

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.579 OF 2017

From the Judgment/Order dated 15.04.2007 passed by the learned District Judge –cum- 1st MACT, Nabarangpur in MAC Case No.42/2016.

Magma HDI G.I. Co. Ltd. ::: Appellant

-:: VERSUS ::-

Ghasini Majhi @ Pujari & Ors. ::: Respondents

MACA NO.544 OF 2017

Ghasini Majhi @ Pujari & Ors. ::: Appellants

-:: VERSUS ::-

Dukhishyam Das & Anr. ::: Respondents

Appeared in this case by Video Conferencing Mode / Hybrid

Mode.

**For Appellant ::: Mr. G.P. Dutta, Advocate
(for Company-insurer)**

**For Respondent ::: Mr. D. Mund, Advocate
(for Claimants)**

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PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing- 29.06.2022:: Date of Order- 12.07.2022

B.P.Satapathy, J. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Since common issue is involved in both the appeals and both the appeals have been filed challenging the impugned Judgment dtd.15.04.2007 passed by the learned District Judge – cum-1st MACT, Nabarangpur in MAC Case No.42 of 2016, both the appeals are heard analogously and disposed of by the present common order.

3. Heard Mr. G.P. Dutta, learned counsel appearing for the Company-insurer and Mr. D. Mund, learned counsel appearing on behalf of Claimants in both the cases.

4. While MACA No. 544 of 2017 has been filed by the Claimants seeking enhancement of the compensation amount, MACA No.579 of 2017 has been filed by the Company-insurer challenging the quantum of compensation and the rate of interest allowed by the learned Tribunal.

5. Mr. Mund, learned counsel for the Claimants in support of his prayer for enhancement of the compensation, submitted that learned Tribunal while directing the insurer to pay compensation of Rs.7,00,000/- (Rs. Seven lakhs) with interest @ 7% per annum payable from the date of application till its payment, never take into consideration the minimum wages prevalent in respect of an

unskilled worker i.e.Rs.207/- (Rs. Two hundred seven) per day. Learned Tribunal illegally held the income at Rs.150/- (Rs. One hundred fifty) per day in place of Rs. 207/- (Rs. Two hundred seven). It is also submitted that learned Tribunal while awarding the compensation never awarded any compensation towards future prospect, which should have been assessed at 25%. Mr. Mund accordingly submitted that the award passed by the learned Tribunal directing for payment of compensation amount of Rs.7,00,000/- (Rs. Seven lakhs) is liable for enhancement suitably by this Court.

6. Mr. Dutta, learned counsel for the Company-insurer though on the other hand supported the impugned Judgment, but could not dispute the stand taken by the Claimants with regard to assessment of the monthly income and non-award of compensation towards future prospect. But he submitted that rate of interest allowed @ 7% per annum needs re-consideration.

7. Heard learned counsel appearing for the respective Parties. Perused the materials available on record. After going through the same, this Court finds that even though the prescribed minimum wages of an unskilled labourer was Rs.207/- (Rs. Two hundred seven) per day as on the date of accident, but the learned Tribunal without any reason or basis held the same at Rs.150/- (Rs. One hundred fifty) per day. Learned Tribunal also did not award any compensation towards future prospect basing on the decision of the Hon'ble Apex Court governing the field.

8. In view of such admitted illegality committed by the learned Tribunal, this Court when came to a finding that the Claimants

will be entitled to get compensation amount of Rs.12,60,000/- (Rs. Twelve lakhs sixty thousand) along with interest @ 6% per annum payable from the date of application till its payment. Mr. Mund, learned counsel appearing for the Claimants supported the said view of this Court. Mr. Dutta, learned counsel for the Appellant-Company left the same to the discretion of this Court.

9. In view of such stand taken by the learned counsel appearing for both the Parties, this Court while interfering with the impugned Judgment, held the Claimants entitled to get compensation amount of Rs.12,60,000/- (Rs. Twelve lakhs sixty thousand) with interest @ 6% per annum payable from the date of application till its payment with right of recovery as against the owner-Respondent. This Court accordingly directs the insurer to deposit the aforesaid compensation amount of Rs.12,60,000/- (Rs. Twelve lakhs sixty thousand) with interest @ 6% per annum payable from the date of application till its payment. This Court directs the insurer to deposit the aforesaid amount before the learned Tribunal within a period of eight (8) weeks from the date of receipt of this order.

10. It is directed that on deposit of the amount by the insurer, learned Tribunal shall do well to disburse the same in favour of the Claimants proportionately and in terms of its earlier order passed on 15.04.2017. Since it is submitted that during pendency of the appeal, one of the Claimant i.e. Claimant-Respondent No. 5 has died and all the Claimants are on record, the share of the said Claimant be released proportionately in favour of the other Claimants.

11. It is however observed that if the insurer will fail to deposit the amount within the time indicated hereinabove, Claimants will be entitled to get interest on the compensation amount of Rs.12,60,000/- (Rs. Twelve lakhs sixty thousand) with interest @ 7% per annum for the period starting from the expiry of the period of eight (8) weeks till its payment.

12. It is further observed that since this Court is allowing right of recovery as against the owner-Respondent, it is observed that if any such application for recovery is moved by the insurer, learned Tribunal shall proceed with the same strictly in accordance with law and by giving reasonable opportunity of hearing to the owner-Respondent.

13. It is however observed that only after deposit of the awarded amount so directed by this Court, the Company-insurer will be permitted to take refund of the statutory deposit along with accrued interest from the Registry of this Court on the proper identification.

14. The appeal is disposed of in terms of the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 12th July, 2022/Sneha