IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1243 of 2018

Reliance General Insurance Co. Ltd. .... ***Appellant***
Mr.G.P.Dutta, Advocate

-versus-

Ramesh Bhutia and others .... ***Respondents***
Mr.P.K.Mishra, Advocate for Respondents No.1, 2, 6,7 & 8
Mr.B.Mohanty, Advocate for Respondents No.3, 4 & 5
Mr.S.B.Das, Advocate for Intervenor

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
11.10.2022

Order No.

I.A.No.997 of 2022 and MACA No.1243 of 2018

08. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.G.P.Dutta, learned counsel for the Insurer-Appellant, Mr.P.K.Mishra, learned counsel for the claimants-Respondents No.1, 2, 6, 7 & 8 and Mr.Mohanty, learned counsel for claimants-Respondents No.3, 4 & 5 and Mr.S.B.Das, learned counsel for the natural mother of Respondents No.6, 7 and 8, who is the second wife of the deceased.

3. The claimants-Respondents 3 to 8 are present in person pursuant to the order dated 16th September, 2022 of this Court.

The second wife of the deceased, namely, Pinki Bhutia, who is the Intervenor-Petitioner in the I.A. is also present in person.

4. Since there was dispute between the first wife, second wife and the parents of the deceased regarding custody of the minor claimants-Respondents No. 6, 7 & 8, all the parties were directed to remain present in person before this Court today. Being asked to the claimants-Respondents No. 6, 7 & 8, who are the minor children of the deceased born through the second wife-Pinki Bhutia, they submit that they are staying with their natural mother at present, namely, Pinki Bhutia at Talcher separately and prosecuting their studies. Said Respondents No.6, 7 & 8 further refused to have stayed with their grant parents, i.e. claimants-Respondents No. 1 and 2 at any point of time. Accordingly, the prayer of the second wife-Pinki Bhutia, who is the natural mother of minor claimants-Respondents No. 6, 7 & 8, to remain custodian of the compensation amount granted in their favour is allowed.

5. Present appeal by the Insurer is directed against the judgment dated 16th May, 2018 passed by 1st M.A.C.T.-cum-District Judge, Dhenkanal in M.A.C. Case No.314 of 2014,

wherein compensation to the tune of Rs.13,75,600/- 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 dated 24th December, 2013.

6. Mr.Dutta submits that the Tribunal has failed to appreciate violation of policy conditions regarding absence of driving license on the part of the driver of the offending vehicle and further, the income of the deceased has been taken on higher side at Rs.8,000/- per month in absence of any substantial material.

7. Mr.Mohanty and Mr.Mishra both on behalf of the claimants have filed their cross-objection praying for enhancement of the compensation amount. They contend that the Tribunal has not added any future prospects to the income of the deceased and further failed to grant consortium in favour of the minor children.

8. Upon hearing both parties and perusal of the impugned award, it reveals that it is the admitted case of the claimants that the deceased was serving as a driver in heavy goods vehicle. To

rebut such contention of the claimants regarding profession of the deceased as a driver of heavy goods vehicle, no such evidence has been produced by the Insurer. In addition to the same, it is the further contention of the claimants that the deceased was also certified to drive Ambulance by St. John's Organization. It is seen from the discussions of the Tribunal made under Issue No.2 that in absence of substantial evidence with regard to remuneration or salary of the deceased as a driver, considering his efficiency and profession as such, his income was taken at Rs.8,000/- per month. Such conclusion of the Tribunal in absence of substantial evidence cannot be confirmed as reasonable. At the same time it is found that the profession of the deceased has been left uncontroverted as a driver of a heavy goods vehicle. So he can well be considered as a highly skilled labourer in terms of the minimum wage prescribed by the Government of Odisha. As per Notification No. 3982 dated 12th May, 2007 of Government of Odisha in Labour Department, the deceased as a driver of heavy goods vehicle can be treated as highly skilled labourer. Further, according to the Notification No. 1942 dated 6th October, 2012, prevalent on the date of accident i.e., 24th December, 2013, the rate of minimum wages for unskilled labourer is Rs.150/-, semiskilled Rs.170/-, skilled Rs.190/- and highly skilled Rs.205/-. Computing on the basis of the same, by counting the daily wage rate of the deceased at Rs.205/-, his monthly comes to Rs.6,150/-. Adding 40% towards future prospects, it comes to Rs.8,610/-. Thus, the annual income comes to Rs.1,03,320/-. Deducting 1/5th towards personal expenses, the annual loss of dependency comes to Rs.82,656/-. Applying multiplier 17 thereto, total loss of dependency comes to Rs.14,05,152/-. Adding 40% towards spousal consortium to claimant-Respondent No.3 and parental consortium to claimants-Respondents no.4 to 8 and further Rs.30,000/- towards the general damages, the total compensation comes to Rs.16,75,152/-, payable along with interest at the rate of 6% per annum.

9. It needs to be stated here that the contention with regard to absence of driving license on the part of the driver of the offending vehicle, the same is found unfounded in absence of any supporting evidence. The insurer has not adduced any evidence in support of any of his contention. Thus, the contention raised in this regard by the Appellant is rejected.

10. In the result, the appeal is disposed of with a direction to the Insurer to pay the modified compensation of Rs.16,75,152/- (Sixteen lakhs seventy five thousand one hundred fifty two) to the claimants by depositing the same before the Tribunal along with interest @6% per annum from the date of filing of the claim application i.e. 24th December, 2014. Upon deposit of the same, it shall be disbursed amongst the claimants in the following ratio;-

The claimants-Respondents 1 and 2 will get Rs.50,000/- (fifty thousand) each, claimant-Respondent No.3 (wife-Atul Bhutia) will get Rs.3,25,152/- (Three lakhs twenty five thousand one hundred fifty two) and the claimants-Respondents No.4 to 8 each will get Rs.2,50,000/- (Two lakh fifty thousand).

The shares granted in favour of each of the claimants shall be paid along with respective interest @6% per annum. The amount granted in favour of the minor claimants 4 to 8, namely, Kajal, Satyajit, Sonali, Sunil and Subham shall be kept in fixed deposit in any National Bank for a period of five years or till attaining their majority, whichever is later. 70% of the amount granted in favour of the claimant-Respondents No.3, namely, Atul shall be kept in fixed deposit in any Nationalized Bank for a period of five years.

The intervenor Petitioner, who is the second wife-Pinki Bhutia, is appointed as the custodian of the compensation amount paid in respect of claimants-Respondents 6, 7 and 8. However, all the claimants are entitled to take quarterly interest over their respective fixed deposit amount.

11. 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.

12. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal