

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.245 of 2021

***The Claim Manager, Magma Finance
Corporation Ltd.***

....

Appellant

Mr. A.A. Khan, Advocate

-versus-

Sulochana Panda and Others

....

Respondents

Ms. Deepali Mahapatra, counsel for Respondents 1-4

Mr. J. Behera, counsel for Respondent No.5

**CORAM:
SHRI JUSTICE B. P. ROUTRAY**

**ORDER
12.4.2022**

Order No.

05. 1. Heard Mr. A.A. Khan, learned counsel for the insurer – Appellant, Ms. D. Mahapatra, learned counsel for claimant - Respondents 1 to 4 and Mr. J. Behera, learned counsel for owner - Respondent No.5.
2. Present appeal by the insurer has been filed challenging the judgment dated 7th April, 2021 of learned 8th MACT, Aska passed in MAC No.27 of 2017 wherein compensation to the tune of Rs.24,89,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 14th March, 2017 has been granted on account of death of the deceased in the motor vehicular accident dated 1st February, 2017.

3. The main ground of challenge is with regard to quantum of compensation. As per the submissions of Mr. Khan the income of the deceased on the date of accident cannot exceed Rs.8000/- per month and the employment of the deceased under Koel Care was seriously disputed before the tribunal.

4. Having heard both parties and upon perusal of the certified copies of Ext. 7 to 13 and A to C, as produced in course of hearing by Mr. Khan, it reveals that the deceased having educational qualification of Higher Diploma in Software Engineering was employed under Koel Care company. As per the claimants, he was getting remuneration of Rs.22,000/- per month and was in employment from 1st March, 2005 till the date of his death. But as per insurer – Appellant, the deceased was in employment for the period from 1st April, 2014 till 30th June, 2015 and getting salary of Rs.8000/- per month only.

5. Admittedly, the employer of the deceased was not examined. In such view of the matter, in absence of examination of the employer or any authorized officer for Koel Care, the tribunal disbelieved the case of both parties and fixed the income of the deceased at Rs.12,000/- per month keeping in view his educational qualification.

6. The insurer admits the employment of deceased under of Koel Care till 30th June, 2015 with remuneration of Rs. 8000/-. Admittedly, as per Exhibits A to C relied by the insurer, the deceased was working as Office Assistant in Koel Care. The claim of the Respondents is that the deceased was working as an Accountant in Koel Care and other

capacities also. So drawing balance between the claim of the claimants and the facts admitted by the insurer, on the principles of preponderance of probability, with regard to employment and remuneration of the deceased either as Accountant or Office Assistant, and further keeping in view his educational qualifications as per Exhibits 7 and 8, the assessment of his income at Rs.12,000/- per month as concluded by the Tribunal cannot be faulted with. The approach of the learned Tribunal while fixing the monthly income of the deceased appears reasonable and rational and as such, the same is confirmed.

7. Except the challenge discussed above no further ground of challenge is advanced by the Appellant with regard to quantum of compensation.

8. In the result, the appeal is dismissed. The Appellant is directed to deposit the entire compensation amount with interest before the tribunal 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 as per the direction contained in the impugned Judgment.

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

10. The certified copies of exhibits 7 to 13 and Exhibits A to C as produced by Mr. Khan are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda

