

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.585 of 2020

National Insurance Company Ltd.* *Appellant

Mr. Subrat Satpathy, Advocate

-versus-

Bhanumati Pagada and Others* *Respondents

Mr. Amiya Kumar Mohanty, counsel for Respondents 1-4

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER
22.02.2022

Order No.

07. 1. Heard Mr. Subrat Satpathy, learned counsel for the insurer – Appellant and Mr. A.K. Mohanty, learned counsel for the claimant – Respondents.
2. Present appeal by the insurer is against the impugned judgment dated 26th November, 2019 of the learned 7th MACT, Bhubaneswar in MAC No.95 of 2016 wherein compensation to the tune of Rs.13,93,000/- along with interest @ 7% per annum from the date of filing of the claim application has been granted on account of death of the deceased in the motor vehicular accident dated 6th February, 2012.
3. The claimant – Respondents have also filed cross-objection praying for enhancement of the compensation amount.
4. Mr. Satpathy contends on behalf of the insurer that the learned Tribunal has committed error in accepting negligence on the part of the rider of the motor cycle only, though in the police case final form

has been submitted as 'no clue and one unknown vehicle was involved in the accident'.

5. In reply Mr. Mohanty, learned counsel for the claimants submits that keeping in view the evidence of eye the witness viz. P.W.3, the negligence on the part of the rider of the motor cycle was established and as such no illegality is there in the approach of the learned Tribunal.

6. Having heard both parties and upon perusal of the impugned judgment it reveals that the case of the claimants are to the effect that the deceased while going as a pillion rider in the motor cycle bearing registration number OR 04 N 8474, one unknown truck coming from their back dashed the motor cycle. As per the evidence of P.W.3, who claimed to be an eye witness of the accident, the accident occurred due to the negligence of the driver of the motor cycle. In the cross examination of the said witness, except some denial suggestions nothing material could be brought to demolish his evidence in chief. The learned Tribunal having discussed the same at paragraphs 6 and 7 of the impugned judgment, has fixed the negligence on the part of the driver of the motorcycle. No fault is seen in the approach of the learned tribunal and as such, his finding with regard to negligence on the part of the driver of the motor cycle is confirmed.

7. Next coming to the question of quantum of compensation, it is submitted by Mr. Satpathy that the date of birth of the deceased being 14th March, 1971 mentioned in the I.D. card under Ext.7, the multiplier should be '14' in terms of principles laid down in the case of *Sarla Verma v. DTC, reported in (2009) 6 SCC 121*. But the

learned tribunal has mistakenly applied multiplier '15' and further took 40% towards future prospects which should be 25%.

8. Upon examination of the said contention it reveals that Ext.7 is the Identity card which was issued by the Ministry of Textile to reveal the deceased as a handloom weaver. This document has been relied by the claimants and brought on record from their side. Therefore the date of birth as mentioned in the said exhibit appears to be more authentic than any other document like the post mortem report. But the tribunal without any discussion on the same, based on the recording in the PM report, took the age of the deceased as 39 years and applied the multiplier '15' taking him within the age group of 36 to 40 years. This approach of the Tribunal is seen as illegal for the reason that Ext.7 is the document which has been relied on by the claimants and the contents thereof has also been relied on by the claimants. Therefore the date of birth of the deceased as stated in Ext.7 has to be accepted instead of the recording made in the PM report. Taken so, if the date of birth of the deceased is 14th March, 1971, then his age on the date of accident would be more than 40 years, i.e. between the age group of 41-45 years. So the right multiplier would be '14' in terms of the principle decided in *Sarla Verma* case (supra).

9. On the same principle when the deceased is taken to be more than 40 years, the extent of future prospects to be considered for the purpose of compensation should be 25% as per the principles enumerated in the case of *National Insurance Company Ltd. v. Pranay Sethi and Others* (2017) 16 SCC 680.

10. Rival contentions have further been raised with regard to monthly income of the deceased. As per the insurer – Appellant it should have been taken as prescribed for skilled labourers, whereas the contention of the claimants in the cross-objection is to the effect that as per evidence of the employer, i.e. P.W.2 his monthly income should be Rs.9,625/-.

11. First to see the evidence of P.W.2, he has orally deposed that the monthly salary of the deceased was Rs.9,625/-. But he could not be able to produce any document in proof of the same. Neither he was able to produce the register of employment or any register relating to payment of wages to the employees before the tribunal. The only document produced by P.W.2 is the salary certificate under Ext.8. The said salary certificate under Ext.A is undoubtedly a private document and is not sufficiently proved on record to establish its credibility. In such circumstance, the learned tribunal has rightly discarded the same.

12. Now coming to decide the exact income of the deceased, admittedly no conclusive evidence has been brought on record by either party. Thus, the approach of the learned Tribunal in fixing it at Rs.7000/- is seen to be balanced one keeping in view the avocation and skill of the deceased. Thus while rejecting the contentions of the insurer and the claimants either to reduce or to enhance the same, monthly income of Rs.7000/- as fixed by the Tribunal is confirmed.

13. Accordingly the computation of compensation is drawn as follows:-

Sl. No.	Head	Calculation
i)	Annual income of the deceased	Rs.7000/- X 12 = 84,000/-
ii)	25% of the annual income comes to	Rs.21,000/-
iii)	Total annual income after adding future prospects of 25%	Rs.84,000/- + 21,000/- = Rs.1,05,000/-
iv)	Deducting 1/4 th towards personal expenses, the annual loss of dependency comes to	Rs.78,750/-
v)	Applying multiplier '14' thereto	Rs.78,750/- X 14 = Rs.11,02,500/-
vi)	Adding loss of estate, funeral expenses and loss of consortium the amount comes to	Rs.11,02,500/- + 70,000/- = Rs.11,72,500/-

14. It is seen that the learned tribunal has forgotten to add filial consortium for the mother Respondent No.4 and parental consortium to the minor children, viz., Respondent Nos.2 and 3. So, on that count Rs.40,000/- for Respondent No.4 and another Rs.40,000/- to Respondent Nos.2 and 3 jointly are liable to be added. Thus the total compensation comes to Rs.11,72,500/- + Rs.80,000/- = Rs.12,52,500/- which is rounded up to Rs.12,60,000/-. The rate of interest is reduced to 6% from 7%.

15. Accordingly the Appellant – insurer is directed to deposit the compensation amount of Rs.12,60,000/- (twelve lakh sixty thousand) before the learned tribunal along with interest @ 6% per annum 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 claimant – Respondents on such terms and proportion to be decided by the learned Tribunal.

16. 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.

17. The appeal is disposed of.

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

(*B.P. Routray*)
Judge