

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.600 of 2017

The Divisional Manager, Oriental Insurance Company Limited ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Rasmita Sahu and others ***Respondents***

Mr. P.C. Pattanaik, Advocate for Respondent Nos.1 to 5

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
10.11.2022

Order No.

07.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. P.C. Pattanaik, learned counsel for the Respondent Nos.1 to 5-claimants.

2. Present appeal by the insurer is directed against the judgment dated 03.03.2017 of learned M.A.C.T., Kandhamal, Phulbani in M.A.C. No.45 of 2015, wherein compensation to the tune of Rs.68,00,000/- has been granted along with interest @9% per annum to the claimants from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 06.06.2015.

3. The entire dispute is on the quantum of compensation. As per the submission of Mr. G.P. Dutta, learned counsel for the Appellant-insurer, assessment of monthly income of the deceased at Rs.35,000/- is highly excessive. He accordingly prays to reduce the compensation amount.

4. Upon hearing Mr. Pattanaik, learned counsel for the claimants – Respondent No.1 to 5 and perusal of the impugned judgment, it reveals that the learned Tribunal has assessed the monthly income of the deceased at Rs.35,000/- based on Ext.5, the so-called salary certificate issued by the employer. It needs to be mentioned here that as per the claim application, the deceased was serving as Manager under a Special Class Contractor. Ext.5 is a certificate issued by the said Contractor showing payment of Rs.35,000/- per month to the deceased as remuneration. P.W.3, the authorized representative of the Contractor examined on behalf of the claimants, is not the author of the certificate under Ext.5. Neither income tax return showing such amount of expenditure paid to the Manager has been produced by P.W.3 nor any registration certificate regarding contractor license has been filed. It is further seen from the cross-examination of P.W.1, the wife of the deceased, that, the deceased had read up-to +2. Thus the assessment of the learned Tribunal solely based on Ext.5 to fix the income of the deceased to Rs.35,000/- is found completely erroneous. In the circumstances and in absence of any credible document, keeping in view the place of residence and place of work of the deceased, in the opinion of this Court, a sum of Rs.15,000/- would be appropriate towards monthly income of the deceased.

5. The deceased was aged about 40 years as per the post mortem report. Thus adding 40% towards future prospects, the annual income of the deceased comes to Rs.2,52,000/-. After deducting $\frac{1}{4}$ th from the same and applying multiplier '15', the total loss of dependency comes to Rs.28,35,000/-. Adding Rs.1,20,000/-

thereto towards consortium for the wife and two children and general damages of Rs.30,000/-, it becomes to Rs.29,85,000/-. Accordingly, the total amount of compensation is determined at Rs.29,85,000/-.

6. In the result, the Appellant – Insurance Company is directed to deposit the compensation amount of Rs.29,85,000/- (rupees twenty-nine lakhs eighty-five thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

7. 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 before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

8. The MACA is disposed of with aforesaid directions.

9. The certified copies of the documents and depositions filed by the parties in course of hearing are kept on record.

10. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge