

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

**MACA No.171 of 2021**

***The Manager, M/s.Bajaj Allianz*** ..... ***Appellant***  
***General Insurance Co. Ltd.***

Mr. A.A. Khan, Advocate

*-versus-*

***Santilata Satapathy and others*** ..... ***Respondents***

Mr. K. Panigrahi, Advocate for Respondent Nos.1 to 3

**CORAM:**

**JUSTICE B. P. ROUTRAY**

**ORDER**  
**29.03.2022**

**Order No.**

08.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company as well as Mr. K. Panigrahi, learned counsel for the Respondent Nos.1 to 3-claimants.

2. The certified copies of the depositions of P.Ws.1, 2 and 3 as filed by learned counsel for the Appellant are kept on record.

3. Present appeal by the insurer is directed against the judgment dated 05.02.2021 of learned 1<sup>st</sup> MACT, Cuttack in MAC Case No.526/2014 wherein learned Tribunal has granted compensation to the tune of Rs.37,58,010/- along with 6% interest per annum to the claimants from the date of filing of the claim application, i.e.30.07.2014 on account of death of the deceased in the motor vehicular accident dated 17.4.2014.

4. The case of the claimants in brief is that the deceased was serving as an Industrial Promotion Officer, Chhatia and had been

on election duty. While he was returning in a Mini Truck bearing Registration No.OR-05-K-9930 from the polling booth to the Office of the Sub-Collector, Athagarh to deposit the polling materials, on the way another Truck bearing Registration No.OR-05-S-5294 (hereinafter referred to as “offending vehicle”) driven in a rash and negligent manner coming from opposite directions suddenly took a right turn and dashed against the Mini Truck in which the deceased was there.

5. It is contended by Mr. A.A. Khan, learned counsel for the Appellant that the learned Tribunal has failed to appreciate receipt of Rs.10,00,000/- by the claimants from the State Government as compensation on account of death of the deceased while on election duty. He further contends that since the deceased was aged about 57 years and only 3 years was left for his retirement, the application of multiplier ‘9’ for the purpose of calculating the loss of dependency is not proper. As per him, the split multiplier method has to be adopted keeping in view the fact that he was to retire at the age of 60 years. In support of his submission, Mr. Khan relies on the decision in the case of ***Reliance General Insurance Company Limited vs. Sashi Sharma and others, 2016 ACJ 2723 (SC)***.

6. Mr. K. Panigrahi, learned counsel for the Respondent Nos.1 to 3-claimants in reply submits that the compensation granted in favour of the wife and other claimants on account of death of the deceased in election duty by the State Government is an ex-gratia compensation and therefore is not deductible from the present compensation amount. In this regard, he relies on the decision of

the Supreme Court in the case of *National Insurance Company Ltd. vs. Mannat Johal and others*, AIR 2019 SC 2079.

7. Admittedly no dispute is raised on the question of fixing negligence on the part of the driver of the offending vehicle and the death of the deceased in the accident. The only dispute is, as stated above, for deduction of Rs.10,00,000/- from the compensation amount and to apply split multiplier method.

8. Coming to the first point whether the amount of compensation which was admittedly received by the wife of the deceased from the State Government is deductible from the compensation amount. It reveals from the evidence of P.W.1 (widow) that she has admitted in her cross-examination that *“After death of my deceased husband we had received Rs.10 lakhs as compensation from the Government of Odisha as my husband was on election duty.”* This statement of P.W.1 leaves no room of doubt on receipt of compensation of Rs.10 lakhs from the Government as her husband died on election duty.

9. As per the submission of Mr. K. Panigrahi, learned counsel for the claimants, the amount as stated above is ex-gratia compensation amount. Admittedly no material is there to accept the said amount as ex-gratia compensation. What is borne from the evidence of P.W.1 is that the said amount of Rs.10 lakhs is compensation amount received from the Government. This P.W.1 was not re-examined after the statement made in her cross-examination to clarify the same. No other evidence has been adduced, either oral or documentary, to clarify the amount for

treating the same as ex-gratia compensation. As such no doubt remains there to treat the same as the compensation amount in terms of the evidence of P.W.1 and the contention advanced on behalf of the claimants to treat the same as ex-gratia compensation is rejected in absence of any material contrary to the admission of P.W.1.

10. Law is settled that any amount received towards compensation on account of the death for which the claim is raised has to be deducted. Thus this Court does not hesitate for deduction of the aforesaid amount from the total amount granted by the learned Tribunal.

11. Coming to the next point raised on behalf of the Appellant to apply split multiplier method, the same is not found with any substance. It is for the reason whatever may be the due date of retirement of the deceased, admittedly he would be entitled for getting pension after his retirement amounting 50% of his salary amount. Superannuation from service does not mean that other prospects of income would also die post-retirement. It is incorrect to presume that after retirement from Government service, a person would have no other prospects of income except getting pension. The Supreme Court in the case of *N. Jayasree vs. Chlamandalam MS General Insurance Company Limited*, AIR 2021 SC 5218 have held at paragraph 28 that application of split multiplier method is not a justified approach. Therefore, I do not find any merit in the submission of learned counsel for the Appellant-insurer to find any fault in the approach of the learned

Tribunal for applying multiplier '9' to determine the loss of dependency.

12. Therefore, this Court is of the opinion that the total compensation payable to the claimants would be less Rs.10 lakhs than the amount determined by the learned Tribunal, which comes to Rs.27,58,010/-.

13. The Appellant – Insurance Company is directed to deposit modified compensation amount of Rs.27,58,010/- before the Tribunal along with interest @6% per annum from the date of filing of the claim application i.e.30.07.2014 within a period of ten weeks from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided of the Tribunal. The penal interest @12% is waived.

14. 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.

15. With aforesaid observations, the appeal is disposed of.

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