IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.658 of 2019

National Insurance Company Ltd. .... ***Appellant***

Mr. Anupam Dash, Advocate

-versus-

Rashmita Pattnaik and Others .... ***Respondents***

Mr. P.K. Mishra, counsel for Respondent Nos.1-3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
07.01.2022

Order No.

06. 1. Heard Mr. A. Dash on behalf of Mr. Gautam Mishra, learned Senior counsel for the Appellant and Mr. P.K. Mishra, learned counsel for the claimant – Respondent Nos.1-3.

2. The present appeal by the insurer is directed against the judgment dated 27th March, 2019 of the learned District Judge-cum-1st MACT, Jagatsinghpur in MAC Case No.74 of 2015.

3. Learned tribunal upon adjudicating the dispute has directed for payment of compensation to the tune of Rs.29,51,320/-along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 19th May, 2015.

4. The case of the claimants is that, the deceased while returning back to home after closing his shop, the offending truck bearing Registration No.OR 04 6154 dashed him from behind causing his death.

5. It is contended on behalf of the Appellant that the alleged truck was not involved in the accident, but an unknown vehicle was involved in the accident. This is apparent from the statement (Ext.D) of the widow (P.W.1) recorded by the surveyor appointed by the insurer as well as from the inquest report prepared by police marked under Ext.C. It is thus submitted that the present insurer may be unsaddled from the liability as the involvement of the alleged truck is not established.

6. Mr. Mishra, learned counsel for the claimant – Respondents submits in reply that such contention put-forth on behalf of the Appellant with regard to Ext.C and Ext.D is unsustainable as Ext.D is inadmissible in evidence and Ext.C has no credible evidentiary value. It is further submitted that the learned Tribunal while computing the quantum of compensation, has erroneously applied the multiplier '13' instead of '14' and no amount towards loss of parental / filial consortium has been granted in respect of Respondent Nos.2 and 3.

7. Having heard both parties and upon perusal of the impugned judgment it is seen that the statement of P.W.1 Rashmita Pattnaik recorded by the Surveyor has been adduced in evidence as Ext.D and the copy of the inquest report prepared by police has been marked under Ext.C on behalf of the insurer. At column-9 in the copy of inquest report under Ext.C it is mentioned that an unknown vehicle is involved in the accident. But the person who has entered the said fact in the inquest report at column 9 has neither been examined by the insurer nor the said fact has been confronted to the eye witness (P.W.2) examined on behalf of the claimants. Nevertheless, such entry in the inquest report prepared by police in the given facts of the case is not found trustworthy for want of adequate evidence. Similarly, the

statement of P.W.1 recorded by the insurer through its' Surveyor has also not been confronted to P.W.1 in course of her cross-examination, rather said P.W.1 has stated during her cross-examination that the Surveyor has taken her signature on a blank paper which she gave in good faith. Therefore such contents either under Ext.C or Ext.D as relied on by learned counsel for the Appellant are without any evidentiary value in the present case. In view of the above analysis the evidence proposed through Ext.C and Ext.D cannot be accepted as admissible to support the contention of the insurer. Accordingly the contentions raised by the insurer in this regard are rejected.

8. Next coming to the submissions of the Claimant – Respondents for enhancement of compensation amount, in absence of any appeal preferred by them in that respect, no relief can be granted in their favour.

9. No merit is seen in the challenge of the insurer with regard to the amount of compensation. Accordingly the appeal is dismissed. However, the rate of interest is reduced to 6% from 7.5%.

10. The insurer – Appellant is directed to deposit the entire award amount along with interest @ 6% per annum from the date of filing of the claim application, i.e. 19th May, 2015 before the tribunal within eight weeks from today; where-after the same shall be disbursed in favour of the claimant – Respondents in the same proportion and terms as directed by the learned Tribunal.

11. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the Tribunal.

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

(B.P. Routray)
Judge

M.K.Panda