IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.575 of 2019 & MACA No.232 of 2020

(From the judgment dated 10th April, 2019 passed by learned 1st M.A.C.T., Cuttack in M.A.C. No.1093 of 2014)

In MACA No.575 of 2019

Lochani Sahoo and others	....	***Appellants***
	-versus-	
Ashok Kumar Sahoo and another	....	***Respondents***

Advocate(s) appeared in this case:-

For Appellants	:	Mr. B.N. Samantaray, Advocate
For Respondents	:	Mr. P.K. Mahali, Advocate For Respondent No.2

In MACA No.232 of 2020

National Insurance Co. Ltd.	....	***Appellant***
	-versus-	
Lochani Sahoo and others	....	***Respondents***

Advocate(s) appeared in this case:-

For Appellant	:	Mr. P.K. Mahali, Advocate
For Respondents	:	Mr. B.N. Samantaray, Advocate For Respondent Nos.1 to 4

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
25th July, 2022

B.P. Routray, J.

1. Both the appeals being arise out of the same judgment dated 10.04.2019 of the learned 1st MACT, Cuttack in M.A.C. No.1093 of 2014 wherein compensation to the tune of Rs.16,79,465/- has been granted along with simple interest @6% per annum to the claimants from the date of filing of the claim application, i.e.27.12.2014, are heard together and disposed of by this common judgment.

2. In MACA No.575 of 2019, the claimants are the Appellants, who have prayed for enhancement of the compensation amount. MACA No.232 of 2020 has been filed by the Insurance Company challenging the award.

3. First coming to the challenges advanced from the side of the insurer, it is submitted by Mr. P.K. Mahali, learned counsel for the Insurance Company that since it has been elicited from the mouth of the eye-witness (P.W.2) that the deceased was walking on the road leaving enough space to his left, he had contributed negligence for the accident.

4. Such contention advanced from the side of the insurer is rejected outright keeping in view the admitted fact that the offending vehicle, i.e. TATA ACE bearing Registration No.OR-05-AV-3314 dashed the deceased from his back side and secondly, the Police has submitted the charge-sheet against the driver of the offending vehicle. Further it is seen from the copy of the evidence of P.W.2, as produced by Mr. Mahali in course of hearing, as well as from the narration of facts in the FIR that, the road is not a highway and the accident happened while the deceased was returning to his house after bathing in the village tank (nala).

5. Now coming to the question of quantum of compensation which the claimants are praying for enhancement, it is seen that the learned Tribunal while calculating the income has forgotten to add future prospects to the same. Again the amount received by the wife of the deceased towards family pension has been deducted and the GIS amount due to the deceased was also deducted from the count.

6. As per the principles decided in the case of ***National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680***, considering the age of the deceased as 48 years, which is not disputed by the parties, future prospects to the extent of 30% is liable to be added since the deceased was admittedly a Government servant serving as Peon in the Department of Planning and Coordination, Govt. of Odisha.

7. The Supreme Court in the case of ***Reliance General Insurance Company vs. Shashi Sharma and others, (2016) 9 SCC 627*****,** has held that all such benefits like family pension or similar benefits should not be counted while computing loss of dependency in the case of motor accident claim.

8. The admitted salary of the deceased for the month of May, 2014 as per Ext.10 and Ext.A is Rs.20,460/- and after deduction of professional tax, the same comes to Rs.20,235/- as per the finding of the learned Tribunal, which is not disputed by both the parties present. Adding 30% to the same towards future prospects, the same comes to Rs.26,305/-. Accordingly the annual income comes to Rs.3,15,666/- (including future prospects). Deducting 1/4th from the same towards personal expenses, it comes to Rs.2,36,749/-. Applying multiplier '13' thereto, the total loss of dependency comes to Rs.30,77,743/-.

9. Further, the wife of the deceased is entitled for spousal consortium of Rs.40,000/-. Three children are also entitled to Rs.40,000/- each towards parental consortium in terms of the decision rendered in the case of ***Magma General Insurance Company Ltd. vs. Nanu Ram @Chuhru Ram and others, (2018) 18 SCC 130***. Again adding Rs.30,000/- towards general damages, the total compensation comes to Rs.32,67,743/- which is rounded to Rs.32,68,000/-.

10. In the result, the impugned award is set aside and both the appeals are disposed of with a direction to the insurer, i.e. M/s.National Insurance Company Limited to deposit the total compensation of Rs.32,68,000/- (rupees thirty-two lakhs sixty-eight thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.27.12.2014 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 learned Tribunal.

11. 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 in MACA No.232/2020 before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

(B.P. Routray)
Judge

B.K. Barik/Secretary