

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1118 of 2018

MACA No.1118 & 1184 of 2018

***The Divisional Manager, Oriental
Insurance Company Ltd.,***

(in MACA No.1118/2018)

Jhumpa Chakrabarty and Others

(in MACA No.1184/2018)

.... Appellants

Mr. Subrat Satpathy, Advocate (in MACA No.1118/2018)

Mr. A.K. Otta, Advocate (in MACA No.1184/2018)

-versus-

Jhumpa Chakrabarty and Others

(In MACA No.1118/2018)

Kalu Parida and Another

(In MACA No.1184/2018)

.... Respondents

**Mr. A.K. Otta, counsel for Respondents 1-5
(in MACA No.1118 of 2018)**

**Mr. Subrat Satpathy, counsel for Respondent No.2
(in MACA No.1184 of 2018)**

CORAM:

SHRI JUSTICE B. P. ROUTRAY

**ORDER
14.11.2022**

Order No.

- 07.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. S. Satpathy, learned counsel for the insurer, i.e. Oriental Insurance Company Ltd. and Mr. A.K. Otta, learned counsel for the claimants.
 3. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.

4. It is submitted by the parties that claimant Narmada Sankar Rath, who is Appellant No.2 in MACA No.1184 of 2018 and Respondent No.2 in MACA No.1118 of 2018, died in the meantime on 30th April, 2021 and all other LRs being on record, no substitution is required.

5. Both the appeals are against same impugned judgment dated 19th April, 2018 of learned 1st MACT, Cuttack passed in MAC Case No.713 of 2015, wherein compensation to the tune of Rs.36,05,388/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 30th September, 2015 has been granted on account of death of deceased Rajendra Narayan Rath in the motor vehicular accident dated 28th June, 2015.

6. MACA No.1118 of 2018 has been filed by the insurer challenging the award. MACA No.1184 of 2018 has been preferred by the claimants praying for enhancement of the compensation amount.

7. Mr. Satpathy, learned counsel on behalf of insurer submits that present offending vehicle has been implanted to manage the compensation, though not involved in the accident. He continues to submit that involvement of present offending vehicle, i.e. motor cycle bearing registration number OD 02U 2941 and the accused driver (Kalu Parida), in road traffic accidents is so frequent that itself proves implantation of the same motor cycle and driver in the present case also. In this regard, Mr. Satpathy has filed I.A. No.41 of 2022 for adducing additional evidence.

8. Admittedly, no evidence has been adduced by the insurer before the tribunal except the salary particulars of the deceased under Ext.A. The documents appended to I.A. No.41 of 2022 and sought to be adduced by way of additional evidence, have been collected after the impugned award was passed. Secondly, the purported certificate issued by the Sun Hospital and appended to the I.A., which reveals that the deceased was injured by collision with a tree, has no authenticity being a Photostat copy issued by a private person. Such contention made in the certificate is found incorrect on the face of the F.I.R. and police papers. The contention of Mr. Satpathy is therefore rejected outright. Further, no evidence being adduced to reveal complicity of the offending motor cycle in other motor accident claim cases, no force can be attached to the submissions of the insurer to disbelieve the case of claimants. As such, the finding of the tribunal regarding involvement of the offending motor cycle in the accident is confirmed.

9. With regard to quantum of compensation it is submitted by Mr. Otta, learned counsel for the claimants that the tribunal illegally did not count different allowances of the deceased towards his income.

10. It is seen from the copy of Ext.13, the salary slip produced by Mr. Otta in course of hearing, that, the total amount paid to the deceased by his employer at the time of accident was Rs.26,575/- per month. But the tribunal has taken the income of the deceased at Rs.20,580/- only, i.e. his basic pay and HRA. No justification is found in the approach of the tribunal in deducting other allowances from his monthly remunerations. It needs to be mentioned here that the

employment of the deceased as the Service Manager of Field Motors Ltd. is not disputed.

11. Thus considering the income of the deceased at Rs.26,375/- (i.e. Rs.26,575/- minus professional tax of Rs.200/-) and completing all formalities of computation, i.e. addition of 30% towards future prospects, deduction of 1/4th towards personal expenses and applying multiplier '14' etc, the total loss of dependency comes to Rs.55,79,784/- which is payable along with interest @ 6%.

12. In the result, both the appeals are disposed of with a direction to the insurer, i.e. Oriental Insurance Co. Ltd. to deposit the modified compensation amount of Rs.55,79,784/- (fifty five lakhs seventy nine thousand seven hundred eighty-four) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 30th September, 2015, within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents (except claimant – Respondent No.2 in MACA No.1118 of 2018, namely Narmada Sankar Rath) on such terms and proportion to be decided by the learned tribunal.

13. The statutory deposit made by the insurer in MACA No.1118 of 2018 before this court along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

14. The copies of exhibits as produced by Mr. Otta in course of hearing are kept on record.

15. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

