

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.431 of 2020

Oriental Insurance Co. Ltd. ***Appellant***

Mr. P.K. Mahali, Advocate

-versus-

***Nimanti Mohanta (since dead) and
others*** ***Respondents***

Mr. P.K. Mishra, Advocate for Respondent Nos.2 to 6

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
02.05.2022

Order No.

08.

1. Heard Mr. P.K. Mahali, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for claimants – Respondent Nos.2 to 6.

2. Present appeal by the insurer is directed against judgment dated 26.06.2019 of learned 1st MACT, Cuttack in MAC No.988 of 2015 wherein learned Tribunal has granted compensation to the tune of Rs.88,01,762/- along with 6% interest per annum to the claimants from the date of filing of the claim application, i.e.23.12.2015 on account of death of the deceased in the motor vehicular accident dated 08.11.2015.

3. The case of the claimants is that the deceased was aged about 48 years on the date of accident, who died due to rash and negligent driving of the offending vehicle i.e. Mahindra Centura Motorcycle, bearing Registration No.OD-34-R.2976. The

deceased was getting salary of Rs.67,791/- per month by working as Senior Operator in TATA Steel Limited, Sukinda Chromite Mines, Kalarangiatta, Jajpur. The claimants before the Tribunal were the wife, three children and parents of the deceased. During pendency of the appeal, the wife died.

4. It is submitted on behalf of the Appellant-Insurance Company that though the motorcycle was not involved in the accident, but has been implanted subsequently to manage the compensation. It is further submitted that the accident took place on 8.11.2015, but the FIR was lodged on 21.11.2015. Further no such record is available at CHC, Badachana to reveal any treatment offered to the deceased immediately after the accident. It is thus urged that, for the delay in lodging the FIR as well as in absence of any record in the local hospital regarding treatment of the deceased, the contention of the insurer about plantation of the alleged motorcycle in the accident is substantiated.

5. Upon hearing learned counsel for the claimants-Respondents and perusal of the impugned judgment, it reveals that Jenapur P.S. Case No.186, dated 21.11.2015 was registered for commission of offences under Secs.279/304(A), I.P.C. concerning death of the deceased in the accident dated 8.11.2015 involving the offending motorcycle. The Police in course of investigation seized the offending motorcycle and ultimately submitted the charge-sheet against the rider, namely, Subrat Jena. Admittedly, the nature of death of the deceased in road traffic accident is not disputed by the insurer. On the other hand, the certified copies of the FIR, Post Mortem report, charge-sheet, etc.

which were adduced in evidence under Exts.1 to 7 were not objected in course of trial before the learned Tribunal and those documents have been marked without any objection. Further no evidence has been adduced by the insurer to rebut such contention of the claimants regarding death of the deceased in the road traffic accident involving the offending motorcycle in question. Therefore, all such contentions raised on behalf of the Appellant to disbelieve the case of the claimants regarding non-involvement of the offending motorcycle or implantation of the same has no substance and accordingly rejected.

6. Next on the question of quantum of compensation, it is submitted by Mr. P.K. Mahali, learned counsel for the Appellant-insurer that the income of the deceased has been taken at a higher side without making any statutory deduction from his salary. In this regard, it is seen from the impugned judgment that the learned Tribunal has counted the amount after deduction of professional tax of Rs.200/- and income tax of Rs.7960/- per month as per the income certificate furnished and proved under Ext.8. When the salary of the deceased mentioned in Ext.8 is not questioned or objected, such contention raised by the Appellant that his income has been taken at a higher side without deduction of the statutory amount is not found acceptable. It is also seen that, the learned Tribunal has deducted a sum of Rs.1699/- received by the wife of the deceased towards Employees Pension Scheme from the income to assess the same at Rs.57,408/- per month. However it is seen that the learned Tribunal has deducted 1/4th towards personal expenses of the deceased out of his income. But considering the death of the wife during pendency of

the appeal and the fact that all children of the deceased had attained majority on the date of accident, and to draw a balance with reasonableness considering the status of the dependents, in my considered opinion, deduction of 1/3rd from the income of the deceased would be a rationale approach for determination of just compensation because it is well settled that the compensation should neither be a bonanza nor pittance. Thus after deduction of 1/3rd from the income towards personal expenses, the loss of dependency including future prospects would come to Rs.77,61,563/- and further adding Rs.1,50,000/- thereto towards general damages and parental consortium to three children, the total amount of compensation comes to Rs.79,11,563/- which is found payable to the claimants along with 6% interest.

7. Accordingly, the Appellant-Insurance Company is directed to deposit the reduced compensation of Rs.79,11,563/- (Rupees Seventy-Nine Lakhs Eleven Thousand Five Hundred Sixty-Three) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.23.12.2015 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants-Respondent Nos.2 to 6 on such terms and proportion to be fixed by the Tribunal. The default interest of 12% per annum is waived.

8. 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-Insurance Company.

9. The MACA is disposed of with aforesaid directions.

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

(B.P. Routray)
Judge

