IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.425 of 2019

Padmini Sahoo and others .... ***Appellants***
Mr.P.K.Mishra, Advocate

-versus-

Krushna Chandra Nayak and another .... ***Respondents***
Mr.S.B.Panda, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
06.5.2022

Order No.

9. 1. Heard Mr.Mishra, learned counsel for the Appellants and Mr.Panda, learned counsel for Respondent No.2.

2. Present appeal by the claimants is against the judgment dated 13th May, 2019 of the learned 1st Addl. District Judge-cum-1st M.A.C.T., Cuttack in M.A.C.No.808 of 2006, wherein compensation to the tune of Rs.3,81,850/- has been granted along with interest @ 6% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 17th October, 2006.

3. It is submitted on behalf of the Appellants that learned Tribunal has wrongly assessed the age of the deceased over 55 years to apply multiplier 9, despite the deceased fall within the age group of 51 to 55 years. It is further submitted that no parental consortium has been granted in respect of the children of the deceased, who are present Appellant No. 2 to 5.

4. Upon hearing Mr.Panda, learned counsel for the Insurer and perusal of the impugned judgment, it reveals that the learned Tribunal has accepted the age of the deceased more than 56 years, keeping in view the discrepancy in the age of the deceased as per the postmortem report and the statement of the wife (P.W.1). The relevant observation made by the learned Tribunal in this regard is reproduced below:

> "As regards the age of deceased, Rama Chandra Sahoo, it is seen from the pleadings of the claimants that the deceased died at the age of 59 years. The petitioners have placed reliance on the entries made in the Post-mortem Report of the deceased vide Ext.9 wherein it is indicated that at the time of death the deceased was aged about 52 years and in para 2 of the application the claimants mentioned the age of the deceased as 54 years. P.W.1 in her deposition stated on oath that the deceased was aged about 54 years at the time of accident. On the other hand, the learned counsel for the Opp.Party No.2-insurance company strongly disputed the age of the deceased. He also submitted that the age of the deceased was 56 years at the time of alleged accident instead of 52 years as per Post-mortem report. But he has not filed any supportive document to that effect. Considering the facts and circumstances of the case, arguments advanced on behalf of both the parties and the age mentioned in claim application as well as deposition of P.W.1, the age of the deceased comes within the age group of 56 to 60 years at the time of his death and in view of the decision reported in 2009(2) T.A.C.677 (S.C.)(Smt. Sarala Verma and others. Versus. Delhi Transport Corporation and another), suitable multiplier would be "09" to compute the amount of compensation."

5. The age of the deceased reflected in the post-mortem report as 52 years remains undisputed. So the conclusion of the Tribunal based on the submission of the Insurer to take the age of the deceased as 56 years is seen unfounded. Even if the statement of the widow (P.W.1) that the deceased was 54 years on the date of the accident is considered to be true, then also the age of the deceased falls within the age group of 51 to 55 years. So at no circumstance,

the age of the deceased can be taken more than 55 years to apply multiplier 9 meant for the age group of 56 to 60 years. Accordingly, the deceased is found to be within the age group of 51 to 55 years on the date of accident and consequently, multiplier 11 is found applicable in place of multiplier 9.

6. Coming to next contention of the claimants, admittedly the children of the deceased, who are present Appellants 2 to 5, are found entitled for parental consortium of Rs.40,000/- each in terms of the principles decided in the case of ***Magma General Insurance Company Limited vrs. Nanu Ram Alias Chuhru Ram and others,* (2018) 18 SCC 130**. Without disturbing the income aspect but only enhancing multiplier to 11, the consequential loss of dependency comes to Rs.3,81,150/-. Further adding Rs.1,60,000/- towards parental consortium for four children of the deceased, the total compensation found liable to be paid to the claimants is Rs.6,11,150/-. As such, the differential amount comes to Rs.2,29,300/-.

7. Considering the interest @6% per annum applicable to the differential amount of Rs.2,29,300/- from the date of filing of the claim application, the Insurer-Respondent No.2 is directed to pay a consolidated sum of Rs.4,00,000/-(four lakhs) to the claimants.

8. In the result, the appeal is disposed of with a direction to the Insurer-Respondent No.2 to pay a further consolidated sum of Rs.4,00,000/-(four lakhs) to the claimants by depositing the same before the Tribunal within a period of two months from today,

which shall be disbursed to the claimants on such terms and proportion to be decided by the learned Tribunal.

9. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal