Tech in Civil Engineering and the Tribunal has assessed his monthly income at Rs.15,000/- despite the admitted case of the claimants that the deceased was a student. As per the insurer, the notional income prescribed in respect of non-earning persons as per the Schedule –II of the M.V.Act should have been taken instead of the amount so taken by the Tribunal.

4. Upon examination of the ground of challenge advanced by the Insurer, it is seen that the Tribunal has observed with regard to the income of the deceased that he having passed Diploma in Civil Engineering in First Division from Odisha Institute of Engineering and Technology, Dhenkanal was pursuing B.Tech. (Civil), 2nd year course in

Mahavir Institute of Engineering and Technology, Bhubaneswar and has completed 3rd/4th Semester. In the opinion of the Tribunal, it is reasonable to assume that the deceased would have got a descent job at least in the private sector as an engineer and thus it is fair and reasonable to assess his future earning at Rs.1,80,000/- per annum taking the normal salary and allowances paid to an engineer. The Tribunal has refused to add future prospects to the income. However, since this part is not challenged by the claimants, this Court refrains from giving any opinion on the same.

5. So far as the challenge of the insurer regarding income aspect of the deceased, it is not at all acceptable to take the deceased in the category of non-earning persons to count the income prescribed in the second Schedule of the M.V.Act. The reason being that, admittedly, the petitioner is a highly qualified young man pursuing his study in Graduate Civil Engineering course. He has already passed diploma in Civil Engineering and thus the educational qualification does not justify him to be treated in the category of notional income group or even a skilled labourer under the Minimum Wages Act. The Supreme Court in the case of *Meena Pawaia v. Ashraf Ali*, 2021 SCC OnLine SC 1083, while considering the appeal by the claimants concerning the deceased who

was a student of 3rd/4th Semester in Bachelor of Engineering has counted the income of the deceased at Rs.10,000/- per month. The relevant observation of the Supreme Court is reproduced below:

“8. At the outset, it is required to be noted that deceased at the time of accident was aged 21/22 years and that he was a 3rd year student in civil engineering. Therefore, it can be said that looking to his educational qualification he was having a bright future. Learned Tribunal assessed the income of the deceased at Rs.15,000/- per month for the purpose of awarding compensation under the head of future economic loss. However, by the impugned judgment and order, the High Court has reduced the compensation and determined the income of the deceased at Rs.5,000/- per month. Awarding the future economic loss to the claimants considering the income of the deceased as Rs.5,000/- is not sustainable at all. Even the labourers/skilled labourers were getting Rs.5,000/- per month under the Minimum Wages Act in the year 2012. As the deceased was studying in the 3rd/4th semester of civil engineering, he cannot be considered worse than the labourers/skilled labourers. Even the counsel appearing on behalf of the Union of India has fairly conceded that assessing the income of deceased at Rs.5,000/- per month for the purpose of awarding the compensation under the head of future economic loss can be said to be at lower side and as such is not justifiable. While awarding the future economical loss, when the deceased died at the young age 21/22 years and was not earning at the time of death/accident, as per catena of decisions of this court, the income for the purpose of determining the future economic loss is always done on the basis of guesswork considering many circumstances namely the educational qualification and background of the family etc. Therefore looking to the educational qualification and the family background and as observed herein above, the deceased was having a bright future studying in the 3rd year of civil engineering, we are of the opinion that the income of the deceased at least ought to

have been considered at least Rs.10,000/- per month, more particularly considering the fact that the labourers/skilled labourers were getting Rs.5,000/- per month even under the Minimum Wages Act in the year 2012.”

6. It is true that considering the educational qualification of the deceased and his status as a student of B.Tech in Civil Engineering course, the observation of the Tribunal that he has bright prospects of future income cannot be faulted with. In such a situation as observed by the Supreme Court reasonable guesswork has to be conducted keeping all such background facts for determining the income aspect. Here, in the instant case, when the deceased is undisputedly studying 2nd year Civil Engineering and the accident is dated 29th June, 2015, the assessment of the Tribunal to count income of Rs.15,000/- per month of the deceased is found justified. Thus, no reason is seen to interfere with the same.

7. There being no dispute raised with regard to age of the deceased or his status as an unmarried boy, and particularly in absence of any challenge from the side of the claimants, this Court confirms the amount awarded in favour of the claimants.

8. In the result, the appeal is dismissed and the Appellant – Insurance Company is also directed to pay the entire award amount along with interest as per the direction of the Tribunal within a period of two months

from today, which shall be disbursed in favour of the claimants in terms of its directions contained in the impugned judgment.

9. The statutory deposit made by the Insurer-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.

(B.P.Routray)
Judge

C.R.Biswal/Secy.

