

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.251 of 2022

The Divisional Manager, Shriram *Appellant*
General Insurance Company Ltd.

Mr. A.A. Khan, Advocate

-versus-

Kali Prasad Tripathy (since dead) *Respondents*
through LRs and another

Mr. P.K. Behera, Advocate for Respondent Nos.1(a) to 1(d)

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
16.12.2022

Order No.

I.A. No.808 of 2022

- 02.
1. Heard Mr. A.A. Khan, learned counsel for the Appellant and Mr. P.K. Behera, learned counsel for the Respondents No.1(a) to 1(d).
 2. Notice on Respondent No.2 is treated sufficient in view of Office note and postal tracking report.
 3. In view of Office note, the I.A. is disposed of as no delay is there.

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4. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Behera, learned counsel for the Respondent Nos.1(a) to 1(d)-claimants.

5. Present appeal by the insurer is directed against the judgment dated 7.10.2021 of learned 1st M.A.C.T., Kalahandi at Bhawanipatna in M.A.C. No.18 of 2018, wherein compensation to the tune of Rs.3,52,620/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.19.02.2018 on account of injury sustained in the motor vehicular accident dated 12.01.2018.

6. Mr. Khan, learned counsel submits for the Appellant-Insurance Company that after ten months of the accident, the injured died for other cause not arising out of the injuries sustained in the accident. Therefore, the present claimants-Respondents No.1(a) to 1(d), who are the LR's of the deceased-injured, are not entitled for any future loss of earning. Secondly, he submits that the medical expenses counted by the learned Tribunal are on higher side.

7. It is seen that the accident took place on 12.01.2018 and in the accident, the original claimant sustained injuries on the face and fracture of right hand shoulder and he underwent treatment as an indoor patient for around 15 days as per the discharge certificate under Ext.6 and the injury report under Ext.3. During pendency of the claim application, the injured died on 13.10.2018.

8. The learned Tribunal while assessing compensation amount concluded that the injured had monthly income of Rs.6000/- as an unskilled labourer in absence of any proof towards income and accordingly assessed the loss of income. The learned Tribunal in the process did not segregate the actual loss of income and future

loss, but stated in the impugned judgment about grant of amount of Rs.1,36,620/-.

9. Upon perusal of the impugned judgment and going through the trend of discussion made therein, it is inferred that the loss of income has been counted by the learned Tribunal towards future loss. Such calculation derived by the learned Tribunal is found unsustainable for the reason that the deceased died after ten months of the accident for a different cause, and in absence of any disability on the part of the injured, the learned Tribunal proceeded to treat functional disability to the extent of 20% permanently. Thus the entire amount of Rs.1,36,620/- granted towards loss of earning is set aside and in place of that, considering the nature of injuries as well as period of treatment, a sum of Rs.25,000/- is granted towards actual loss of income.

10. The other heads of count, particularly the medical expenses to tune of Rs.1,50,000/-, is found supported with medical bills, discharge certificate and other circumstances regarding his treatment. Therefore, no merit is seen in the contention of Mr. Khan to disturb such other findings given by the learned Tribunal, except the amount of Rs.10,000/- granted towards future medical expenses.

11. Accordingly, the compensation amount is modified to Rs.2,30,000/-, payable along with interest @6% per annum.

12. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.2,30,000/- (rupees two

lakhs thirty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 19.02.2018 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

13. 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.

14. The MACA is disposed of with aforesaid directions.

15. The copy of Ext.3 as filed by Mr. Khan, learned counsel for the insurer in course of hearing is kept on record.

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

(B.P. Routray)
Judge