

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1019 of 2017

National Insurance Co. Ltd. ***Appellant***

Mr. P. Sinha, Advocate

-versus-

Santosh Kumar Senapati and another ***Respondents***

Mr. M.K. Dash, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

28.10.2022

Order No.

08.

1. Heard Mr. P. Sinha, learned counsel for the Appellant-Insurance Company and Mr. M.K. Dash, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against judgment dated 11.05.2017 of learned 4th M.A.C.T., Cuttack in M.A.C. No.673 of 2012 (299 of 2014) wherein compensation to the tune of Rs.2,84,000/- has been granted along with simple interest @6% per annum to the claimant from the date of filing of the claim application, i.e. 01.10.2012 on account of death of the deceased in the motor vehicular accident dated 16.08.2012.

3. Mr.P. Sinha, learned counsel for the insurer submits that first of all the claimant being the nephew of the deceased is not a dependant and not entitled for compensation. Secondly, the death of the deceased in the alleged accident is doubtful.

4. As per the case of the claimant, the deceased-Dutika Senapati was unmarried and the claimant is the son of her brother. The accident took place on 16.8.2012 and the deceased died on 19.8.2012. The contents of the FIR and evidence of P.W.2, the eye-witness, as well as other documents collected in course of police investigation clearly speak regarding sustenance of injury by the deceased in the accident and her consequent death. No material is there to doubt regarding the same and moreover, the insurer has not adduced any evidence in rebuttal except copy of the insurance policy and driving license. As such, the contention put-forth by Mr. Sinha to suspect death of the deceased in the accident is without any force and rejected.

5. P.W.1, the claimant has clearly stated that the deceased was the only earning member of their family after death of father of the claimant and therefore, it is brought in evidence that the claimant was a dependant on the income of the deceased. In view of the principles decided in the case of *N. Jayasree -vs- Choramandalam General Insurance Company Ltd*, 2021 SCC Online SC 967, the claimant cannot be denied as a dependant of the deceased only for the reason that he is the nephew. As such, no fault is seen in the approach of the learned Tribunal in granting compensation in favour of the claimant.

6. No other ground is seen to interfere with the quantum of compensation as the Tribunal by assessing monthly income at Rs.3000/- has quantified the amount.

7. In the result, the appeal is dismissed and the Appellant – Insurance Company is directed to deposit the entire compensation of Rs.2,84,000/- (rupees two lakhs eighty-four thousand) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e.01.10.2012 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on same terms and proportion as directed by the Tribunal.

8. On deposit of the award amount before the learned Tribunal and upon filing of 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.

9. Copies of depositions of P.W.1 and other exhibits as produced by Mr. Sinha, learned counsel for the Appellant-insurer 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