

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.500 of 2020

M/s.New India Assurance Co. Ltd. ***Appellant***
Mr. S.S. Rao, Advocate

-versus-

Bhabeni Behera and others ***Respondents***
Mr. K.C. Nayak, Advocate for Respondent Nos.1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
19.07.2022

Order No.

06.

1. Heard Mr. S.S. Rao, learned counsel for the Appellant-Insurance Company as well as Mr. K.C. Nayak, learned counsel for Respondent Nos.1 to 3, the claimants.

2. Present appeal by the insurer is directed against judgment dated 17.03.2020 of learned 1st M.A.C.T., Angul in M.A.C. Case No.33 of 2018 wherein compensation to the tune of Rs.53,83,532/- has been granted along with simple interest @7% per annum to the claimants from the date of filing of the claim application, i.e.27.02.2018 on account of death of the deceased in the motor vehicular accident dated 02.12.2017.

3. The claimants are the deceased's wife, his minor son and father. The case of the claimants are that the deceased was serving as Police Constable and on the date of accident, i.e. on 2.12.2017 while he was coming towards Badakera in a motorcycle near village Rantalei around 9.00 P.M. in the night,

the accident took place as the offending truck all of sudden overtaking the deceased abruptly stopped on the middle of the road without indicating any signal, i.e. the parking light. As a result of the accident, the deceased sustained injuries and died.

4. Learned Tribunal has fixed the negligence on the part of the driver of the offending truck.

5. Mr. S.S. Rao, learned counsel for the Appellant contends that since undisputedly the deceased driver of the motorcycle hit the truck on its back side and as per the evidence of the eye-witness-P.W.2, the offending truck had the red sticker pasted on the back side of the vehicle, it would be apt to attribute contributory negligence on the part of the deceased for the cause of accident. But the learned Tribunal has failed to notice this aspect and has fixed entire negligence on the part of the driver of the truck.

6. In order to examine the contention raised by Mr. Rao, perusal of the evidence of P.W.2, who is the eye-witness of the accident, reveals that, at the time of accident the deceased's motorcycle was coming at a speed of 30-40 km per hour whereas the truck overtook at a speed of around 80-90 km per hour. It is the specific evidence of P.W.2 elicited in his cross-examination that, *"There was stickering in the alleged offending vehicle, but the same was not visible due to dust. There was no other vehicle on the road at the time the truck in question overtook the motorcycle. In case of the sticker affixed to the rear side of the vehicle to be visible when the vehicle coming from the backside will focus its' head light."*

Thus it is clear from the evidence of P.W.2 that the sticker on the rear side of the offending truck was not visible due to dust. The learned Tribunal has narrated the entire evidence of P.W.2 and the contention of the insurer with regard to attribution of contributory negligence on the part of the deceased and has finally concluded to the effect that, the driver of the offending vehicle is entirely negligent for the cause of the accident. While considering the facts as narrated by P.W.2 in his evidence, no fault is seen in the approach of the tribunal in arriving at such conclusion to fix the negligence entirely on the part of the driver of the offending truck. As such, the contention raised by Mr. Rao is rejected.

7. It is next contended by Mr. Rao that the quantum of compensation is liable to be reduced since the Tribunal has failed to deduct the special allowance received by the deceased as a Police Constable, while accepting the monthly income of the deceased at Rs.36,494/-.

8. This submission as put forth by Mr. Rao is not conceivable for the reason that the law is well settled in such matters that the pay received by the deceased minus statutory deduction only (i.e. deduction towards income tax, professional tax, etc.) is to be counted for the purpose of income. The learned Tribunal dealing with this aspect has stated that after deduction of professional tax of Rs.200/-, the deceased was receiving monthly salary of Rs.36,494/-. Therefore, here also no fault is seen on the part of the Tribunal while computing the compensation amount. The age of the deceased and consequent multiplier as well as other heads

of counting compensation being not disputed, which are also found as per the principles propounded by the Supreme Court in different decisions, the impugned award does not warrant any interference by this Court.

9. In the result, the appeal is dismissed.

10. The Appellant-Insurance Company is directed to deposit the entire award amount including interest as per the direction of the learned Tribunal within a period of two months from today before the learned Tribunal which shall be disbursed in favour of the claimants in terms of its direction.

11. 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.

(B.P. Routray)
Judge