**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.375 of 2020**

(From the judgment dated 28th November, 2019 passed by the learned 4th M.A.C.T., Cuttack in M.A.C. Case No.428 of 2013/276 of 2015.)

***The Divisional Manager, M/s.New India Assurance Co. Ltd.*** .... ***Appellant***

*-versus-*

***Anusaya Malik@Anu Jena and others*** .... ***Respondents***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Appellant | : | Mr. S. Roy, Advocate |
| For Respondents | : | Mr. B.N. Rath, Advocate<br>For Respondent Nos.1 to 9 |

**CORAM: JUSTICE B.P. ROUTRAY**

**JUDGMENT**

***13th July, 2022***

***B.P. Routray, J.***

**1.** Present appeal by the insurer is directed against the judgment dated 28th November, 2019 passed by the learned 4th M.A.C.T., Cuttack in M.A.C. Case No.428 of 2013/276 of 2015 wherein compensation to the tune of Rs.17,60,880/- has been granted along with simple interest @6% per annum.

**2.** As per the Appellant, the learned Tribunal has calculated the loss of dependency taking monthly income of the deceased at Rs.6000/-, which according to the counsel for the Appellant should not exceed Rs.4500/- per month when he was a mason admittedly. It is also contended that the learned Tribunal has erroneously granted filial consortium to the tune of Rs.3,20,000/- to the claimants.

**3.** Before dealing with the grounds of challenge advanced by the Appellant, it is necessary to look at the facts of the case. The accident took place on 05.05.2013 and the deceased was aged about 26 years on the date of accident. The claimants are the wife of the deceased, his parents and six younger brothers and sisters. As per the claim, the deceased was a mason and the evidence has been laid in that regard. The Appellant also does not dispute the same, but contends to count his income at the prevalent rate prescribed for unskilled labourer on the date of accident.

**4.** As per Government Notification No.1942 dated 6.10.2012, the rate of minimum wages per day prescribed for unskilled labourer was Rs.150/-, for semi-skilled Rs.170/-, for skilled Rs.190/- and for highly skilled Rs.205/-. This rate of wage was prevalent on the date of accident, i.e. 05.05.2013. Admittedly no documentary proof has been adduced in support of the contention of the claimants to prove the deceased as a skilled or semi-skilled or highly skilled person. It is the general contention and the oral evidence adduced by the claimants to assert that the deceased was a mason. Therefore in the given facts, it would be appropriate to consider him as an un-skilled labourer and fix his income at Rs.150/- per day as per the prevalent rate. Thus his monthly income comes to Rs.4500/-. But the learned Tribunal without taking note of all these has straight away fixed the monthly income at Rs.6000/-. This is not appreciated to be correct in the given facts of the case and the same is modified to Rs.4500/- per month. Adding 40% to the same towards future prospects, it comes to Rs.6300/- per month. By deducting 1/5$^{th}$ from the same as number of claimants are 9 (nine) in total, it comes to Rs.5040/-.

**5.** It is seen from the impugned judgment that the learned Tribunal relying on the case of ***Magma General Insurance Co. Ltd. vrs. Nanu Ram @ Chuhru Ram and others,*** reported in ***(2018) 18 SCC 130*** granted filial consortium to the parents and siblings of the deceased to the tune of Rs.3,20,000/-, besides Rs.40,000/- as spousal consortium to the wife of the deceased. The Supreme Court in the case of ***Magma General Insurance Co. Ltd.*** (supra) has categorically observed at paragraph 23 that, the parents are entitled to filial consortium where they have lost their minor child, or unmarried son or daughter. Here in the case at hand, the deceased is a married man and the learned Tribunal therefore, has granted spousal consortium to the wife. As such, the deceased does not fall within the category of minor child or unmarried son and accordingly it is held that the claimants except the wife of the deceased are not entitled to any amount towards loss of consortium.

**6.** In view of the above discussion, the compensation amount is modified to the extent mentioned below:-

| | | | |
|---|---|---|---|
| (1) | Monthly Income | - | Rs. 4500/- |
| (2) | Future prospects @40% | - | Rs. 1800/- |
| (3) | After deduction of 1/5$^{th}$ towards personal expenditure, it comes | - | Rs. 5040/- |
| (4) | Annual loss of dependency | - | Rs.5040/- x 12 = Rs.60,480/- |
| (5) | Multiplier applied | - | 17 |
| (6) | Total loss of dependency | - | Rs.60,480/- x 17 = Rs.10,28,160/- |
| (7) | Funeral expenses and loss of estate | - | Rs.30,000/- |
| (8) | Spousal consortium to the Respondent No.1 (wife of the deceased) | - | Rs.40,000/- |
| | **Total compensation** | **=** | **Rs.10,98,160/-** |

**7.** Resultantly, the claimants are held entitled for compensation to Rs.10,98,160/- (Rupees Ten Lakhs Ninety-eight Thousand One Hundred Sixty) along with simple interest @6% per annum from the date of filing of the claim application, i.e. 22.07.2013 and the Appellant-insurer is directed to pay the same to the claimants within a period of two months from today by depositing the amount before the learned Tribunal.

It is further directed that out of the total amount including interest, a sum of Rs.6,40,000/- (Rupees Six Lakhs Forty Thousand) be granted to the Respondent No.1-Anusaya Malik @ Anu Jena and Rs.6,00,000/- (Rupees Six Lakhs) to Respondent No.3-Santilata Malik. The rest amount shall be disbursed among Respondent Nos.2 and 4 to 9 in equal proportion.

**8.** It is made clear that 75 (seventy-five) percentum of the amount granted to the Respondent Nos.1 & 3 shall be kept in fixed deposits in any nationalized Banks for a period of 5 years which shall be non-encumberable. But the quarterly interest payable to Respondent Nos.1 & 3 respectively.

**9.** The appeal is disposed of in terms of the above directions.

**10.** On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.



***(B.P. Routray)***
***Judge***

*B.K. Barik/Secretary*