

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.776 of 2019

The Divisional Manager, National Insurance Co. Ltd. *Appellant*

Mr. G.P. Dutta, Advocate

-versus-

Smt. Sanjukta Sahu and others *Respondents*

Mr. B.N. Rath, Advocate for Respondent Nos.1 & 2

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

**ORDER
29.08.2022**

Order No.

12.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. B.N. Rath, learned counsel for the Respondent Nos.1 & 2-claimants.

2. Present appeal by the insurer is directed against the judgment dated 03.05.2019 of learned 4th M.A.C.T., Angul in M.A.C. No.205/2016 wherein compensation to the tune of Rs.13,60,000/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 25.10.2016.

3. Mr. G.P. Dutta, learned counsel on behalf of the Appellant submits that the assessment of the income of the deceased at Rs.10,000/- per month in absence of any material is illegal and further, addition of 50% towards future prospects is erroneous.

4. Upon hearing Mr. B.N. Rath, learned counsel for the Respondent Nos.1 & 2-claimants and perusal of the impugned judgment, it reveals that the deceased was aged about 21 years and his income to the extent of Rs.10,000/- per month has been assessed based on his qualification as a Diploma Engineer. However, in absence of any fixed employment of the deceased, addition of 50% of the income towards future prospects is not permissible. This is reduced to 40% in terms of the principles decided in the case of *National Insurance Company Limited vs. Pranay Sethi and others*, (2017) 16 SCC 680.

5. Accordingly, a reduced compensation of Rs.12,50,000/- along with 6% interest is proposed to the parties in course of hearing. Mr. B.N. Rath, learned counsel for the claimants-Respondent Nos.1 & 2 agrees to the same and Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

6. In the result, the Appellant – Insurance Company is directed to deposit the reduced compensation of Rs.12,50,000/- (rupees twelve lakhs fifty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; whereafter the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal. However, the penal interest as directed by the learned Tribunal is waived and keeping in view the fact that the number of

passengers in the Bus were more than the permitted limit, the insurer is granted with liberty to recover the amount, if recoverable, from the owner of the vehicle in accordance with law after affording opportunity of hearing to the owner.

7. On deposit of the award amount before the learned Tribunal and filing of a 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.

8. The MACA is disposed of with aforesaid directions.

9. An urgent certified copy of this order be granted on proper application.

(*B.P. Routray*)
Judge