

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.558 of 2020

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

.... ***Appellant***

Mr. Prasanta Kumar Mahali, Advocate

-versus-

Sabita Behera and Others

.... ***Respondents***

Mr. Aviram Patra, counsel for Respondents 1-5

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

7.3.2022

Order No.

06.

1. Heard Mr. P.K. Mahali, learned counsel for the insurer – Appellant and Mr. A. Patra, learned counsel for claimant – Respondents.

2. Present appeal by the insurer is against the impugned judgment dated 15th May, 2019 of the learned 4th MACT, Cuttack passed in MAC Case No.469 of 2011/337 of 2017 wherein compensation to the tune of Rs.9,26,800/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 22nd July, 2011 has been granted on account of death of the deceased in the motor vehicular accident dated 13th June, 2011.

3. It is submitted on behalf of the Appellant that the Tribunal without any material has counted monthly income of the deceased at Rs.4000/-. It is further submitted that even if considering the rate of minimum wages which was Rs.90/- for unskilled labourer, Rs.103 for

semi-skilled labourer and Rs.116/- for skilled labourer prevailing in the year 2011, the amount of Rs.4000/- per month is on the higher side.

4. In reply, Mr. Patra, learned counsel for the claimant – Respondents submits that the insurer has not rebutted the evidence brought on record by the claimants, even by putting any suggestion to P.W.1 with regard to income of the deceased. He further submits that taking the avocation of the deceased as Mason and applying the wages prescribed for skilled labourer, i.e. Rs.116/- per day, the monthly income comes to Rs.3,480/-. Therefore monthly income of Rs.4000/- as counted by the learned Tribunal cannot be viewed on higher side.

5. Having heard both parties and upon perusal of the impugned judgment it reveals from para-9 that the Tribunal while accepting the avocation of the deceased as a Mason, has fixed his monthly income at Rs.4,000/- and further added 40% towards future prospects and added further amount towards conventional heads.

6. Considering the submissions of both parties and the difference between the prescribed wages for skilled labourer which comes to Rs.3,480/- per month and the income taken by the Tribunal which is Rs.4000/- per month, and drawing a balance between both amounts, in my opinion the purpose would be served if the total compensation is reduced to Rs.9,00,000/-. As such, the amount is fixed to Rs.9,00,000/-.

7. It is further submitted by Mr. Mahali, learned counsel for the insurer that the offending vehicle had no permit at the time of

accident. But no material has been brought on record to satisfy the same. The mere reason that the Police has not seized any permit in course of investigation would not be sufficient to prove the contention of the insurer. As such, the contention raised by Mr. Mahali in this regard is rejected.

8. In the result, the appeal is disposed of with a direction to the Appellant – insurer to deposit compensation amount of Rs.9,00,000/- (Rupees nine lakh) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 22nd July, 2011 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants – Respondent Nos.1 to 5 on such terms and proportion to be decided by the Tribunal.

9. However, the penal interest @ 12% per annum as directed by the Tribunal is waived.

10. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

11. The appeal is disposed of.

12. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge