

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.755 of 2019

Smt. Kumudini Nayak and Another* *Appellants

Mr. B. Singh, Advocate

-versus-

Prasanta Mohapatra and Another* *Respondents

Mr. G.P. Dutta, counsel for Respondent No.2

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

19.4.2022

Order No.

05. 1. Heard Mr. B. Singh, learned counsel for the claimant – Appellants and Mr. G.P. Dutta, learned counsel for insurer – Respondent No.2.
2. Present appeal by the claimants has been filed challenging the judgment dated 11th September, 2019 of learned 3rd MACT, Rairangpur passed in MAC No.11 of 2017 wherein compensation to the tune of Rs.14,98,480/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 14th December, 2017 has been granted on account of death of the deceased in the motor vehicular accident dated 4th October, 2017 .
3. The entire contention of the claimants is that the Tribunal has committed error in deducting 50% towards personal expenses of the deceased by not counting major son of the deceased as a dependent.

Keeping in view the ratio decided in the case of *National Insurance Company Limited v. Birender and Others*, (2020) 11 SCC 356 such reasoning of the Tribunal is held inappropriate. In the given facts of the present case, 1/3rd of the income of the deceased is liable to be deducted instead of one-half. As such the amount of compensation is liable to be enhanced and considering the same, a further sum of Rs.3,50,000/- consolidated is proposed to the parties. This is agreed by Mr. Singh, learned counsel for the claimant-Appellants and Mr. Dutta, learned counsel for the insurer leaves it to the discretion of the Court. As such, the amount is fixed to the above extent.

4. In the result the appeal is disposed of with a direction to the insurer – Respondent No.2 to deposit a further consolidated sum of Rs.3,50,000/- (three lakh fifty thousand) before the tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Appellants on such terms and proportion to be decided by the learned Tribunal.

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

(B.P. Routray)
Judge