

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.275 of 2019 and MACA No.496 of 2019

MACA No.275 of 2019

Union of India

.... ***Appellant***
Mr. S.B. Panda, C.G.C.

-versus-

Mamata Mallik and others

.... ***Respondents***
Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 4

AND

MACA No.496 of 2019

Mamata Mallik and others

.... ***Appellants***
Mr.P.K.Mishra, Advocate

-versus-

Union of India

.... ***Respondent***
Mr.S.B.Panda, C.G.C.

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
13.12.2022

Order No.

07.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Panda, learned Central Government Counsel for Union of India and Mr.Mishra, learned counsel for the claimants.
3. Both the appeals arise out of the same judgment dated 19th January, 2019 passed by the learned 1st MACT-cum-District

Judge, Dhenkanal, in M.A.C. Case No.289 of 2014, wherein compensation to tune of Rs.6,82,000/- along with interest @7% per annum has been granted from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 29th January, 2004.

4. The facts of the case, according to the claimants, is that while the deceased was going in a motorcycle bearing Registration No.OSD-2657 at that time the offending truck bearing Registration No.OR-02G-6693 dashed against it being driven in a rash and negligent manner, as a result of which the deceased died.

5. The offending truck belongs to East Coast Railway, Bhubaneswar. As per Mr. Panda, the accident being a head on collision between the truck and motorcycle, the driver of the motorcycle was also negligent in contributing to the accident and therefore, the claim application is not maintainable in his absence. But the Tribunal without considering such defect has awarded the compensation against the Railways, i.e. present Appellant in MAC No.275 of 2019.

6. The claimants in MACA No.496 of 2019 has prayed for enhancement of the compensation amount on the ground of non-addition of future prospectus and parental consortium.

7. First dealing with the challenge advanced by the Railway, it is seen that involvement of the offending truck in the accident is not disputed. Negligence on the part of the driver of the truck is though not questioned, but contributory negligence on the part of the driver of the motorcycle is prayed for. Admittedly,

the police upon completion of investigation has submitted the charge-sheet against the driver of the offending truck only. The contents of F.I.R. also support the case of the claimants. P.W.2, an eyewitness to the accident, has stated in his evidence that the offending truck caused the accident coming in a high speed and negligent manner. Such evidence adduced from the side of the claimants is not sufficiently rebutted by the Railways and no evidence has been adduced from their side to support any such pleading made by them. Therefore, no illegality is seen in the finding of the learned Tribunal in fixing entire negligence on the part of the driver of the truck and the contention put forth by Mr. Panda to contribute negligence on the part of driver of the motorcycle is rejected being without substance.

8. Before coming to the submissions with regard to enhancement of compensation as prayed by the claimants, it needs to be mentioned in the foremost that the Railways do not put-forth any such challenge to the quantum of compensation. The Tribunal has fixed the monthly income of the deceased at Rs.4,000/- and did not grant any future prospect despite the age of the deceased was 30 years on the date of accident. The Tribunal also did not grant parental consortium to the minor children of the deceased. Thus, adding future prospects to the extent of 40%, the loss of dependency comes to Rs.8,56,800/- and further adding consortium of Rs.40,000/- to the widow as well as Rs.40,000/- each to claimant nos.2 & 3, who are minor children of the deceased, and again adding Rs.30,000/- towards general damages,

the total compensation amount is modified to Rs.10,06,800/-, payable along with interest @6% per annum.

9. In the result, both the appeals are disposed of with a direction to the Union of India, i.e. the Appellant in MACA No.275 of 2019 to deposit the modified compensation amount of Rs.10,06,800/-(Ten lakhs six thousand eight hundred) along with interest @6% per annum before the Tribunal from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the Tribunal.

10. The statutory deposit made by the Union of India in MACA No.275 of 2019 with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

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

12. Copies of depositions filed by Mr.Mishra in course of hearing is kept on record.

(B.P. Routray)
Judge