IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.968 of 2017

M/s.Bajaj Allianz General Insurance Company Limited .... ***Appellant***

Mr.G.P.Dutta, Advocate

-versus-

Rupalata Sahoo and others .... ***Respondents***

Mr.Debasish Patnaik, Advocate for Respondent Nos. 1 to 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
8.2.2022

Order No.	
7.	1. Heard Mr.Dutta, learned counsel for the Appellant and Mr.Pattnaik, learned counsel for Respondent Nos.1 to 3.

2. The Insurer in the present appeal has challenged the judgment/award dated 28th July, 2017 passed by learned 3rd M.A.C.T., Jagatsinghpur in M.A.C.No.06 of 2012, wherein the Tribunal has directed for payment of compensation to the tune of Rs.14,90,000/- along with interest @7% per annum with effect from the date of filing of the claim application i.e., 18th January, 2012 on account of the death of the deceased in the motor vehicular accident dated 24th June, 2011.

3. The case of the claimants is that, the deceased, who was a businessman having his shop namely 'Jaya Guru shop' at Jholasahi, Cuttack while returning on the date of accident in his motorcycle, the offending truck dashed him from behind causing the injuries resulting his death.

4. Mr.Dutta, learned counsel for the Appellant submits that in the F.I.R. as well as the inquest report, though no

registration No. of the vehicle was mentioned by the so-called eyewitness i.e., P.W.2, but subsequently the present vehicle was planted to make a valid claim for compensation. It is also submitted that the learned Tribunal has wrongly assessed the monthly income of the deceased at Rs.12,000/- in absence of any documentary proof. A further submission is made to the effect that since the shop of the deceased continued to operate even after death of the deceased, there cannot be total loss of income on account of death of the deceased to his dependants.

5. Conversely, Mr.Pattnaik, learned counsel for the claimants supports the impugned judgment.

6. Upon hearing both parties, it reveals from the impugned judgment that under Issue Nos.2 & 3, the learned Tribunal has dealt with the involvement of the offending vehicle in the accident. It is seen that P.W.2 was the eyewitness and all the police papers including copy of the F.I.R., chargsheet etc. have been relied upon by the claimants to prove involvement of the offending vehicle in the accident resulting death of the deceased. P.W.2 has described himself as the eyewitness to the accident and categorically said involvement of the offending vehicle in the accident. For the reason of some discrepancy in the statement of P.W.2 regarding non-mention of the registration number of the offending vehicle at the first instance, his entire evidence cannot be discarded as untrustworthy. The learned Tribunal has discussed in detail the evidence of said P.W.2 vis-à-vis the police papers filed on behalf of the claimants to conclude the involvement of the vehicle in question in the accident. Thus,

no irregularity or illegality is seen to disturb said finding of the learned Tribunal.

7. Next coming to the quantum of compensation, it is seen that the claimants in support of the same has adduced oral evidence of the widow i.e. P.W.1 and filed Saral Forms for the assessment year 2004-05 & 2005-06 and the I.T. return for the financial year 2011-12. Apart from that, registration certificate of the dealership of the shop by the Sales Tax Authority has also been filed under Ext.10. Admittedly all such documents do not disclose the exact income and expenditure of the shop. In other words those documents do not disclose any specific income of the deceased. In such situation the learned Tribunal has taken the income of the deceased at Rs.12,000/- per month.

8. It is true that the ownership of the shop namely Jaya Guru Shop is not disputed by the Insurer-Appellant. As per evidence of P.W.1–the widow, the deceased was earning Rs.15,000/- per month after paying the salary of the staff of the shop. The accounts of profit, loss or expenditure was not produced by the claimants. In such view of the matter, it is really difficult to get the exact income of the deceased. As it appears, the Tribunal has dealt some guess work to determine the income of the deceased at Rs.12,000/- per month. It is also noticed from the cross-examination of P.W.1 that she has admitted to have not filed the original pan card, TIN or SRIN card issued by the Sale Tax Authority. The documents also do not reveal anything if the shop was in fact closed after the death of the deceased or still continued in operation. In such situation, considering the fact that the deceased was running the shop as its' owner, which was a

readymade garment shop, without getting into further details of the income, the amount of compensation is reduced to Rs.12,75,000/- (Twelve lakhs seventy five thousand). This is agreed by the learned counsel for the claimants – Respondents and learned counsel for insurer – appellant leaves to the discretion of the court.

9. Accordingly, the Appellant-Insurer is directed to deposit the compensation amount of Rs.12,75,000/- along with interest @ 6% per annum from the date of filing of the claim application i.e., 18th January, 2012 within a period of two months from today, where-after the same shall be disbursed to the claimants on the same terms and conditions as directed by the Tribunal in the impugned judgment.

10. Copy of depositions of the witnesses as filed by Mr.Dutta are kept on record.

11. With the aforesaid modification in the amount, the appeal is disposed of.

12. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

13. Urgent certified copy of the order be granted on proper application.

(B.P. Routray)
Judge

CRBiswal