IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.697 of 2020

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

Mr. Prasanta Kumar Mahali, Advocate

-versus-

Usharani Pradhan @ Choudhury and Another .... ***Respondents***

Mr. Satyabhusan Das, counsel for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
7.3.2022

Order No.

07. 1. Heard Mr. P.K. Mahali, learned counsel for the insurer – Appellant and Mr. S. Das, learned counsel for claimant – Respondent No.2.

2. Present appeal by the insurer is against judgment dated 5th September, 2019 of the learned 2nd MACT, Cuttack passed in Misc. Case No.1083 of 2012 wherein compensation to the tune of Rs.9,71,840/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 28th December, 2012 has been granted on account of death of the deceased in the motor vehicular accident dated 9th October, 2012.

3. It is submitted on behalf of the Appellant that the learned Tribunal has failed to appreciate contributory negligence on the part

of the deceased. It is further submitted that the accident is a head-on-collusion where the deceased had contributed by coming to the middle of the road at the time of accident. In support of the same, the statement of P.W.2, the eye-witness made during his cross-examination is relied on.

4. Upon hearing both parties and perusal of the copy of the deposition of P.W.2 as produced by Mr. Mahali in course of hearing, it is seen that the said witness during his cross-examination has stated that, "*the width of the road at the spot was within 20 fts. To 25 fts.. There was gap of 15 fts. towards the left of the truck at the spot.*" This statement of P.W.2 itself suggests that the truck has come to the extreme right side of the road at the time of accident whereas the motor-cycle was on the extreme left side of the road. Therefore, no negligence can be attributed on the part of the deceased who was riding the motor-cycle.

5. It is also submitted that the rider was not wearing helmet at the time of accident and the driver of the offending truck had no valid license to drive heavy vehicle. Upon perusal of the record no evidence is seen to have been adduced on those aspects by the insurer. The materials brought on record do not satisfy such contention advanced by the Appellant which are rejected as such.

6. Next coming to the question of quantum, Mr. Mahali submits that in absence of any documentary proof the income of the deceased should be counted as an unskilled labourer as per prescribed wages. This submission does not appear convincing. It is for the reason that

as per the evidence adduced from the side of the claimants, the deceased was working as an Assistant Engineer in Oil Refinery Project, Paradeep under Punj Lloyd Ltd. and earning Rs.18,000/- per month. But in absence of any documentary proof, the learned Tribunal considering the educational qualification of the deceased and the oral evidence adduced on that respect, has counted the income of the deceased as a skilled labourer at Rs.190/- per day, which comes to Rs.5,700/- per month. No flaw is seen in the said approach of the Tribunal and is confirmed. However, Rs.80,000/- as added by the learned Tribunal under the conventional heads towards consortium is to be reduced by Rs.40,000/- in view of the fact that the deceased was bachelor and the father, who is Respondent No.1, died during pendency of the appeal.

7. In the result the appeal is disposed of with a direction to the Appellant – insurer to deposit the reduced compensation of Rs.9,31,840/- (Rupees nine lakh thirty-one thousand eight hundred forty) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2012 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.2 on such terms and proportion to be decided by the Tribunal.

8. 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.

9. The appeal is disposed of.

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

(B.P. Routray)
Judge

M.K.Panda