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IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No. 538 of 2017

From the judgment dated 21.12.2016 passed by the learned 3rd M.A.C.T., Talcher in MAC Case No. 83 of 2015.

The Divisional Manager, The Oriental Appellant
Insurance Co. Ltd.

-versus-

1. Gangotree Sahoo
2. Rangei Sahoo
3. Hansika Priyadarshini Sahoo
4. Manoharlal Agrawalla Respondents

For Appellant : Mr. G.P. Dutta, Advocate

For Respondents : Mr. P.K. Nayak, Advocate
For Respondents No.1 to 3

CORAM:

JUSTICE SAVITRI RATHO

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Date of Judgment : 04.02.2022
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Savitri Ratho, J I have heard Mr. G.P. Dutta, learned counsel for the appellant and Mr. P.K. Nayak learned counsel for the respondents through hybrid mode and video conferencing mode due to COVID-19 Pandemic.

2. This appeal is preferred by the appellant-Divisional Manager, Oriental Insurance Company Ltd. challenging the *MACA No. 538 of 2017*

judgment dated 21.12.2016 passed by the learned 3rd M.A.C.T., Talcher in MAC Case No.83 of 2015, wherein the Tribunal awarded compensation of Rs.1,08,01,856/- (Rupees one crore eight lakhs one thousand eight hundred and fifty six only) and directed the Insurance Company to pay the entire compensation amount along with interest @ 7.5% per annum from 10.11.2015, i.e., the date of filing of the claim application along with the cost, till the realization is made to the claimants-respondents no.1 to 3.

3. The respondents no.1 to 3 as legal heirs (his wife, mother and minor daughter respectively) of the deceased Muna Kumar Sahoo had filed the claim petition claiming Rs.1,20,00,000/- (Rupees One crore and twenty lakhs only) as compensation on account of his death of in a motor vehicle accident on 03.11.2015.

The case of the claimants in brief was that the deceased, namely, Muna Kumar Sahoo was working as Operator, Grade-I in NALCO at Angul. On 03.11.2015 at about 2.30 P.M., the deceased was going to Manapur with one Saroj Kumar Behera in a motor cycle bearing Registration No.OR-19-K-2748. In front of Brahmanidevi Pitha near village Kulad on the N.H.55, the offending truck driven by the negligent driver bearing Registration No.OD-17-2798 came in a high speed with negligent manner from behind the

motor cycle and dashed against the deceased. As a result of which, the deceased was thrown away on the road side and sustained multiple bleeding and grievous fracture injuries on his head and died on the spot. The deceased was a permanent employee of NALCO and at the time of his death was earning Rs.62,000/- per month. The claimants had spent Rs.50,000/- towards his funeral and they were also to be compensated towards loss of love and affection, towards pain and suffering, loss of consortium, loss of estate and loss of future income.

4. Respondent No.4, the owner of the truck was set ex parte as he did not appear.

The Appellant Insurance company filed written statement denying the manner of accident and challenged the maintainability of the claim petition for non joinder and mis joinder of parties and prayed that the owner should produce the driving licence, original insurance policy and claimed violation of original policy condition.

5. The claimants examined three witnesses - Gangotri Sahoo wife of the deceased as P.W.1, Sarbeswar Sahoo eye witnesses to the accident as P.W.2 and one Binod Kumar Pradhan, Manager (Finance) Smelter, NALCO, Angul as P.W.3. Seventeen

documents were marked as exhibits on their behalf. Ext 1 is the certified copy of the FIR, Ext.2 is the certified copy of the chargesheet, Ext.3 is the certified copy of the P.M. report, Ext.4 is the certified copy of the inquest report, Ext.5 is the certified copy of the injury report, Ext.6 is the certified copy of the zimanama, Ext.7 is the original death certificate, Ext.8 is the legal heir certificate, Ext.9 is the medical card of NALCO , Ext.10 is the Voter I Card of Muna Kumar sahuo, Ext.11 is the NALCO employee I Card, Ext.12 is the servicer certificate issued by NALCO, Ext.13 is the SCTE &VT, Ext.14 is the HSC certificate, Exts.15 to 17 are salary slips issued by NALCO to the deceased.

6. No witness was examined by the Opposite Parties nor any exhibits marked on their behalf.

7. That the learned Tribunal framed six issues and found that the accident took place on 03.11.2015 at about 2.30 pm on NH 55 due to the rash and negligent driving of the truck bearing registration number OD-17-2798 and as a result of the accident, Muna Kumar Sahoo died. On the date of accident, the driver had a valid driving licence and the vehicle was covered by a valid insurance policy. The legal heirs of the deceased were entitled to receive compensation on account of his death. As decided in the

case of **Sarala Verma vs. DTC and another : (2009) 43 OCR (S.C.) 349** , three facts are to be established for assessing the compensation – age of the deceased, his income and the number of dependants. To arrive at loss of dependency, the Tribunal has to deduct the personal expenses of the deceased and apply the correct multiplier with reference to the age of the deceased. Relying on the HSC certificate age of the deceased was found to be 31 years and multiplier of 16 was selected was to be applied to ascertain loss of income. Relying on the pay slips for the month of August 2015, September 2015 and October 2015 which came to Rs 1,98,517/- (Rs 54,187/- + Rs 51,422/- + Rs 92,908/-), the average salary per month was taken to be Rs 66,172/- Future prospects was calculated at the rate of 50% to be Rs 33,086/- per month. Taking the monthly income at Rs 99,258/- and annual income to be Rs 11,91,096/- and total tax of Rs 1,87,797/- was deducted from it bringing the annual income to be Rs 10,03,299/- . From this amount, 1/3 was deducted towards personal expenses (Rs 10,03,299/- - Rs 3,34,433/- = Rs 6,68,866/-) and multiplier of 16 was applied arriving at the amount of Rs.1,07,01,856/-. After adding Rs.1,00,000/- towards loss of love and affection , loss of estate and funeral expenses and transportation of dead body the total compensation amount came to Rs.1,08,01,856/- which the learned Tribunal directed the Appellant

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Insurance Company to pay alongwith interest at the rate of 7.5% per annum with effect from 10.11.2015 i.e the date of filing the claim application, within one month from date of receipt of the order.

8. Learned counsel for the appellant-Insurance Company has challenged the impugned judgment primarily on the following grounds:

i) The finding of the learned tribunal that monthly income of the deceased was Rs 66,172/- per month is perverse as non admissible items like puja bonus , allowances ,amount paid towards professional tax have been included , while calculating the average monthly salary.

ii) Under the “Nalco Employees Family Financial Assistance Rehabilitation Assistance Scheme” (in short the “Scheme”), one of the legal heirs of the deceased is liable to get the basic pay plus DA prevailing at the time of the death of the deceased employee till his original date of superannuation and his widow Respondent No.1 is in fact getting the said amount. This amount should have been deducted while deciding the quantum of compensation.

iii) If the amount being paid to the wife of the deceased every month under the scheme is not deducted from the total compensation then no amount should be awarded towards future prospects as that would result in unjust enrichment and would not be just compensation, as has been decided by the Supreme Court in a catena of decisions .

iv) Award of interest at the rate of 7.5% per annum on the ground that the case dragged on for years due to fault of the Insurance Company is not supported by materials on record and is therefore liable for interference and the rate of interest cannot exceed 6% per annum for which the impugned order is liable for interference.

v) The multiplier should be reduced to 14 as otherwise the compensation amount may become a “bonanza” instead of “just” ..

9. Mr. P.K Nayak, learned counsel appearing on behalf of the claimants – respondents No 1 to 3 has submitted that the amount of compensation does not warrant any interference as the same has been rightly calculated by the learned Tribunal keeping in mind the settled position of law. He has submitted that the amount being paid to the wife of the deceased every month is under the scheme. As all terminal benefits payable to them on the death of the deceased have

been deposited with the employer, she is getting paid a monthly compensation and on the normal date of superannuation of her deceased husband, this monthly payment under the Scheme would cease and the amount deposited with the employer – Company under the Scheme would be refunded to his legal heirs and they are not entitled to any interest on this deposited amount. As per decision of the Supreme Court in the case of ***Sebastiani Lakra and others vs. National Insurance Company Ltd. and another*** reported in ***AIR 2018 S.C. 5034***, where the deceased was an employee of SAIL/ Rourkela Steel Plant and was covered under a similar scheme and on his death due to a motor vehicle accident, such amount cannot be deducted while calculating the amount of compensation payable to the legal heirs. He has further submitted that the age of the deceased at the time of his death was 31 years and as the deceased was in a stable job at the time of his death relying on the decision of ***National Insurance Company vs. Pranay Sethi and others*** reported in ***AIR 2017 (4) TAC 673 : (2017) 16 SCC 680***, the claimants are entitled to future prospects to the extent of 50% and therefore the amount awarded towards future prospects does not call for any interference.

10. The photostat copies of the depositions of the witnesses, the relevant exhibits and the “Nalco Employees ‘Family
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Financial Assistance Rehabilitation Assistance Scheme” (in short the “Scheme”) has been produced by the learned counsel for the Appellant and is tagged to the record. I have carefully perused the depositions and the Scheme.

11. As regards the first contention of the appellant pertaining to incorrect determination of salary of the deceased at the time of his death for the purpose of calculating the compensation, the learned counsel for the appellant has submitted that for assessment of the compensation, net income/salary should be considered. Relying upon the decision of the Supreme court in the case of *State of Haryana and another vs. Jasbir Kaur and others* reported in *2003 (3) TAC 569: (2003) 7 SCC 484* submits that the learned Tribunal committed error while assessing the compensation. Placing reliance upon the cross examination of P.W.3, he has submitted that the learned Tribunal committed error in holding the monthly income of the deceased. for the month of October, 2015 to be Rs 92,908/- when Ext.17 reveals that for the said month, the deceased had received Rs 37,500/- towards Puja bonus. Puja bonus obviously cannot be taken to be part of the salary.

On perusal of the copy of Ext.15, it is seen that for the month of August 2015, the deceased had gross earnings of Rs.54,187/- and after deducting professional tax, other allowances which

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are not part of the salary, the net income is arrived at Rs.48,787/-.

Ext.16 is copy of the pay slip of the deceased for the month of September, 2015, and reveals that the deceased had a gross income of Rs.51,422/- and after deducting professional tax and other allowances which are part of the salary, the net income comes to Rs 46,111/-. From the contents of the copy of Ext.17 which is the pay slip of the deceased for the month of October, 2015, it appears that the deceased had a gross income of Rs 92,908/- which includes puja bonus of Rs 37,500/-. After deducting puja bonus and contribution towards professional tax and the other allowances which are not part of salary, the net income comes to Rs 50,604/-. Therefore keeping in view the income of the deceased for the last three months prior to his death, (Rs 48,787/- + Rs 46,111/- + Rs 50,604/- = Rs 1,45,502/-) the average monthly income comes to Rs 1,45,502/- - Rs.97,002/- = **Rs.48,500/-** and not Rs 66,172/-. As puja bonus and contribution towards professional tax and other allowances cannot be taken to be part of the income for the purpose of calculation of loss of income, his monthly income is taken to be Rs 48, 500/- per month .

12. The second contention of the learned counsel for the appellant relying upon the decision of Supreme Court in **Reliance**

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reported in reported in AIR 2016 SC 4465 : 2016 (4) TAC 149 and the evidence of P.W.3 was that that since the wife of the deceased is getting the basic pay plus D.A. prevailing on the date of death of the deceased and will continue to do so till the original date of his superannuation under the Scheme, the said amount is to be deducted while calculating the compensation.

In the case of **Sebastiani Lakra** (supra), decision in Shashi Sharma has been distinguished and the Supreme Court has held as follows:

“..12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to ‘just compensation’ under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural

corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on

account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. *As held by the House of Lords in **Perry v. Cleaver** the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.*

16. *Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.*

17. *The issue before us is whether we should deduct the amount being received by the family members under the EFB Scheme while calculating the loss of income.*

18. *The EFB Scheme is totally different from the rules which were under consideration of this Court in **Shashi Sharma** case (supra). Under this Scheme, the nominee or legal heir(s) of the deceased employee have to deposit the entire amount of gratuity and all other benefits payable to them on the death of the employee.*

19. *In the present case, it stands proved that the claimants have deposited a sum of Rs.27,43,991/ received by them on the death of the deceased with the employer and are now getting about Rs.50,082/ per month. This amount of Rs.50,082/ is to be paid to the legal heirs under the EFB Scheme only till date of retirement of the deceased. Even if an interest @ of 12% per annum is calculated on the amount of Rs.27,43,991/, that would amount to Rs.3,30,000/ per year or Rs.27,500/ per month. The appellants claimants are getting about Rs.50,000/ per month i.e. about Rs.22,500/ per month more, but this is only to be paid for a period of about 7 years till 30.04.2021. This payment will cease thereafter.*

20. *The aforesaid payment is totally different to the payment made by the employer in **Shashi Sharma** case (supra) which was statutory in nature. Therefore, we hold that this amount cannot be deducted.*

21. *However, since the claimants are getting quite an advantage, we feel that the MACT was right in not taking into consideration the future prospects in the peculiar facts and circumstances of the case. Therefore, though we are not inclined to deduct the amount payable to the claimants, we feel that in the peculiar facts and circumstances of the case, they are not entitled to claim another amount @ of 15% by way of future prospects. The payment of the amount under the EFB Scheme more than offsets the loss of future prospects. This, in our opinion, would be 'just' compensation...."*

The relevant clauses of the scheme under which the wife of the deceased is getting paid an amount every month are reproduced below:

“6.0 BENEFIT:

On separation of an employee from the service of the Company due to death/Permanent Total Disablement, nominees/employee has to deposit with the Company an amount equivalent to the entire amount of notional PF, Gratuity, Group Insurance and Company's contribution under Benevolent Fund Scheme. The employee/nominee will be entitled to monthly fixed compensation worked out based on his Salary (Basic Pay + DA) last drawn and it shall continue till the normal date on which the employee concerned would have attained the age of superannuation, had he been in the

services of the Company (Basic Pay will not include Personal Pay, Special Pay, Special Personal Pay, Stagnation Increment, Non-Practising Allowance etc., if any). Further, on death/separation due to permanent total disablement during the period when salary revision is due then the fixed monthly compensation would be revised based on the revised pay scales from the month following the month of deposit of requisite additional amount of PF, Gratuity, Group Insurance, Death Benevolent Fund, as the case may be.

- i) Employees who have effected temporary/permanent withdrawals from P.F.,
AND/OR
- ii) Who may like to retain part of such funds to meet their family commitments, the monthly payment in the above cases will be reduced in the same proportion, which the shortfall in contributions/ deposit at the time of death of an employee bears to the total Gratuity, Group Insurance, Company's contribution under Benevolent Fund Scheme and notional P.F. and in case of permanent total disablement the monthly payment will be reduced in the same proportion which the shortfall in contributions/ deposit at the time of separation bears to the total of gratuity and notional PF which would have accrued had the withdrawal not been made.

For example:

i)	Gratuity amount due	Rs.2,00,000/-
ii)	Notional P.F.	Rs.2,00,000/-
iii)	Group Insurance	Rs 62,000/-

iv)	Company's contribution under Benevolent Fund Scheme	<u>Rs. 1,30,000/-</u>
	Total :	Rs.5,92,000/-
v)	Total contribution/deposit	Rs.5,42,000/-
vi)	Amount of monthly payment as a Percentage of last drawn salary (Basic + DA)	$\frac{\text{Rs.5,42,000} \times 100}{\text{Rs.5,92,000}} = 91.55\%$

The amount would be payable w.e.f. month following the month at which the amount as at Para-7.0 are deposited with the Company.

6.1 xxxxx

6.2 xxxx

6.3 xxxx

7. **DEPOSIT OF AMOUNT:**

(Equivalent to PF, Gratuity, Group Insurance and Company's contribution under Benevolent Fund Scheme)

i) **Cases of Death /Permanent Total Disablement after the Scheme comes into force:**

In case of death the beneficiary shall deposit an amount equivalent to the PF balance, Gratuity, Group Insurance and Company's contribution under Benevolent Fund Scheme and in case of permanent total disablement the employee shall deposit an amount equivalent to the PF balance and gratuity. The deposit shall be made with the Company within seven days of settlement of the respective dues and all dues are to be deposited within a maximum period of 90 days from the death or separation on permanent total disablement to derive the benefit from the month following the date of death/separation due to Permanent Total Disablement.

ii) xxxx

9.0 TERMINATION OF BENEFIT:

i) On the normal date of superannuation of the separated employee, the monthly payments under this Scheme would cease and the amount deposited with the Company under this Scheme would be refunded to the employees or his/her nominee, as the case may be. Under the Scheme, no interest on the amount deposited will be admissible for the period of deposit.

ii) If the employee / nominee desires to permanently withdraw the P.F., Gratuity, Group Insurance and Company's contribution under Benevolent Fund Scheme deposited with the Company under the Scheme at any point of time, he/she will be allowed to do so. In such cases, the employee/nominee would cease to receive the benefit from the date of such withdrawal, under the Scheme. (Partial withdrawal of the P.F., Gratuity, Group Insurance and Company's contribution under Benevolent Fund Scheme deposited with the Company would be allowed once and accordingly the monthly payment will be reduced proportionately.

10.0 CONDITIONS:

10.1 the Scheme is voluntary .

10.2 xxxx

10.3 xxxx

10.4 xxxx

10.5 xxxx”

From the above provisions , it is apparent that the scheme is voluntary and in the manner of a contract and if the nominee or legal heir(s) of the deceased employee deposit the entire amount of notional PF, Gratuity, Group Insurance and Company’s contribution under Benevolent Fund Scheme, he/she will be entitled to monthly fixed compensation worked out based on the employee’s basic salary (basic pay + DA) last drawn and it shall continue till the normal date on which the employee would have attained the age of superannuation, had he been in service. Therefore, the second contention of the learned counsel for the appellant has no teeth to stand on and his plea that the amount which is being paid per month to the wife of the deceased by NALCO under the scheme is to be deducted while calculating the loss of income is rejected.

13. Relying on the decision of the Supreme Court in the case of ***Sebastiani Lakra*** (supra), learned counsel for the appellant has contended that the claimants are not entitled to award of extra amount towards future prospects , while the learned counsel for the claimants has submitted that the observations in the said case will not be attracted as the deceased in that case was aged about 52 years

while in the present case , the age of the deceased was 31 years at the time of his death .

In the case of **Pranay Sethi** (supra), the Supreme Court while answering the reference has held as follows:-

*“60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. **Sarla Verma** thinks it appropriate not to add any amount and the same has been approved in **Reshma Kumari**. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in **Santosh Devi** should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in **Sarla Verma**, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As **Rajesh** has not taken note of the decision in **Reshma Kumari**, which was delivered at earlier point of time, the decision in **Rajesh** is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary

method of computation. The established income means the income minus the tax component.

*(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of **Sarla Verma** which we have reproduced hereinbefore.*

*(vi) The selection of multiplier shall be as indicated in the Table in **Sarla Verma** read with paragraph 42 of that judgment.*

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

62. The reference is answered accordingly. Matters be placed before the appropriate Bench”

In the case of **Sebastiani Lakra** (supra) the Supreme Court while considering the compensation to be awarded towards future prospects where one of the legal heirs was getting paid every month by the employer of the deceased under a similar scheme , has held as follows:

“...21. However, since the claimants are getting quite an advantage, we feel that the MACT was right in not taking into consideration the future prospects in the peculiar facts and circumstances of the case. Therefore, though we are not inclined to deduct the amount payable to the claimants, we feel that in the peculiar facts and circumstances of the case, they are not entitled to claim another amount @ of 15% by way of future prospects. The payment of the amount under the EFB Scheme more than offsets the loss of future prospects. This, in our opinion, would be ‘just’ compensation.

As the wife of the deceased is being paid every month under the scheme of the employer-company, there was no necessity to award any amount towards loss of future prospects. The learned tribunal has awarded 50% towards loss of future prospects, which is set aside as would amount to giving a “bonanza” to the claimants . At the same time , the circumstances of the claimants have to be kept in mind to ensure that the compensation is “just” . Therefore , keeping in view the age of the deceased at the time of his death, and the fact that his legal heirs are his wife, mother and minor daughter, I feel that the compensation would be “just” if loss of future prospects is calculated at the rate of 15% instead of totally depriving the claimants of the benefits of future prospects

merely because she has opted for benefit of the scheme and is being paid a fixed amount every month .

14. The learned counsel for the appellants has submitted that award of interest at the rate of 7.5 % per annum on the ground that the case dragged on for years due to fault of the Insurance Company is erroneous and illegal and not supported by materials on record and if interest is to be awarded, keeping in mind the prevailing rate of bank interest, the rate of interest cannot exceed 6% per annum. The learned counsel for the claimants has submitted that the claimants are entitled to payment of interest, but has not made any objection to the suggestion of the Court for reduction of the rate to 7% from the date of application. I therefore feel that it would be proper in the facts and circumstances of the case to reduce the rate of interest to 7% from 7.5% per annum.

15. The contention of the learned counsel for the appellant to reduce the multiplier to 14 in place of 16 is rejected in view of the fact that instead of addition 50% towards future prospects , the same has been calculated at the rate of 15 %.

CALCULATION

16. The monthly income of the deceased is taken to be Rs 48,500/-. To this if future prospects at the rate of 15% is

added, the amount comes to Rs 48,500 + (48,500 x 15/100) = Rs 48500 + Rs 7275/- = Rs 55,775/-. The annual income then comes to Rs 55,775/- x 12 = Rs 6,69,300/-. As this comes within taxable range, income tax of Rs 70,000/- approximately will be payable. If this amount is deducted from the amount of Rs 6,69,300/-, towards income tax, the annual income comes to Rs 5,99,300/-. After deducting 1/3 towards personal expenses, (Rs 5,99,300/- - Rs 199,766.66) the amount comes to Rs 3,99,533.33/- which is rounded to Rs 3,99,600/- (Rupees three lakhs ninety nine thousand six hundred only). If multiplier of 16 is applied, the amount comes to Rs.63,93,600/-. As per the decision in **Pranay Sethi** (supra) if Rs 70,000/- is to be awarded - towards loss of estate (Rs 15,000/-), loss of consortium (Rs 40,000/- and funeral expenses (Rs 15,000/-), the total compensation amount comes to Rs 64,63,600/- rounded to Rs 64,64,000/-. As observed earlier, the claimants shall be entitled to interest @ of 7 % per annum from the date of filing of the petition till the payment of the amount.

17. Having heard the learned counsels for the parties and in view of the aforesaid discussion, the appeal is partly allowed. The compensation amount of Rs.1,08,01,856/- (Rupees one crore eight lakhs one thousand eight hundred fifty six only) is modified to Rs 64,64,000/- (Rupees sixty four lakhs sixty four thousand only).

This amount is to be paid alongwith interest @ 7% per annum from the date of filing of claim application i.e. from 10.11.2015 till realization. The appellant shall deposit the said amount before the Tribunal within three months of receipt of this order. On such deposit being made, the same shall be disbursed proportionately to the claimants in consonance with the award.

18. On the appellant insurance Company furnishing proof of deposit of the modified awarded amount before the learned Tribunal, the statutory amount deposited in this Court alongwith accrued interest if any, shall be permitted to be withdrawn.

19. The MACA is accordingly disposed of.

.....
(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 4th February, 2022 / Sukanta