IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.551 of 2019

The Divisional Manager, Oriental Insurance Co. Ltd.	....	***Appellant***

Mr. P.K. Mahali, Advocate

-versus-

Ulfat Bibi and others	....	***Respondents***

Mr. P.K. Mishra, Advocate for Respondent Nos.1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
30.03.2022

Order No.
08.

1. Heard Mr. P.K. Mahali, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for the Respondent Nos.1 to 3-claimants.

2. Present appeal by the insurer is directed against the judgment dated 16.4.2019 of learned 1st MACT, Jagatsinghpur in MAC Case No.101/2017 wherein learned Tribunal has granted compensation to the tune of Rs.39,10,000/- along with 7.5% interest per annum to the claimants from the date of filing of the claim application, i.e.25.07.2017 on account of death of the deceased in the motor vehicular accident dated 01.07.2017.

3. The case of the claimants in brief is that the deceased was aged about 53 years on the date of accident and he was serving as driver in the Office of the learned District & Sessions Judge, Jagatsinghpur. He was getting monthly salary of Rs.33,000/-. The claimants are the wife and two major sons of the deceased.

4. The learned Tribunal upon adjudication of the issues fixed the negligence on the part of the driver of the offending vehicle, i.e. Bolero bearing Registration No.OD-05-A-3800. Such fixing of negligence on the part of the driver of the offending vehicle is not disputed by the Appellant.

5. Mr. P.K. Mahali, learned counsel for the Appellant contends that the deceased being the driver of his motorcycle at the time of accident and not wearing the helmet, had contributed for the negligence and was not having any valid DL for driving the motorcycle. He further contends that while calculating the monthly income of the deceased, the learned Tribunal forgot to exclude statutory deductions from the income and as such, the amount of compensation is liable to be reduced.

6. Mr. P.K. Mishra, learned counsel for the claimants-Respondent Nos.1 to 3 in his reply submits that no material is there in support of the contention of the counsel for the Appellant that the deceased had no DL or he was driving without the headgear. Moreover, no evidence was adduced from the side of the Appellant and no material has been brought on record in support of their contention.

7. Truly, as it reveals from record, no evidence was adduced from the side of the insurer-Appellant to disclose if the deceased was riding the motorcycle without any headgear. Undisputedly the deceased was a driver serving in the establishment of the learned District & Sessions Judge, Jagatsinghpur. So in absence of any specific evidence that he did not have the licence to drive a

motorcycle, such contention put-forth by the Appellant is not liable to be believed.

8. The date of birth of the deceased is 17.6.1965 as reflected in his service record and this information was obtained by the Appellant through RTI Act. Thus, the age of the deceased on the date of accident is 52 years and he comes within the age group of 51-55 years.

9. Next coming to the question of quantum, challenge of the Appellant is that the statutory deductions from the monthly salary of the deceased have not been effected by the Tribunal. It reveals from the discussions of the learned Tribunal made under Issue No.3 that, his monthly gross salary has been taken at Rs.37,935/- based on last pay certificate proved under Ext.8 on behalf of the claimants. With regard to statutory deductions, professional tax of Rs.2500/- per annum and income tax at applicable rate i.e. 5% above the amount of Rs.2,50,000/- + education cess, is liable to be deducted. Thus deducting the same from the annual income of the deceased, the calculation would be as follows:

Rs.37,935 x 12 =		Rs.4,55,220/-
Rs.4,55,220	–	Rs.2,500 = Rs.4,52,720/-
Rs.4,52,720	–	Rs.10,136 (5%)
	–	Rs.304 (Education Cess)
	=	Rs.4,42,280/-

After deducting 1/3rd towards personal expenses, the amount comes to Rs.4,42,280 – Rs.1,47,426 = Rs.2,94,854/-, and applying multiplier '11', the total loss of dependency comes to Rs.32,43,394/-. Adding 15% towards future prospects, i.e. Rs.4,86,509/-, the total amount comes to Rs.37,29,903/-. Further adding Rs.70,000/- towards conventional heads, the total amount comes to Rs.37,99,903/-, which is rounded to Rs.38,00,000/-."

10. The aforesaid amount as determined is liable to be paid along with interest @6% per annum from the date of filing of the claim application.

11. In the result, the Appellant-Insurance Company is directed to deposit the total compensation amount of Rs.38,00,000/- (rupees thirty-eight lakhs) along with interest @6% per annum from the date of filing of the claim application i.e. 25.07.2017 before the Tribunal within a period of ten weeks 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.

12. 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.

13. With the aforesaid observations, the appeal is disposed of.

(B.P. Routray)
Judge

B.K. Barik