IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.542 of 2016

Clara Anastacia Xalxo and others .... ***Appellants***
Mr. P.K. Nayak, Advocate

-versus-

Purna Chandra Mohanta and others .... ***Respondents***
Mr. P.K. Mishra, Advocate for Respondent No.2
Mr. A.A. Khan, Advocate for Respondent No.4

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
10.11.2022

Order No.
08.

1. Heard Mr. P.K. Nayak, learned counsel for the Appellant-claimants, Mr. P.K. Mishra, learned counsel for the Respondent No2-National Insurance Company Limited and Mr. A.A. Khan, learned counsel for the Respondent No.4-Cholamandalam MS General Insurance Co. Ltd.

2. Present appeal by the claimants is directed against the judgment dated 06.01.2016 of learned III M.A.C.T., Rourkela in M.A.C. Case No.93 of 2013, wherein compensation to the tune of Rs.22,08,015/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 23.02.2013.

3. It is submitted by Mr. Nayak, learned counsel for the Appellants-claimants that the Tribunal did not add any future prospect to the income of the deceased and further, deducted the family pension amount from the income. He thus prays to re-

count the compensation amount. He further submits that Appellant No.6-Patras Xalxo died in the meantime on 13.10.2019 and all other LRS being on record, no further substitution is required.

4. After hearing Mr. P.K. Mishra as well as Mr. A.A. Khan, learned counsels for respective Insurance Companies, it is seen from the impugned judgment that negligence has been distributed at the ratio of 70:30 between National Insurance Company Ltd. and Cholamandalam MS General Insurance Co. Ltd. Neither of the Insurance Companies have preferred appeal to challenge such finding of the learned Tribunal.

5. Now coming to the question of quantum of compensation, it is seen that the Tribunal has adopted a complete erroneous procedure to determine the compensation. It first deducted the medical and house rent allowances and then deducted the family pension amount from the income of the deceased. The deceased was a Bank employee and his annual income is determined at Rs.5,56,399/-. The claimants admit such amount of income of the deceased as per learned Tribunal. Mr. Nayak also does not dispute to such amount of income of the deceased. Thus accepting the income of the deceased to such extent and after deducting statutory tax amount there-from, i.e. Rs.41,200/- towards income tax and Rs.2,500/- towards professional tax, the net annual income remains Rs.5,12,699/-. Adding future prospects to the extent of 15% thereto, it comes to Rs.5,89,603/-. Considering the number of claimants, 1/5th of the same is liable to be deducted towards personal expenses. Doing so, it comes to

Rs.4,71,683/- and applying multiplier ‘11’, the total loss of dependency comes to Rs.51,88,513/-. Adding Rs.1,60,000/- towards loss of consortium to the wife and three children and general damages of Rs.30,000/-, the total compensation is determined at Rs.53,78,513/-.

6. It needs to be mentioned here that law is no more *res integra* that the pecuniary advantages like family pension, gratuity, etc. are not to be considered for deduction from the compensation amount.

7. At this stage, Mr. Nayak submits that the claimants have already received the compensation amount including interest in terms of the direction of the Tribunal. So deducting a sum of Rs.22,08,015/- from the modified compensation amount of Rs.53,78,513/-, the balance amount remains Rs.31,70,498/-, payable by both Insurance Companies in the ratio of 70:30 as determined by the Tribunal.

8. In the result, the appeal is disposed of with a direction to the Respondent No.2-National Insurance Co. Ltd. and Respondent No.4-Cholamandalam MS General Insurance Co. Ltd. to deposit the balance compensation amount of Rs.31,70,498/- (rupees thirty-one lakhs seventy thousand four hundred ninety-eight) in the ratio of 70:30 respectively, before the Tribunal along with interest @6% per annum respectively, 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-Appellant Nos.1 to 5 (except Appellant No.6-Patras Xalxo) on such terms and proportion to be fixed by the Tribunal.

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

(B.P. Routray)
Judge

B.K. Barik