

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1226 of 2015

Geli Dei and another

....

Appellants

Mr. B.N. Rath, Advocate

-versus-

Bhubaneswar Mohapatra and another

Respondents

Mr. A.A. Khan, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

10.01.2022

Order No.

06.

1. This matter is taken up through video conferencing.
2. Heard Mr. B.N. Rath, learned counsel for the Appellants-claimants as well as Mr. A.A. Khan, learned counsel for the Respondent No.2-Insurance Company.
3. The claimants, i.e. the mother and son of the deceased, have come up in appeal praying for enhancement of the compensation amount.
4. The learned Tribunal, i.e. 1st M.A.C.T., Nayagarh in MAC No.63 of 2013 has directed for payment of compensation to the tune of Rs.6,88,992/- along with interest @7% per annum to the claimants in his judgment dated 7.8.2015.
5. The case of the claimants is that, the deceased was working as a loading and unloading labourer in Nayagarh Bus Stand and on

5.6.2013 while he was returning home by walking, the offending vehicle, i.e., Tata Indigo ECS car bearing Registration No.OR-25-C-7050 dashed against him causing his death.

6. Learned counsel for the Appellants submits that the deceased was admittedly 35 years of old on the date of accident and was working as a loading and unloading labourer. Learned Tribunal considering him as a labourer in the agricultural sector has determined his monthly income @Rs.126/- per day instead of fixing his wage at Rs.150/- per day applicable for unskilled labourers in non-agricultural sector. It is further contended that the learned Tribunal has though granted 30% towards future prospects, but as per the decision rendered in the case of *National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680*, the claimants are entitled for 40% on that aspect. Besides, no amount has been granted towards loss of parental/filial consortium.

7. Mr. A.A. Khan, learned counsel for Respondent No.2- Insurance Company submits in reply that when the evidence of the claimants is to the effect that the deceased was doing loading and unloading job of vegetables like potatoes, onions, etc. then no fault can be found there in the direction of the learned Tribunal counting the deceased as a labourer in the agricultural sector. However, in respect of future prospects, he agrees with the decision rendered in the case of *Pranay Sethi* (supra).

8. Having heard both parties and considering the submissions advanced on behalf of the claimants-Appellants, the contention to

calculate monthly income of the deceased @Rs.150/- per day as prevailing in the year 2013 is found with substance. Accordingly, the annual loss of dependency comes to Rs.4,200 x 12 =Rs.50,400/-. Adding further amount towards parental/filial consortium thereto and without getting into further details of computation, the insurer-Respondent No.2 is directed to pay further consolidated amount of Rs.3,00,000/-.

9. Accordingly, the aforesaid consolidated amount of Rs.3,00,000/- (rupees three lakhs) be deposited by Respondent No.2-Insurance Company within a period of eight weeks from today before the learned Tribunal; where-after the same shall be disbursed in favour of the claimants in such proportion to be decided by the Tribunal.

10. The appeal is disposed of.

11. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office Order circulated vide Memo No.514, dated 7th January, 2022.

(B.P. Routray)
Judge