

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.628 OF 2016

From the Judgment / Order dated 23.4.2016 passed by the learned District Judge-cum-1st M.A.C.T, Nayagarh in M.A.C Case No.58 of 2008.

Divisional Manager, ICICI

Lombard G.I.Co. Ltd

::: Appellant.

-:: VERSUS ::-

Puspalata Patnaik & Others

::: Respondents.

Appeared in this case by Video Conferencing Mode /

Hybrid Mode.

For Appellant ::: Mr. A.A. Khan, Advocate

For Respondents::: Mr. A.K. Jena, Advocate
(for Respondent No.1)
Mr. S.K. Bhanjadeo, Advocate
(For Respondent Nos.2,4 & 5)

PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing- 13.04.2022:: Date of Judgment-.20.04.2022

B.P.Satapathy, J. Heard Mr. A.A. Khan, learned counsel for the appellant, Mr.A.K. Jena, learned counsel appearing for Respondent No.1 and Mr. S.K. Bhanjadeo, learned counsel appearing for Respondent Nos.2,4 & 5.

2. The present appeal has been filed by the appellant-company challenging the judgment dated 23.4.2016 passed by the learned District Judge-cum-1st M.A.C.T, Nayagarh in MAC No.58 of 2008.

3. This appeal arising out of an incident which took place on 2.10.2007 has a chequered history. Initially learned Tribunal vide order dated 17.5.2011 when disposed of the matter with a direction to the appellant-company to pay compensation of Rs.19,29,500/- with interest @ 7.5% per annum, the said award was challenged by the appellant-company and by Respondent No.1 in MACA NO.521 of 2011 and 181 of 2012 respectively.

4. This Court vide a common order passed on 11.9.2015, set aside the said award dated 17.5.2011 and remanded the matter to the learned Tribunal for fresh disposal. After such remand of the matter, learned Tribunal vide its order dated 23.4.2016 enhanced the compensation by directing the appellant-company to pay compensation of Rs.24,87,760/- along with interest @ 7.5% per annum payable from the date of application till its realization. Learned Tribunal vide the said judgment while allowed 30% of the award amount in favour of the respondent No.1-wife, an amount of 40% was allowed in favour of Respondent No.2 who was the minor son of the deceased.

Learned Tribunal allowed 30% of the award amount

jointly in favour of Respondent Nos.4 & 5- parents of the deceased.

5. Mr. Khan, learned counsel appearing for the appellant-company while challenging the award dated 23.4.2016 submitted that learned Tribunal though relying on the Income Tax return of the deceased, assessed the compensation by holding the monthly income of the deceased at Rs.35,081/- but the said Income Tax Return submitted before the learned Tribunal was not duly signed by the assessee- deceased and the same could not have been taken into consideration for arriving at the monthly income of the deceased. Mr. Khan also submitted that even though violation of the policy condition was urged before the learned Tribunal but while allowing the compensation, no right or recovery was passed in favour of the appellant-company. Mr. Khan accordingly prayed for interference of this Court in the impugned award.

6. Mr. Jena, learned counsel appearing for the Respondent No.1 brought to the notice of this Court by the cross-examination filed by the said respondent wherein a prayer has been made to allow major portion of the award instead of 30%, so allowed by the learned Tribunal, as the Respondent No.1 is the wife of the deceased.

7. Mr. Bhanjadeo, learned counsel appearing for Respondent Nos.2, 4 & 5 argued that similar prayer made by the respondent No.1 for allowing more share

over and above the 30% allowed by the learned Tribunal was the subject matter in MACA No.1105 of 2017 filed by the Respondent No.1. This Court vide order dated 10.1.2022 dismissed the said appeal and the said order has attained finality in the eye of law. Mr. Bhanjadeo accordingly prayed that since similar claim made by the Respondent No.1 in MACA No.1105 of 2017 was rejected by this Court, the prayer made in her cross-objection was also liable to be rejected by this Court.

8. At this point of time, Mr. Khan, learned counsel appearing for the appellant brought to the notice of this Court an order passed by the learned Tribunal on 21.1.2011. Learned Tribunal in the said order while considering the stand of the appellant-company that the permit of the offending vehicle was not in the record. Learned Tribunal relying on a decision of the Hon'ble Apex Court held that even if violation of policy condition is alleged, the Insurance Company is to satisfy the claim arising out of the policy and it can proceed against the insurer for recovery of the compensation amount to be paid by the insurer. Mr. Khan, also urged that the learned Tribunal while assessing the compensation at Rs.24,87,760/- has allowed interest @7.5% per annum which is on the higher side. It is also argued that at the relevant point of time, prevailing interest rate cannot be @7.5% per annum.

09. Having heard learned counsel for the parties at length, and in view of the stand taken by the appellant-company vis-a-vis Respondent No.1,2,4 & 5, this Court while interfering with the impugned judgment when came to a conclusion that Respondent No.1,2,4 & 5 are entitled to get compensation of Rs.22,00,000/- with interest @ 6% per annum payable from the date of application till its realization. Mr. Jena, learned counsel appearing for the Respondent No.1 and Mr. Bhanjadeo, learned counsel appearing Respondent NOs.2,4 & 5 supported the said view of this Court.

10. Mr. Khan, learned counsel appearing for the appellant-company left the aforesaid view to the discretion of this Court.

11. Taking into consideration such stand of the learned counsel appearing for the respective parties, this Court directs the appellant-company to pay compensation of Rs.22,00,000/- (Twenty two lakhs) along with interest @ 6% per annum payable from the date of application till its realization with right of recovery against the Respondent No.3.

12. This Court directs the appellant-company to deposit the aforesaid compensation amount along with interest, as assessed by this Court, within a period of eight weeks from today before the learned Tribunal. It is directed that on such deposit of the compensation amount along with interest so assessed by this Court before the learned Tribunal, learned Tribunal shall

disburse the same proportionately and in terms of the judgment dated 23.4.2016.

13. Since the appeal filed by the Respondent No.1 in MACA No.1105 of 2017 was dismissed by this Court, the cross-objection filed by the said Respondent No.1 seeking half portion of the award is not maintainable and accordingly the same is also rejected.

14. It is also observed that only after deposit of the compensation amount along with interest before the learned Tribunal, so assessed by this Court, within a period of eight weeks, the appellant-company shall be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on proper identification.

15. The MACA is accordingly disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 20TH April, 2022/sangita