IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.133 of 2017

The IFFCO-TOKIO General Insurance Company Limited	....	***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Wahid Alli Khan and others	....	***Respondents***

Mr. U.P. Mishra, Advocate for Respondent Nos.1 to 5
Mr. G.P. Dutta, Advocate for Respondent No.8

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
28.11.2022

Order No.
06.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-The IFFCO-TOKIO General Insurance Company Ltd., Mr. U.P. Mishra, learned counsel for the Respondent Nos.1 to 5-claimants and Mr. G.P. Dutta, learned counsel for the Respondent No.8-The Cholamandalam MS General Insurance Company Limited.

2. Present appeal by the insurer is directed against the judgment dated 17.11.2016 of learned 1st M.A.C.T., Puri in M.A.C. No.136 of 2011, wherein compensation to the tune of Rs.15,08,143/- has been granted along with interest @7.5% per annum to the claimants from the date of filing of the claim application, i.e. 21.5.2011 on account of death of the deceased in the motor vehicular accident dated 15.4.2011.

3. Mr. A.A. Khan, learned counsel for the Appellant challenges the award mainly questioning quantification of compensation

amount and additionally he submits that entire negligence attributed to the driver of the offending Ambulance bearing Registration No.OR-02-AZ-2256 is erroneous as the driver of offending Auto-rickshaw was also equally negligence for the cause of accident.

4. Mr. U.P. Mishra, learned counsel submits for the claimants-Respondent Nos.1 to 5 that the assessment of income of the deceased by the learned Tribunal at Rs.10,000/- per month is grossly low and further, the learned Tribunal did not consider her contribution to the family as a house maker besides her income from coir business. He also submits that the learned Tribunal did not add any future prospects to the income of the deceased. The claimants praying for enhancement of the compensation amount have filed their cross objection.

5. Upon hearing all the parties, it reveals that the accident took place on 15.4.2011 when the deceased was going as an occupant of an Auto-rickshaw. The accident was head-on-collision and the deceased died on the same day in hospital while undergoing treatment. The Police upon completion of investigation submitted charge-sheet against the driver of the Ambulance stating entire negligence by him for the cause of accident. Leaving the Auto-rickshaw driver from negligence was also questioned before learned Tribunal by the present Appellant, who is the insurer of the offending Ambulance, and the learned Tribunal upon elaborate discussion of evidence brought on record through the eye-witness as well as the Police papers, has rejected such contention of the Appellant. It is the specific case of the claimants

that when the Auto-rickshaw was on the left side of the road, the Ambulance being driven in rash and negligent manner swerved to the right to dash against it. There is no rebuttal evidence produced by the insurer to controvert the case of the claimants, which is supported in the Police report also. Therefore, no point is made out in the submission of Mr. Khan to accept any contributory negligence on the part of the Auto-rickshaw driver. As such, the finding of the learned Tribunal that the driver of the Ambulance was entirely negligent for the cause of accident is confirmed.

6. So far the quantum of compensation is concerned, learned Tribunal upon discussion of the oral evidence adduced by P.W.1, the husband of the deceased and Ext.11, the Savings Bank Pass Book, and considering the financial transactions made therein has assessed the income of the deceased at Rs.10,000/- per month. The same does not require any interference. It is for the reason that as per the claimants, the deceased had coir business and she was transacting through Bank account. Though it is claimed that the deceased had earned Rs.15,000/- per month, but the learned Tribunal upon consideration of all aspects of income through evidence has reasonably concluded about the same at Rs.10,000/-. It is true that no document has been produced in support of the income of the deceased to the tune of Rs.15,000/- per month like, IT return or transaction contracts. As such, I do not find any reason to disturb the finding of the Tribunal in this regard.

7. The further submission made by Mr. Mishra, learned counsel for the claimants, to count additional income of the deceased as a house maker for managing her family has no merit for

consideration for the reason that her income in specific terms have been pleaded by the claimants and has been assessed by the learned Tribunal based on evidence. The contentions of the insurer-Appellant on quantification of monthly income of the deceased are also rejected, for the reasons stated in the above paragraph.

8. It is seen that the learned Tribunal did not add any future prospects to the income of the deceased. As per the settled principle, future prospect to the extent of 40% is liable to be added in view of the age of the deceased as 35 years, which is never disputed by the Appellant. Accordingly, the monthly income of the deceased is enhanced to Rs.14,000/- and the total loss of dependency, after deducting 1/4th towards personal expenses, is determined at Rs.20,16,000/-. Adding Rs.2,00,000/- towards consortium to the husband and four children and general damages of Rs.30,000/-, the claimants are found entitled for Rs.22,46,000/-. Further Rs.18,143/-, as taken by the learned Tribunal towards medical expenses for the treatment of the deceased, is liable to be added in the compensation amount. Accordingly the total compensation amount is determined at Rs.22,64,143/-, payable along with interest @6% per annum.

9. In the result, the appeal is disposed of with a direction to the Appellant-The IFFCO-TOKIO General Insurance Company Limited to deposit the modified compensation amount of Rs.22,64,143/- (rupees twenty-two lakhs sixty-four thousand one hundred forty-three) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.

21.05.2011 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants in equal share on same terms and proportion to be decided by learned Tribunal.

10. On deposit of the award amount before the 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.

11. The copies of the depositions and exhibits as filed in course of hearing are kept on record.

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

(B.P. Routray)
Judge

B.K. Barik