

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.396 of 2017

MACA Nos.396 & 847 of 2017

Smt. Ramamani Rout

(In MACA No.396/2017)

***National Insurance Company Ltd.
represented through its Officer-in-
Charge, Orissa Legal Cell***

(In MACA No.847/2017)

.... Appellants

Mr. Gopinath Sethi, Advocate (in MACA No.396/2017)

Mr. J.R. Deo, Advocate (in MACA No.847/2017)

-versus-

Chandan Kumar Pandey and Others (In MACA No.396/2017)

Gayatri Rout and Others

(In MACA No.847/2017)

.... Respondents

Mr. A.K. Sahu, counsel for Respondent No.3 &
Mr. J.R. Deo on behalf of Mr. G. Mishra,
senior counsel for Respondent No.2
(in MACA No.396/2017)

Mr. A.K. Sahu, counsel for Respondent No.1 &
Mr. Gopinath Sethi, counsel for Respondents 2, 3 & 4
(in MACA No.847/2017)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

20.9.2022

Order No.

- 09.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. G.N. Sethi, learned counsel for the claimant, namely, Ramamani Rout who is the mother of the deceased, Mr. A.K. Sahoo, learned counsel for the widow of the deceased and Mr. J.R. Deo on

behalf of Mr. G. Mishra, learned senior counsel for the insurance company.

3. Both the appeals being arise out of same judgment, are heard together and disposed of by this common order.

4. Both the appeals are against the same impugned judgment dated 27th February, 2017 of learned 1st MACT, Baleswar passed in MAC Case No.23 of 2014 wherein compensation to the tune of Rs.34,98,000/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 27th January, 2014 has been granted on account of death of the deceased Manoranjan Rout in the motor vehicular accident dated 12th December, 2013.

5. MACA No.847 of 2017 has been preferred by the insurance company challenging the award. MACA No.396 of 2017 has been filed for inter se dispute between the claimants and as per the mother – Appellant the widow has remarried in the meantime and thus is not entitled for getting any share from the compensation.

6. Four claimants who are the wife, parents and younger sister of the deceased filed claim application under Section 166 of the MV Act praying for compensation on account of death of the deceased in the motor vehicular accident dated 12th December, 2013 involving the offending truck bearing registration number HR 55B 6900.

7. The tribunal upon adjudication directed for payment of aforesaid compensation amount and further directed that out of the total amount, Rs.14 lakhs shall be given to the wife and Rs.10 lakhs

each to the mother and father and Rs.98,000/- to the sister of the deceased along with respective interest amount.

8. The insurance company questions such determination of total compensation mainly on the ground that conveyance allowance and food allowances being reimbursable should be excluded from the purview of income. Secondly, it is submitted that the offending truck was not having valid permit on the date of accident and as such right of recovery should be granted in favour of the insurer for violation of policy condition.

9. On perusal of the impugned judgment it reveals that the tribunal has assessed the income of the deceased at Rs.17,000/- per month and for that purpose the tribunal has considered the amount mentioned in Form-16 issued by the employer and deducted the statutory tax amount paid there-from. Thus, the submission of the insurance company to deduct conveyance allowance etc from consideration does not found with substance since the employer has included everything in Form-16 for the purpose of income under the income tax Act. However, the rate of interest is reduced from 7.5% to 6%.

10. It is seen from the copy of the WS filed by the insurer, as produced in course of hearing by Mr. Deo, that, a specific plea has been taken to the effect that the permit of the truck was expired on 3rd April, 2012. The date of accident is on 12th December, 2013. But the tribunal has ignored such aspect from discussion. It needs to be mentioned here that, there is no denial either from the side of the claimant or from the owner to that effect and as such, violation of policy condition is apparent from the pleading. The insurance

company therefore has the right to recover the compensation amount from the owner.

11. So far as the challenge advanced by the mother of the deceased in MACA No.396 of 2017, the same is found without merit. It is for the reason that the status of Respondent No.3 as the widow at the time of filing of the claim application is not disputed. Mr. Sahoo, learned counsel for the widow - Respondent No.3 seriously objects such contention of the mother about re-marriage of the widow. Nothing is seen from the memorandum of appeal with regard to date of such alleged re-marriage of the widow. Nevertheless, subsequent marriage of the widow, if any, will not disentitle her from getting compensation under the MV Act. Accordingly, the contention raised by the mother – claimant is rejected.

12. In the result MACA No.396 of 2017 is dismissed and MACA No.847 of 2017 is disposed of with a direction to the insurer, i.e. National Insurance Company Ltd. – Appellant in MACA No.847 of 2017 to deposit total compensation of Rs.34,98,000/- (thirty-four lakhs ninety-eight thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 27th January, 2014 within a period of three months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion as directed in the impugned judgment.

13. However, as stated earlier the insurer is at liberty to recover the compensation amount from the owner of the offending vehicle – Respondent No.5 in MACA No.847 of 2017 in accordance with law and after affording opportunity of hearing.

14. The statutory deposit made by the insurer in MACA No.847 of 2017 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.

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

(B.P. Routray)
Judge

M.K.Panda

