

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.769 of 2018

***The Divisional Manager,
National Insurance Company Ltd.***

.... Appellant
Mr.B.N.Udgata, Advocate

-versus-

Bidyut Prabha Sahoo and others

.... Respondents
Mr.A.K.Otta, Advocate
for Respondent Nos.1 to 3

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
03.01.2022**

Order No.

05.

1. Heard Mr.Udgata, learned counsel for the Appellant-Insurer and Mr.Otta, learned counsel for the Claimants-Respondents.
2. This appeal is directed against the judgment dated 26th March, 2018 passed by the learned 1st Addl.District Judge-cum-1st MACT., Cuttack in MAC No.732 of 2010 wherein compensation to the tune of Rs.16,74,555/- was granted along with interest @6% per annum from the date of filing of the claim application i.e., 30th September, 2010 on account of death of the deceased in the motor vehicular accident.
3. Mr.Udgata, learned counsel for the Appellant submits that the deceased did not die out of any motor vehicular accident but due to fall of branch of a road side tree which was coloured as a motor vehicular accident and as such, the impugned judgment of the learned Tribunal is liable to be set aside.

4. Mr.Otta, learned counsel for the Claimants-Respondents submits on the other hand that, in view of evidence of P.Ws.2 and 3, who are the eyewitnesses of the accident, the entire contention of the insurer is unsustainable. He further submits that the computation for just compensation as determined by the tribunal requires no interference.

5. Having heard both parties and upon perusal of the impugned judgment as well as the certified copies produced in course of hearing, it reveals that P.W.2 was the person driving the motorcycle at the time of accident. P.W.3 was the passerby who eye-witnessed the accident. The deceased was travelling as a pillion rider in the motorcycle driven by P.W.3. Both P.Ws.2 and 3 have categorically stated in their evidence that offending truck bearing Registration No.OR-04D-9977 was the cause for fall of the branch resulting the accident. Though they have been cross-examined extensively, but nothing could be elicited from their mouth to disbelieve their statements with regard to cause of the accident involving the offending truck. Apart from that, the police also investigated and submitted charge-sheet against the driver of the offending truck.

6. Admittedly, the owner did not choose to contest the case and the driver of the vehicle is found charge-sheeted by police for criminal prosecution. As such, the oral evidence so adduced through P.Ws.2 and 3 are found corroborated in police papers. The certified copy of Ext.5 i.e. the postmortem report also reveals that the cause of death is due to Road Traffic Accident.

7. Thus, keeping in view all such materials brought on record, the contention of the insurer is not found correct to disbelieve the case of the Claimants. It is needless to say that the rebuttal evidences adduced by the insurer through O.P.W.1 are not found sufficient to discard the evidence so adduced on behalf of the claimants.

8. In the computation for just compensation, the age and income of the deceased as taken by the tribunal, remains undisputed. The learned Tribunal by taking monthly income at Rs.11,968/- of the deceased, who was serving as a teacher in a private high school, has applied appropriate multiplier and no irregularity is found in the said computation. As such, no reason is found to interfere with the impugned judgment.

9. Accordingly, the appeal is dismissed being without merit.

10. The statutory deposit made by the Appellant be refunded to him on proper application on production of proof of deposit of the awarded amount before the learned Tribunal.

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

(B.P. Routray)
Judge