IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.402 of 2020

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

Mr. G.P. Dutta, Advocate

-versus-

Smt. Manorama Bisoi and Others .... ***Respondents***

Mr. B.N. Rath, counsel for Respondents 1-3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
23.11.2022

Order No.

11. 1. The matter is taken up through hybrid mode.

2. Heard Mr. G.P. Dutta, learned counsel for the insurer - Appellant and Mr. B.N. Rath, learned counsel for claimant – Respondents 1-3.

3. Present appeal by the insurer is against impugned judgment dated 24th December, 2019 of learned 1st MACT, Angul passed in MAC Case No.143 of 2018 wherein compensation to the tune of Rs.10,86,532/- along with interest @ 7% per annum from the date of filing of the claim application has been granted on account of death of the deceased Hemanta Kumar Bisoi in the motor vehicular accident dated 4th July, 2018.

4. The contention of Mr. Dutta on behalf of the Appellant is to the effect that the deceased being an insured person under the ESI Act, is

not entitled to get compensation under the Motor Vehicle Act (hereinafter referred as 'the MV Act') keeping in view the bar prescribed under Sections 53 and 61 of the Employees' State Insurance Act (hereinafter referred as 'the ESI Act').

5. This court earlier in MACA No.75 of 2021 has held that, when the accident is purely a motor vehicular accident arises by use of a motor vehicle and is completely unconnected to the nature of the employment of the injured, the claim for compensation under Section 166 of the MV Act is maintainable and in such case, the bar prescribed under the ESI Act is not attracted. It is further observed that, the statutes like the ESI Act, EC Act and MV Act, which are containing beneficial provisions for the poor victim, are to be interpreted for the benefit of the victim and it would be harsh to send the victim of a motor vehicular accident or his dependents to the ESI court only for the reason that he is/was an insured person under the ESI Act, even if the cause of injury is completely unconnected to the nature of employment.

6. In the instant case, no material is there to reveal that the accident in any way is connected to the employment of the deceased either directly or incidentally. The evidence of the witnesses does not reveal so nor any question is put by the insurer to them in course of their cross-examination to that effect. Therefore, as held by this court in the earlier case stated above, the accident being found unrelated and unconnected to the employment of the deceased, the claim application filed under Section 166 of the MV Act by the claimants is

maintainable and the direction of the tribunal for payment of compensation in the impugned judgment is thus justified.

7. With regard to quantum of compensation it is submitted by Mr. Dutta that the tribunal has erroneously added future prospects to the extent of 15% instead of 10%. This submission of Mr. Dutta is found with substantial force in view of the principles propounded in the case of ***National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680,*** as the undisputed age of the deceased is 57 years. Thus, re-computing the compensation afresh, leaving the monthly income of the deceased undisturbed and adding 10% towards future prospects, a modified compensation of Rs.10,42,338/- with 6% interest is proposed to the parties. This is agreed by Mr. Rath, learned counsel for the claimants and Mr. Dutta, learned counsel for the insurer leaves it to the discretion of the court. Accordingly the compensation amount is fixed to the said extent.

8. In the result the appeal is disposed of with a direction to the Appellant – insurer to deposit the modified compensation amount of Rs.10,42,338/- (ten lakhs forty two thousand three hundred thirty eight) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents on such terms and proportion to be decided by the learned tribunal.

9. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on

proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda