

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.402 of 2019 & MACA No.1040 of 2018

In MACA No.402 of 2019

Pramila Mohanta and another ***Appellants***
Mr. D.C. Dey, Advocate

-versus-

Narendra Kumar Mohanta and others ***Respondents***
Mr. G.P. Dutta, Advocate for Respondent No.2
Mr. P.K. Mishra, Advocate for Respondent No.3

In MACA No.1040 of 2018

Banita Mahanta ***Appellant***
Mr. P.K. Mishra, Advocate

-versus-

Narendra Kumar Mahanta and others ***Respondents***
Mr. G.P. Dutta, Advocate for Respondent No.2
Mr. D.C. Dey, Advocate for Respondent Nos.3 & 4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
17.08.2022

Order No.

MACA No.402 of 2019 & MACA No.1040 of 2018

11. 1. Heard Mr. D.C. Dey and Mr. P.K. Mishra, learned counsels for two sets of claimants and Mr. G.P. Dutta, learned counsel for the Insurance Company.
2. Both the appeals being arise out of the same judgment dated 30.8.2018 of the learned 4th MACT, Keonjhar in M.A.C. Case No.82/90 of 2017-15 and M.A.C. Case No.48/13 of 2016-15 wherein compensation to the tune of Rs.10,76,560/- has been

granted in both the cases along with interest @6% per annum to the claimants from the date of filing of the claim applications, i.e. 03.07.2015 & 06.01.2015 respectively on account of death of the deceased in a motor vehicular accident dated 06.11.2014, are heard together and disposed of by this common order.

3. MACA No.402/2019 has been filed by the mother and brother of the deceased and MACA No.1040/2018 has been filed by the widow of the deceased.

4. In both the appeals, the quantum of compensation has been questioned and the Appellants have prayed for enhancement of the same.

5. It is submitted on behalf of the Appellants-claimants that the income of the deceased has not been properly appreciated by the learned Tribunal before rejecting the claim of the applicants regarding employment of the deceased as Manager in M/s. Sri Krishna Enterprises, a Fly Ash Bricks factory.

6. It is submitted that despite the evidence adduced and the employer was examined, the employment of the deceased as such was disbelieved by the learned Tribunal without valid reasons. Even ignoring his educational qualification, the Tribunal took him as skilled labourer to fix the daily wage at Rs.192.50.

7. Upon hearing all the parties and perusal of the impugned judgment reveals that the Tribunal has disbelieved the claim of employment of the deceased as Manager, because P.W.3, the employer denied to have issued any appointment order. However,

the educational qualification of the deceased as a B. Tech Mechanical Engineer was not disputed. The oral evidence adduced from the side of the claimants reveals that the deceased was serving as the Manager in the Fly Ash Brick factory namely, M/s.Sri Krishna Enterprises and earning Rs.35,000/- per month. On detail scrutiny of evidence of P.Ws.1, 2 and 3, their statements are not found satisfactorily credible with regard to employment of the deceased as a Manager in M/s.Sri Krishna Enterprises and drawing of salary of Rs.35,000/- per month. Therefore, the analysis of the Tribunal to disbelieve the evidence of those witnesses cannot be faulted with. But at the same time, considering the educational qualification of the deceased and the consistent evidence adduced from the side of the claimants that he was engaged in Fly Ash Bricks business, and with some guess work, his income can safely be determined at Rs.10,000/- per month against the finding of the learned Tribunal treating him as a skilled labourer. Such conclusion is drawn considering the date of accident and place of residence of the deceased.

8. Accordingly, upon re-computation of the compensation by taking into account all such relevant aspects, a further enhanced consolidated sum of Rs.15,00,000/- is proposed to the parties. This is agreed by Mr. P.K. Mishra and Mr. D.C. Dey, learned counsels for the claimants and Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court.

9. Mr. P.K. Mishra and Mr. D.C. Dey, learned counsel for the claimants further submits in agreement that out of the enhanced

compensation amount, Rs.6 lakhs be given to the widow of the deceased, namely, Banita Mahanta and rest Rs.9 lakhs be given to the mother and brother of the deceased, namely, Pramila Mohanta and Bijay Kumar Mohanta jointly.

10. Resultantly, both the appeals are disposed of with a direction to the Insurance Company to pay a further consolidated sum of Rs.15,00,000/- (rupees fifteen lakhs) by depositing the same before the leaned Tribunal within a period of two months from today as per the proportion stated in the above paragraph, which shall be disbursed to the claimants. 50% of the amount given to each of the claimants shall be kept in fixed deposit in any nationalized Bank for a period of five years.

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

(*B.P. Routray*)
Judge