

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

**MACA No.357 of 2021 & MACA No.320 of 2021**

**In MACA No.357 of 2021**

***Oriental Insurance Co. Ltd.***

....

***Appellant***

Mr. P.K. Mahali, Advocate

*-versus-*

***Sharada Pattanaik and others***

....

***Respondents***

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

**In MACA No.320 of 2021**

***Sharada Pattnaik and others***

....

***Appellants***

Mr. D.C. Dey, Advocate

*-versus-*

***Bidyut Ghosh and another***

....

***Respondents***

Mr. P.K. Mahali, Advocate for Respondent No.2

**CORAM:**

**JUSTICE B. P. ROUTRAY**

**ORDER**

**19.09.2022**

**Order No.**

**MACA No.357 of 2021 & MACA No.320 of 2021**

07. 1. Heard Mr. P.K. Mahali, learned counsel for the Insurance Company and Mr. D.C. Dey, learned counsel for the claimants.
2. Both the appeals being arise out of the same judgment dated 16.08.2021 of the learned 4<sup>th</sup> MACT, Cuttack wherein compensation to the tune of Rs.32,49,682/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application, i.e.12.4.2016 on account of death of the deceased in the motor vehicular accident dated

08.01.2016, are heard together and disposed of by this common order.

3. MACA No.357 of 2021 has been filed by the insurer challenging the award and MACA No.320 of 2021 has been filed by the claimants praying for enhancement of the compensation amount.

4. It is contended on behalf of the insurer that that the profession of the deceased was not established and therefore, his income taken by the learned Tribunal is not acceptable.

5. On the other hand, Mr. D.C. Dey, learned counsel for the claimants submits that the Tribunal has failed to grant parental consortium to two children of the deceased.

6. Upon hearing both the parties and perusal of the impugned judgment, it reveals that the Tribunal by accepting the deceased as a practicing Advocate has taken his income at Rs.3,94,175/- after deduction of statutory tax based on the ITR filed under Ext.11. Perusal of copy of Ext.11 as produced in course of hearing reveals that the same was submitted online on 25.8.2015. The date of accident is on 8.1.2016. Therefore, what is contended by the insurer that the Tribunal has erred in calculating the income of the deceased upon Ext.11 only, is found without substance. No reason is seen to disbelieve the income aspect disclosed in Ext.11, particularly when the authenticity of Ext.11 is neither doubted nor disputed.

7. Learned Tribunal then computed the total compensation amount by adding 10% towards future prospects. Here Mr. Dey contends that addition of 10% towards future prospects should be enhanced to 15%. But no force is found on such submission since the Tribunal has given its finding that the deceased was a practicing Advocate.

8. So far the contention regarding grant of parental consortium to the Claimant Nos.2 & 3 is concerned, they are found entitled to the same being the unmarried sons of the deceased.

9. In the result, both the appeals are disposed of with a direction to the Insurance Company to deposit the enhanced compensation of Rs.33,29,682/- (rupees thirty-three lakhs twenty-nine thousand six hundred eighty-two) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e.12.04.2016 within a period of three months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal. However, the default interest @12% per annum as directed by the Tribunal is waived.

10. 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 in MACA No.357 of 2021 with accrued interest thereon shall be refunded to the Insurance Company.

**11.** The copy of Ext.11 as produced by Mr. Dey, learned counsel for the claimants is kept on record.

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

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

B.K. Barik

