IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.383 of 2019

Divisional Manager, Oriental Insurance Co. Ltd.	....	***Appellant***

Mr. S. Satapathy, Advocate

-versus-

Sarita Mandothia and others	....	***Respondents***

Mr. B.N. Rath, Advocate for Respondent Nos.1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
04.08.2022

Order No.
10.

1. Heard Mr. S. Satapathy, learned counsel for the Appellant-Insurance Company as well as Mr. B.N. Rath, learned counsel for the Respondent Nos.1 to 3-claimants.

2. Present appeal by the insurer is directed against judgment dated 23.08.2018 of learned 1st MACT, Angul in M.A.C. Case No.206 of 2016 wherein compensation to the tune of Rs.47,18,384/- along with interest @6% per annum from the date of filing of the claim application, i.e.,28.12.2016 was granted by the learned Tribunal to the claimants on account of death of the deceased in a motor vehicular accident dated 24.02.2016.

3. Mr. S. Satapathy, learned counsel for the Appellant-Insurance Company while challenging the award submits that the income tax return copy for the Assessment year 2015-2016 and 2016-

2017 under Ext.4 & 4/1 as relied on by the learned Tribunal to determine the annual income of the deceased were not in existence on the date of death of the deceased, but has been filed subsequently on 28.3.2017. Therefore, such assessment of income of the deceased by the learned Tribunal is erroneous.

4. On the other hand, Mr. B.N. Rath, learned counsel for the Respondent Nos.1 to 3-claimants replies that even if those documents were not there on the date of death of the deceased, but the fact remains that the deceased was paying LIC premium of Rs.2,36,000/- per annum and Rs.1,92,000/- towards postal RD. The concerned receipts as filed under Exts.6 and 7 series are not disputed. Further the fact that the deceased was having transport business in the name of M/s. SriRam Transport is also not disputed.

5. Upon hearing both the parties and considering the submissions made in the respect of the quantum of compensation, admittedly the documents under Ext.4 series, which are IT returns, were filed after death of the deceased. Thus, they cannot be relied on fully because the deceasesd never filed any IT return during his lifetime, but those returns have been filed much after to his death on his behalf probably for creating a favourable case in support of the claim of the applicants. As seen from the impugned judgment, the learned Tribunal by relying all those IT returns has determined the annual income of the deceased at Rs.4,32,750/-. This is not found correct when the IT returns were admittedly filed more than one year after the death of the deceased. At the same time, considering the statements of daughter of the deceased and the amount paid towards LIC premium, towards postal RD, the admitted transport business of the deceased and making some guess work taking into account the place of business which is at Angul Town in Orissa, in my considered opinion, the income of the deceased should be reduced to Rs.3,00,000/- per annum, i.e. Rs.25,000/- per month. It needs to be mentioned here that no such material is there to reveal any particular fixed income of the deceased. Accordingly, the total loss of dependency comes to Rs.31,94,900/- (approximately after deducting income tax in the prevailing slab and after adding 25% towards future prospects and deducting 1/3rd towards personal expenses). Further adding consortium of Rs 40,000/- for each of the claimants and general damages to the tune of Rs.30,000/-, total compensation comes to Rs.33,43,666/- which is rounded to Rs.33,50,000/-.

6. In the result, the Appellant-Insurance Company is directed to deposit the total compensation amount of Rs.33,50,000/- (Rupees Thirty-three Lakhs Fifty Thousand) along with interest @6% per annum from the date of filing of the claim application i.e. 28.12.2016 before the learned Tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the learned Tribunal.

7. 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.

8. Further, taking note of the document filed under Ext.A, which is the extract of driving license of the accused driver-Md. Aftab, liberty is granted in favour of the Appellant-Insurance Company to recover such amount of compensation from the owner, if recoverable, in accordance with law after affording opportunity of hearing to the owner.

9. The copies of the exhibits and depositions as filed by both the parties in course of hearing are kept on record.

10. With the aforesaid observations and directions, the appeal is disposed of.

(B.P. Routray)
Judge

B.K. Barik