

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.695 of 2017 & MACA No.1083 of 2017

In MACA No.695 of 2017

Damayanti Mohanta

....

Appellant

Mr. H.K. Mohanta, Advocate

-versus-

Satyajit Dhar Mohapatra and another

....

Respondents

Mr. G.P. Dutta, Advocate for Respondent No.2

In MACA No.1083 of 2017

D.M., Oriental Insurance Co. Ltd.

....

Appellant

Mr. G.P. Dutta, Advocate

-versus-

Damayanti Mohanta and another

....

Respondents

Mr. H.K. Mohanta, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

27.07.2022

Order No.

MACA Nos.695 & 1083 of 2017

12. 1. Heard Mr. G.P. Dutta, learned counsel for the Insurance Company and Mr. H.K. Mohanta, learned counsel for the claimant.
2. Both the appeals being arise out of the same judgment dated 27.04.2017 of the learned 1st MACT, Mayurbhanj, Baripada in M.A.C. Case No.44/2015 wherein compensation to the tune of Rs.12,34,000/- has been granted along with simple interest @7% per annum to the claimants from the date of filing of the claim

application, i.e.18.03.2015 on account of death of the deceased in a motor vehicular accident dated 25.12.2014, are heard together and disposed of by this common order.

3. MACA No.1083 of 2017 has been filed by the Insurance Company challenging the award and MACA No.695 of 2017 has been preferred by the claimant praying for enhancement of the compensation amount.

4. Mr. G.P. Dutta, learned counsel for the Insurance Company while challenging the award submits that the monthly income of the deceased has been erroneously fixed at Rs.12,000/- by the learned Tribunal without valid evidence and therefore he prays for reduction for quantum of compensation.

5. On the other hand, Mr. H.K. Mohanta, learned counsel for the claimant submits that the learned Tribunal has forgotten to add future prospects to the income of the deceased and further, Rs.10,000/- only has been granted towards general damages without any amount for loss of consortium.

6. The claimant is the mother of the deceased and the deceased was unmarried. The accident is dated 25.12.2014 and as per the claim of the applicant, the deceased was serving as a salesman in Baripada Medical Hall and getting Rs.12,000/- per month as his remuneration.

7. It is seen from the impugned judgment that P.W.3, who is stated to be the Manager of said Baripada Medical Hall, has stated that the deceased was getting Rs.12,000/- per month by

serving as a salesman. But no document with regard to the employment of the deceased or any material regarding authenticity of such employment of the deceased in the said organization has been adduced. Further the proprietor/owner of such medical hall did not come to the witness box. However as per the evidence of P.W.1, it is found that the deceased is a Graduate and such evidence of P.W.1 remains unchallenged. Thus considering the educational qualification of the deceased and in absence of concrete evidence with regard to his income, this Court assessed his income at Rs.10,000/- per month by guess work.

8. Admittedly the learned Tribunal has not granted any future prospects and also did not grant filial consortium to the claimant, who is the mother of the deceased. Further only Rs.5000/- has been granted towards funeral expenses and another Rs.5000/- towards loss of love and affection. Considering the principles decided in the case of *National Insurance Company Limited vs. Pranay Sethi and others*, (2017) 16 SCC 680, and *Magma General Insurance Company Ltd. vs. Nanu Ram @Chuhru Ram and others*, (2018) 18 SCC 130, 40% of the income towards future prospects is added along with Rs.70,000/- towards consortium as well as general damages.

9. In the result, total compensation is computed at Rs.14,98,000/- which is rounded to Rs.15,00,000/-. Learned counsels for the respective parties agree with the computation to arrive the aforesaid amount.

10. Accordingly, both the appeals are disposed of with a direction to the Insurance Company to deposit the total compensation of Rs.15,00,000/- (rupees fifteen lakhs) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.18.03.2015 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 decided by the Tribunal.

11. 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 in MACA No.1083/2017 before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company

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

(B.P. Routray)
Judge