**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.847 of 2019 & MACA No.439 of 2020**

**In MACA No.847 of 2019**

***Madhumita Harichandan and others*** .... ***Appellants***

Mr. D.C. Dey, Advocate

*-versus-*

***Bidyadhar Biswal and another*** .... ***Respondents***

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

**In MACA No.439 of 2020**

***The Sr. Divisional Manager, M/s.New India Assurance Company Limited*** .... ***Appellant***

Mr. G.P. Dutta, Advocate

*-versus-*

***Madhumita Harichandan and others*** .... ***Respondents***

Mr. D.C. Dey, Advocate for Respondent Nos.1 to 3

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

**ORDER**
**06.09.2022**

**Order No.**

**MACA No.847 of 2019 & MACA No.439 of 2020**

13. **1.** Heard Mr. D.C. Dey, learned counsel for the claimants and Mr. G.P. Dutta, learned counsel for the Insurance Company.

**2.** Both the appeals being arise out of the same judgment dated 22.10.2019 of learned 4th MACT, Cuttack in M.A.C. Case No.158 of 2017/105 of 2018 wherein compensation to the tune of Rs.91,30,400/- has been granted along with simple interest @6% per annum to the claimants from the date of filing of the claim application, i.e. 20.03.2017 on account of death of the deceased in a motor vehicular accident dated 02.01.2017, are heard together and disposed of by this common order.

**3.** MACA No.847 of 2019 has been filed by the claimants praying for enhancement of compensation and MACA No.439 of 2020 has been preferred by the Insurance Company challenging the award.

**4.** It is submitted by Mr. G.P. Dutta, learned counsel for the Insurance Company that the Tribunal has erroneously assessed the annual income of the deceased at Rs.14,24,007/- instead of Rs.12,44,160/- as shown in the IT return copy under Ext.14. Secondly, it is submitted that since the deceased was due to retire after two years of his death, the application of multiplier '9' is not permissible. It is further submitted that the split multiplier method has to be applied to determine the compensation amount.

**5.** Mr. D.C. Dey, learned counsel for the claimants on the other hand submits that the cost of attendant charges, transport charges and special diet during the period of treatment of the deceased in the hospital are not added.

**6.** Perusal of the impugned judgment reveals that the deceased was serving as the Manager in State Bank of India at Regional Business Office, Phulbani on the date of accident and as per the his monthly salary slip under Ext.23, he received salary of Rs.85,678/- for the month of October, 2016. But the Tribunal considering copy of the IT return filed under Ext.14 for assessment year 2016-17 determined his income at Rs.14,24,007/-

per annum. Admittedly, the gross total income mentioned in Ext.14 is Rs.14,24,007/- (Rs.14,24,006.68) and after permissible deductions under Section 80-C, 80-CCC and 80-CCD, the taxable income counted to Rs.12,44,160/-. So the submission advanced by the insurer to count the taxable income only, i.e. to the tune of Rs.12,44,160/- is not found acceptable. The tax paid is Rs.2,04,195/- only. So no fault is seen in the computation of the Tribunal in determining the net annual income to the tune of Rs.12,19,812/- of the deceased after deduction of the statutory taxes.

**7.** The submission with regard to application of split multiplier has no merit and this Court earlier in the case of ***The Manager, M/s.Bajaj Allianz General Insurance Co. Ltd. vs. Santilata Satapathy and others***, (MACA No.171 of 2021 disposed of on 29.3.2022) has held that split multiplier method has no merit.

**8.** Next coming to the challenges advanced by the claimants for enhancement towards attendant charges etc. in the cost of treatment, it is seen from the impugned judgment that the learned Tribunal has added Rs.5,63,690/- towards treatment expenses of the deceased during his period of treatment in AMRI Hospital, Bhubaneswar from 2.1.2017 to 15.1.2017. The Tribunal has determined the expenses in terms of the bill produced by the claimants under Ext.31. Since AMRI Hospital was a private hospital and the Tribunal has considered the bill to determine the medical expenses produced by the claimants, no merit is seen in the submission of the claimants to add the cost of attendant or special diet because that all were added in the bill. As such the contentions advanced from the side of the claimants for enhancing the compensation amount is rejected.

**9.** However, the penal interest @12% as directed by the Tribunal is waived.

**10.** In the result, both the appeals are disposed of with a direction to the Insurance Company, i.e. New India Assurance Co. Ltd. to deposit the entire compensation amount of Rs.91,30,400/- (rupees ninety-one lakhs thirty thousand four hundred) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e. 20.03.2017 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion directed by the learned Tribunal.

**11.** On deposit of the award amount by the insurer before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made in MACA No.439 of 2020 before this Court with accrued interest thereon shall be refunded to the insurer.

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

***( B.P. Routray)***
***Judge***

B.K. Barik