**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.273 of 2021**

***Oriental Insurance Co. Ltd.*** .... ***Appellant***
Mrs.Prativa Mishra, Advocate

*-versus-*

***Mukhi Nag and others*** .... ***Respondents***
Mr.P.K.Mishra, Advocate for Respondents 1 to 5

**CORAM:**
**JUSTICE B. P. ROUTRAY**

**<u>ORDER</u>**
**21.02.2022**

**<u>Order No.</u>**
03.

1. Heard Mrs. P.Mishra, for the Appellant and Mr. P.K. Mishra, for claimants-Respondents 1 to 5.

2. Present appeal by the Insurer is against the judgment dated 9th June, 2021 of the 2nd Addl. District Judge-cum-3rd MACT, Cuttack in MAC Case No.901 of 2018, wherein compensation to the tune of Rs.13,81,894/- has been granted along with interest @ 7% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident on 24th July, 2018.

3. It is contended on behalf of the Appellant that involvement of the offending vehicle in the accident is suspicious since no registration number was mentioned in the F.I.R. and further, the driver of the motor cycle in which the deceased was travelling as a pillion rider did not have the license nor the deceased had worn

the requisite headgear. Thus, it is contended that contributory negligence should be attributed to the owner of the motorcycle for the cause of the accident.

4. Mr.Mishra, learned counsel for the Claimants in reply submits that police have submitted the charge-sheet against the driver of the offending vehicle upon completion of investigation. Further P.W.2, the alleged eyewitnesses to the accident examined on behalf of the Claimants has categorically stated about involvement of the offending vehicle in the accident which hit the motorcycle from its back. As such, the question of contributory negligence on the part of the driver of the motorcycle does not arise.

5. Having heard the parties and perusal of the impugned judgment it reveals that, P.W.2 is the alleged eyewitness to the accident and he has given a detail account of accident what he had seen at that relevant time when the Bolero (offending vehicle) coming in a rash and negligent manner abruptly dashed from the back side of the motorcycle. It further reveals that the police upon completion of investigation has submitted a charge sheet against the driver of the offending vehicle under Sections 279/337/338/304(A) of the I.P.C. Admittedly no evidence was adduced from the side of the Insurer to rebut such evidence produced on record from the side of the claimant, except Ext.A – the copy of the F.I.R. Therefore the entire contention put forth on behalf of the Appellant with regard to contributory negligence on the part of the driver of the motorcycle is rejected.

6. Regarding quantum of compensation, it is submitted on behalf of the Appellant that the learned Tribunal has erroneously added 40% towards future prospectus though the case of the Claimants is that the deceased is a labourer.

7. The Supreme Court in the case of ***National Insurance Company Ltd. v. Pranay Sethi and Others,*** (2017) 16 SCC 680 have held as follows:

> "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."

8. In view of the proposition of law declared above no merit is seen in the contention of the Appellant to delete future prospects in the present facts of the case. Accordingly, the said contention is rejected.

9. However, upon perusal of the impugned judgment, it is seen that when assessing the monthly income of the deceased based on prescribed minimum wages of the relevant year learned Tribunal has counted 25 working days per month. This ought to have been calculated at thirty days per month without any reduction of working days in cases of daily wage labourers. But in absence of any appeal preferred from the side of the claimants, this Court refrains from entering into the said aspect.

10. In the result, upon analysis of the entire impugned judgment and the contentions raised by the Appellant, no merit is seen in the appeal. The appeal is dismissed.

11. Accordingly, the Appellant-Insurer is directed to deposit the entire compensation amount along with interest as directed by the learned Tribunal in its impugned order 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.

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***

*C.R.Biswal*