

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.63 of 2017, 448 of 2017 & 449 of 2017

(From the judgment dated 18th October, 2016 passed by learned 3rd M.A.C.T., Cuttack in M.A.C. Case No.283 of 2010 (62/2012) and M.A.C. Case No.615 of 2010)

In MACA No.63 of 2017

Smt. Ahalya Nayak and another *Appellants*
-versus-

Mr. Dillip Kumar Sahoo and others *Respondents*

Advocate(s) appeared in this case:-

For Appellants : Mr. B.N. Rath, Advocate

For Respondents : Mr. S. Satapathy, Advocate
For Respondent No.2

In MACA No.448 of 2017

*The Divisional Manager,
M/s.Oriental Insurance Company
Ltd.* *Appellant*

-versus-

Smt. Ahalya Nayak and others *Respondents*

Advocate(s) appeared in this case:-

For Appellant : Mr. S. Satapathy, Advocate

For Respondents : Mr. B.N. Rath, Advocate
For Respondent Nos.1 & 2

In MACA No.449 of 2017

***The Divisional Manager,
M/s.Oriental Insurance Company
Ltd.***

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Appellant

-versus-

***Kailash Chandra Mahanta and
others***

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. S. Satapathy, Advocate

For Respondents : Mr. B. Singh, Advocate
For Respondent Nos.1 to 5

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
27th July, 2022

B.P. Routray, J.

1. All the three appeals being arise out of the same judgment dated 18.10.2016 of the learned 3rd MACT, Cuttack are heard together and disposed of by this common judgment.

2. Heard Mr. S. Satapathy, learned counsel for the Insurance Company, Mr. B.N. Rath, learned counsel for the claimants, namely, Ahalya Nayak and her children and Mr. B. Singh, learned counsel for the parents of the deceased.

3. It needs to be mentioned here that before the learned Tribunal, two claim applications were filed. The wife of the deceased, namely, Ahalya Nayak along with her minor daughter, namely, Liza Mohanta filed M.A.C. Case No.615 of 2010 and the parents along with brother and sisters of the deceased filed M.A.C. Case No.283 of 2010. Learned Tribunal clubbed up both the claim applications and directed for compensation in respect of the wife, minor daughter and mother of the deceased only.

4. Compensations granted in respect of the wife and minor daughter of the deceased as well as the mother are challenged by the Insurance Company in MACA No.448 of 2017 and MACA No.449 of 2017 respectively. MACA No.63 of 2017 has been filed by the wife and minor daughter of the deceased praying for enhancement of the compensation.

5. Learned Tribunal in the impugned judgment directed for payment of total compensation of Rs.34,85,000/- with further direction that Rs.30,00,000/- be granted in favour of the wife and minor daughter of the deceased and Rs.4,85,000/- be granted in favour of the mother of the deceased.

6. Mr. S. Satapathy, learned counsel for the Insurance Company while pursuing his appeals submits that the monthly income of the deceased has been taken at higher side to the tune of Rs.25,000/- per month resulting higher compensation. As per him, accepting the contention that the deceased as a diploma engineer, his salary should not be counted more than Rs.12,000/-. But the learned Tribunal without any valid evidence, assessed a sum at Rs.25,000/- per month.

7. On the other hand, Mr. B.N. Rath, learned counsel for the claimants-wife and minor daughter of the deceased submits that while calculating the multiplier, the age of the deceased has been erroneously taken at 28 years instead of 24 years 6 months as per his HSC Certificate and Pan Card. Resultantly the Tribunal applied multiplier '17' instead of multiplier '18'. He further adds that no future prospects have been granted.

8. Considering the submissions made by all the parties and upon perusal of the impugned judgment, it reveals from the discussions made under Issue No.2 that based on the evidence of P.W.2, the alleged power of attorney holder of M/s. Sidhartha Construction and

Trading Pvt. Ltd., the Tribunal came to the conclusion about the income of the deceased at Rs.25,000/- per month as salary from his service. A close scrutiny of the statement of the said witness elicited during his cross-examination does not satisfy his credibility as the power of attorney holder of the company being its Manager. It is for the reason that no original power of attorney deed was filed and secondly, no document about existence of such private company, namely, M/s. Sidhartha Construction and Trading Pvt. Ltd. was adduced in evidence. Therefore, what is stated by P.W.2 that the deceased was earning Rs.25,000/- per month as an employee of the said organization cannot be completely believed. At the same time, considering the undisputed qualification of the deceased that he was a diploma engineer, his income can be assessed at Rs.15,000/- per month by guess work considering the prevalent monthly salary of a diploma engineer in case of employment under established institutions. Further, the age of the deceased as per the HSC certificate being not disputed, the multiplier is taken as '18' against the finding of the Tribunal. Adding 40% towards future prospects and consortium in favour of the wife, mother and minor child, the total compensation is computed to

Rs.30,06,000/-. Learned counsels present for respective parties agree to such computation of compensation.

9. Out of the aforesaid amount, a sum of Rs.4,50,000/- be given to the mother of the deceased, namely, Kausalya Mahanta, as agreed by Mr. Singh and Mr. Rath, learned counsels. Rest amount be granted to the wife, namely, Ahalya Nayak and minor daughter, Liza Mohanta.

10. The Insurance Company, i.e., M/s.Oriental Insurance Co. Ltd. is directed to deposit the entire amount along with interest @6% per annum on the same from the date of filing of the claim application, i.e.07.09.2010 (taken a uniform date in respect of both the claim applications) within a period of two months before the learned Tribunal by properly apportioning the amount in respect of Ahalya Nayak and Liza Mohanta on one part and Kausalya Mohanta on the other part.

11. Out of the amount fall to the share of Ahalya Nayak and Liza Mohanta, an amount of Rs.20,00,000/- be kept in fixed deposit in the name of Liza Mohanta (minor daughter) till she attains majority and 60% of the rest amount shall be kept in fixed deposit in the name of Ahalya Nayak for a period of five (5) years in any nationalized Bank.

50% out of the amount fall to the share of Kausalya Mohanta (mother of the deceased) shall be kept in fixed deposit for a period of five (5) years in any nationalized Bank.

12. 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 Nos.448 & 449 of 2017 before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

13. All the three appeals are disposed of in terms of the above directions and observations.

(B.P. Routray)
Judge

B.K. Barik/Secretary