

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.502 of 2019 & MACA No.1003 of 2019

(From the judgment dated 6th July, 2019 passed by Shri Pravat Kumar Rajguru, learned 2nd M.A.C.T., Cuttack in Misc. Case No.631 of 2013)

In MACA No.502 of 2019

Bishnupriya Panda

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Appellant

-versus-

***Basanti Manjari Mohanty and
another***

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. D.C. Dey, Advocate

For Respondents : Mr. A.A. Khan, Advocate
For Respondent No.2

In MACA No.1003 of 2019

***M/s.Oriental Insurance Company
Limited***

Appellant

-versus-

Bishnupriya Panda and another

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. A.A.Khan, Advocate

For Respondents : Mr. D.C. Dey, Advocate
For Respondent No.1

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. Both the appeals being arise out of the same judgment dated 06.07.2019 of the learned 2nd MACT, Cuttack in Misc. Case No.631 of 2013 wherein compensation to the tune of Rs.68,74,000/- has been granted along with interest @7% per annum to the claimant from the date of filing of the claim application, i.e.25.9.2013, are heard together and disposed of by this common judgment.

2. Bishnupriya Panda, the original claimant is the Appellant in MACA No.502 of 2019 and the insurer has preferred MACA No.1003 of 2019.

3. The deceased was a young girl aged about 21 years prosecuting her studies in 4th year MBBS at VSS Medical College & Hospital, Burla. On 27.7.2013 at around 6.30 P.M. when the deceased was going in TVS Scooty at Boreipali Chowk, Sambalpur, the offending Truck bearing Registration No.OR-09-C-5525 dashed it from the back side being driven in a rash and negligent manner causing death of the deceased while being shifted to the Hospital.

4. The claimant, the widow mother of the deceased, filed the application claiming compensation of Rs.20 lakhs on account death of the deceased in the motor vehicular accident. Two witnesses were examined on behalf of the claimant and 18 nos. of documents were marked in evidence in support of the claim. No evidence was adduced from the side of the insurer or the owner.

5. Learned Tribunal upon adjudication directed for payment of compensation by the insurer to the tune of Rs.68,74,000/- along with 7% interest to the claimant. The learned Tribunal for determining just compensation has assessed monthly notional income of the deceased at Rs.50,000/- added with 40% of the same towards future prospects and applied '18' multiplier.

6. The insurer challenges such assessment made by the learned Tribunal by contending before this Court that when the deceased was admittedly a non-earning person fixing her notional income at Rs.50,000/- is against the principles enshrined in the M.V. Act, that too with addition of 40% future prospects. It is further submitted that besides entitlement of the claim for compensation, the alleged

offending vehicle has been implanted, though was not involved in the accident, to manage grant of compensation under the M.V. Act.

7. The original claimant while pursuing the appeal has prayed for enhancement of the compensation by taking monthly notional income of the deceased at rupees one lakh instead of Rs.50,000/- calculated by the learned Tribunal.

8. First coming to the challenge advanced by the insurer regarding his contention that the offending vehicle has been implanted in this case, admittedly no evidence has been adduced either by the insurer or by the owner to that effect. It was even not pleaded by them before the Tribunal. On the other hand, it is seen from the certified copies of the police papers that the charge-sheet has been submitted against the accused-driver for commission of offences under Sections 279/337/304-A, I.P.C. to stand criminal prosecution. Besides, P.W.2 as an eye-witness of the accident has categorically deposed before the learned Tribunal narrating involvement of the present offending vehicle flawlessly. The insurer could not able to elicit anything contrary during her cross-examination and rather she stood firm in her contention. The insurer even did not choose to put any suggestion to

said P.W.2 to exclude involvement of the offending vehicle in the accident. Therefore, such contention of the insurer to discard involvement of the present offending vehicle in the accident is rejected out-right being without substance. On the other hand, the evidence of said P.W.2 coupled with the copies of the police papers such as FIR, charge-sheet etc clearly establishes death of the deceased in the motor vehicular accident involving the present offending Truck.

9. Before delving further some undisputed facts need to be mentioned here. Those are, the deceased was aged about 21 years being her date of birth on 1.6.1992, she was a meritorious student in her career and she was prosecuting her 4th year MBBS course at VSS Medical College & Hospital, Burla.

While assessing her notional income, the learned Tribunal has made a detail analysis of her past career and the certainty of her future employment as a Doctor. The relevant observations of the Tribunal in this regard are reproduced below:

“9. It is the case of the petitioner that the deceased was pursuing her 4th year M.B.B.S study at the time of her death.

P.W.1 has filed and proved the certificates of merit of the deceased for Class-IV to VIII. Those are marked from Exts.11 to 15.

These documents reveal that from Class-IV to Class-VIII the deceased was a rank holder in the school by placing herself thrice in first position and once in second and third position..

P.W.1 also filed and proved the mark sheets of her deceased daughter for Secondary School Examination of the year 2008 and Senior Secondary School Certificate Examination for the year 2010. Those are marked as Exts.17 and 18 respectively.

Ext.17 reveals that the deceased had secured A-1 Grade in all the subjects. Exts.18 reveals that the deceased secured A-1 grade in prime subjects like Physics, Chemistry & Biology. She has also secured A-2 grade in English and Mathematics.

P.W.1 has filed and proved one certificate of Scholarship amounting to Rs.20,000/- awarded to her deceased daughter by the Department of Biotechnology as the deceased had an outstanding performance in Biology in All India Senior Secondary School Certificate Examination (CBSE). It is marked as Ext.9.

P.W.1 has filed two mark sheets of the year 2011 and 2012 of V.S.S. Medical College, Burla. Those are marked as Exts.10 & 10/a. These exhibits reveal that the deceased had secured 70% of marks in M.B.B.S. course of these two years.

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12. In a case of death of a student who has no income, the Tribunal has to take a notional income as the income of the deceased.

Such notional income will differ from case to case. That is why no straight jacket formula can be adopted.

In the case at hand, it is found that the deceased was a brilliant scholar. The deceased was making herself ready to be in the profession of medicine.

Medicine as a profession, is the only profession which shall have its importance till the civilization exists, because health was/is and shall be utmost priority for every individual, family and society at large.

Presently, our country is in extreme need of qualified medial professionals as there is dearth of doctors. In such a situation, any doctor with average standard will get ample opportunity of employment, either in the government or in any private sector.

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10. Further, the learned Tribunal has added 40% of such notional income towards future prospects taking the deceased under self-employment as a Doctor.

11. Thus the learned Tribunal has considered the employment aspect of the deceased from a logical point of view for the purpose of determining just compensation. It is true that the deceased on the date of accident was a non-earning person. Taking advantage of the same, it is contended by Mr. Khan, learned counsel for the insurer that the amount prescribed in Second Schedule of the M.V. Act for non-earning

persons should be made applicable, or at best the daily wage rate prescribed for highly skilled labourers on the date of accident should be applied. Such argument advanced by the insurer is completely unacceptable. It is for the reason that a 4th year student of MBBS Course having a meritorious educational career can never be treated as a highly skilled labourer nor can her income be equated with such amount prescribed in the Second Schedule of the M.V. Act as notional income for such non-earning persons. Because considering the demand for Doctors in the society, a simple MBBS pass out, even without post graduation, will never sit ideal. Moreover, the social reputation and prestige attached to the profession of Doctor is pious and priceless.

12. The Supreme Court in the case of ***Meena Pawaia and others vs. Ashraf Ali and others***, 2021 SCC OnLine SC 1083, where the deceased was a 3rd year bachelor in civil engineering and died in the motor vehicular accident on 12.9.2012, has taken his monthly income at Rs.10,000/- at least. Further, the Supreme Court has added 40% towards future prospects. Such relevant observations of the Supreme Court are reproduced herewith.

“.....While awarding the future economical loss, when the deceased died at the young age 21-22 years and was not earning at the time of death/accident, as per catena of

decisions of this Court, the income for the purpose of determining the future economic loss is always done on the basis of guesswork considering many circumstances namely the educational qualification and background of the family, etc. Therefore looking to the educational qualification and the family background and as observed herein above, the deceased was having a bright future studying in the 3rd year of civil engineering, we are of the opinion that the income of the deceased at least ought to have been considered at least Rs.10,000/- per month, more particularly considering the fact that the labourers/skilled labourers were getting Rs.5,000/- per month even under the Minimum Wages Act in the year 2012.

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Therefore we are of the opinion that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this court in the case of Pranay Sethi (supra) i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years.”

13. In the instant case considering the meritorious career of the deceased and the certainty of her future employment after one or two years of the accident had she not died, the social status and reputation attached to the profession of a Doctor and the prospects in career, I fully agree with the assessment done by the learned Tribunal in determining her notional income at Rs.50,000/- per month and consequential loss of dependency to the tune of Rs.68,04,000/-.

Learned Tribunal has also rightly added Rs.70,000/- to the same towards conventional heads including loss of filial consortium to make the total compensation to Rs.68,74,000/-.

It goes without saying that the prayer for enhancement by the mother (the original claimant) is seen without merit keeping in view the initial emoluments and allowances attached to a Doctor when she enters into the professional employment

14. However, keeping in view the present rate of interest applicable in respect of the fixed deposits, the rate of interest on the compensation amount is reduced to 6%.

15. In the result, both the appeals are disposed of with a direction to the insurer, i.e. M/s.Oriental Insurance Company Limited to deposit the compensation of Rs.68,74,000/- (rupees sixty-eight lakhs seventy-four thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.25.9.2013 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant-Bishnupriya Panda on such terms and proportion as directed by the learned Tribunal in the impugned judgment.

16. 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 in MACA No.1003/2019 before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

(B.P. Routray)
Judge



B.K. Barik/Secretary