

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1 of 2015

Divisional Manager, The New India Assurance Company Limited ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Sukanti Giri and others ***Respondents***

Mr. S.K. Nayak, Advocate for Respondent Nos.1 to 7

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
08.08.2022

Order No.

09.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. S.K. Nayak, learned counsel for the Respondent Nos.1 to 7-claimants.

2. Present appeal by the insurer is directed against the judgment dated 27.09.2014 of learned 1st M.A.C.T., Mayurbhanj, Baripada in M.A.C. Case No.47 of 2002 wherein compensation to the tune of Rs.13,16,000/- has been granted along with interest @7% per annum to the claimants from the date of filing of the claim application, i.e.7.3.2002 on account of death of the deceased in the motor vehicular accident dated 17.2.2002.

3. Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company submits that, the offending vehicle though was not involved in the accident but has been implanted and secondly, the future prospects to the extent of 50% instead of 40% has been

granted and therefore the impugned award needs to be interfered with.

4. Having heard Mr. S.K. Nayak, learned counsel for the Respondent Nos.1 to 7-claimants and upon perusal of the impugned judgment, it reveals that no witness was examined from the side of the insurer, but certain documents marked under Exts.A to F have been filed from the side of the insurer. It is contended by Mr. Dutta that since it has been mentioned in the inquest report under Ext.E that the deceased died due to fall from his own motorcycle, involvement of the offending motorcycle, which belong to his own brother-in-law, therefore is not established. Admittedly, the witness who has endorsed so in the inquest report was not an eye-witness nor was he examined before the Tribunal to prove such contents. On the contrary, P.W.2 examined from the side of the claimants is the eye-witness, who has categorically stated before the learned Tribunal that the accident took place due to rash and negligent driving of the offending motorcycle that dashed against the deceased. Therefore, such contention of the insurer based on the inquest report is not proved on record which the learned Tribunal has rightly discarded out. Accordingly, such contention of the insurer is rejected.

5. The other submission on the quantum of compensation that the learned Tribunal has granted future prospects to the extent of 50%, the same is against the principles decided in the case of *National Insurance Company Limited vs. Pranay Sethi and*

others, (2017) 16 SCC 680. As such, it is reduced to 40%. Other aspects relating to the income of the deceased are not disputed.

6. Thus considering such ground of challenge on the quantum of compensation, a reduced compensation of Rs.12,30,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. S.K. Nayak, learned counsel for the claimants-Respondent Nos.1 to 7 agrees to the same and Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

7. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.12,30,000/- (rupees twelve lakhs thirty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.7.3.2002 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.

8. 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-Insurance Company.

9. The MACA is disposed of with aforesaid directions.

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

(B.P. Routray)
Judge

