

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.165 of 2021

MACA Nos.165 of 2021 & 793 of 2020

The Divisional Manager,

M/s. National Insurance Co. Ltd. (In MACA No.165/2021)

Minakhi Sahoo and Others (In MACA No.793/2020)

.... Appellants

Mr. P. K. Mohanty, Advocate (in MACA No.165/2021)

Mr. P.K. Mishra, Advocate (in MACA No.793/2020)

-versus-

Minakhi Sahoo and Others (In MACA No.165/2021)

Jagabandhu Sahoo and Another (In MACA No.793/2020)

.... Respondents

Mr. P.K. Mishra, counsel for Respondents 1-3
(in MACA No.165/2021)

Mr. P.K. Mohanty, counsel for Respondent No.2
(in MACA No.793/2020)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

8.4.2022

Order No.

I.A. No.1423 of 2020 arising out of MACA No.793 of 2020

05. 1. The Appellants being claimants are exempted from payment of court fees for the time being.
2. The I.A. is disposed of.

MACA Nos.165 of 2021 and 793 of 2020

06. 3. Heard Mr. P.K. Mohanty, learned counsel for the insurer and Mr. P.K. Mishra, learned counsel for the claimants.

4. Both the appeals are against the same impugned judgment dated 11th December, 2020 of learned 1st MACT, Cuttack passed in MAC No.1045 of 2016 wherein compensation to the tune of Rs.9,20,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2016 has been granted on account of death of the deceased in the motor vehicular accident dated 2nd December, 2016.

5. Mr. Mohanty submits on behalf of the insurer that the driver of the offending vehicle, i.e. motor cycle bearing registration number OD 34 B 0390 being one of the claimants as the son of the deceased, is not entitled for any compensation. It is also contended that the monthly income of the deceased as counted by the learned Tribunal is erroneous and the income of the deceased cannot exceed Rs.5000/- per month. It is also submitted by Mr. Mohanty that the age of the deceased is 46 years on the date of accident as per his Adhar Card and as such multiplier '13' should be applied instead of '14'.

6. Conversely it is submitted by Mr. Mishra, learned counsel for the claimants that the monthly income of the deceased should be fixed at Rs.6,216/- taking the minimum prescribed rate of wages at Rs.207.20 per day for unskilled labourer on the date of accident, i.e. 2nd December, 2016.

7. Admittedly, claimant No.2- Susanta Kumar Sahoo (present Respondent No.2 in MACA No.165 of 2021 and Appellant No.2 in MACA No.793 of 2020) has been charge-sheeted as the accused to face the criminal prosecution for negligence in causing the accident. Therefore, he being the accused for the offence under Section

279/304-A of the I.P.C. concerning the accident is not entitled for compensation for the death of the deceased.

8. Coming to the challenges on the quantum of compensation as advanced by both parties, it is seen that the age of the deceased as per Aadhaar Card is not proved on record. Since no specific date of birth of the deceased or any document with regard to date of birth of the deceased including the Aadhaar Card has been proved on record, the contention of the insurer that the deceased should be treated at 46 years of age cannot be accepted and the finding of the learned tribunal to treat his age at 45 years based on the PM report cannot be faulted with. Therefore, the question of any inappropriate application of multiplier does not arise and the application of multiplier '14' as taken by the Tribunal is confirmed.

9. So far as the income of the deceased is concerned, it is the case of the claimants that the deceased was earning Rs.3000/- per month doing transport business. But admittedly, no documentary proof could be adduced in that support and therefore, the Tribunal has fixed his income taking him as a daily labourer in absence of any proof regarding income or profession. Undisputedly, the prevalent rate of wages prescribed on the date of accident was Rs.207.20 per day as per SRO No.323/2016 dated 28th June, 2017. Therefore the finding of the Tribunal to determine the income of the deceased at Rs.5,500/- per month on notional basis is liable to be interfered with. By taking the income of the deceased at Rs.6216/- per month @ Rs.207.20p. per day, the amount of compensation is enhanced to Rs.9,80,000/- keeping in view that claimant No.2 is not entitled for any amount

including Rs.40,000/- towards parental consortium granted by the Tribunal.

10. In result, the appeal is disposed of with a direction to the insurer – Appellant in MACA No.165 of 2021 and Respondent No.2 in MACA No.793 of 2020 to deposit a total compensation of Rs.9,80,000/- (nine lakh eighty thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2016 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant Nos.1 and 3, namely Minakhi Sahoo and Subrat Kumar Sahoo on such terms and proportion to be decided by the learned Tribunal including reapportionment.

11. The statutory deposit made by the insurer – Appellant in MACA No.165 of 2021 before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge