

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.360 of 2019

MACA Nos.360 & 441 of 2019

***Ahalya Jena and Others* (in MACA No.360/2019)**

***Legal Manager, M/s.Royal Sundaram
Alliance Insurance Company Ltd. (in MACA No.441/2019)***

Appellants

.....
Mr. P.K. Mishra, Advocate (in MACA No.360/2019)

Mr. A.A. Khan, Advocate (in MACA No.441/2019)

-versus-

***Jaladhar Swain and Another* (In MACA No.360/2019)**

***Ahalya Jena and Others* (In MACA No.441/2019)**

Respondents

.....
Mr. A.A. Khan, counsel for Respondent No.2
(in MACA No.360/2019)

Mr. P.K. Mishra, counsel for Respondents 1-3
(in MACA No.441/2019)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

25.8.2022

Order No.

- 05.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. P.K. Mishra, learned counsel for the claimants and Mr. A.A. Khan, learned counsel for the insurer.
 3. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.

4. Both the appeals are directed against the impugned judgment dated 16th April, 2019 of learned 3rd MACT, Cuttack passed in MAC Case No.760 of 2013 wherein compensation to the tune of Rs.8,26,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 27th November, 2013 has been awarded on account of death of deceased Subash Jena in the motor vehicular accident dated 3rd August, 2013.

5. MACA No.360 of 2019 has been filed by the claimants praying for enhancement of the compensation amount on the ground that no parental consortium has been granted in respect of the children of the deceased. MACA No.441 of 2019 has been filed by the insurance company questioning involvement of the offending vehicle in the accident.

6. Upon hearing both parties and perusal of the impugned judgment it reveals that the offending vehicle is the tractor-trolley bearing registration number OD 02 A 7992 and OD 02 A 7993 respectively. The confusion arose because the FIR was lodged mentioning that the tractor – trolley bearing registration number OR 25 C 4326 was involved in the accident. But in course of police investigation it came to light that the original registration number of said tractor – trolley is OD 02 A 7992 and OD 02 A 7993 respectively. It also came to light in course of investigation that the engine number and chassis number of both stated tractor-trolley are same but the owner has affixed a wrong number plate in order to avoid the financier. The fact that both the registration numbers are in respect of the same offending vehicle having same engine number and chassis number is candid from the contents of Ext.4 as well as the

seizure list. Thus what is contended by the insurer that present offending vehicle bearing registration number OD 02 A 7992 and OD 02 A 7993 is not involved in the accident is found without any substance and accordingly rejected.

7. With regards to quantum of compensation, no serious objection is raised from the side of the insurer. But it appears from perusal of the impugned judgment that a sum of Rs.40,000/- as spousal consortium has only been granted in favour of the wife of the deceased though other two claimants are the minor children of the deceased. Thus in view of the principles propounded in the case of ***Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram and Others, (2018) 18 SCC 130***, claimant Nos.2 and 3 are entitled for parental consortium of Rs.40,000/- each. Accordingly, the compensation amount is enhanced by Rs.80,000/-, which comes to Rs.9,06,000/-, payable along with interest @ 6% per annum.

8. In the result, both the appeals are disposed of with a direction to the insurer, i.e. Royal Sundaram Alliance Insurance Co. Ltd. to deposit the enhanced compensation amount of Rs.9,06,000/- (nine lakh six thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 27th November, 2013 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the Tribunal.

9. However, the penal interest of 12% is waived.

10. The statutory deposit made by the insurer - Appellant in MACA No.441 of 2019 before this court along with accrued interest be

refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda

