IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.367 of 2021 And MACA No.186 of 2021

MACA No.367 of 2021

M/s.New India Assurance Co. Ltd. …. **Appellant**

Mr.S.Sudhakar Rao, Advocate

-versus-

Raghab Baral and others …. **Respondents**

Mr.B.P.Mohanty, Advocate for Respondent Nos.1 to 5

AND

MACA No.186 of 2021

Raghab Baral and others …. **Appellants**

Mr.B.P.Mohanty, Advocate

-versus-

Bidyadhara Patra and another …. **Respondents**

Mr.S.Sudhakar Rao, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
01.12.2022

Order No.

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

2. Heard Mr.Rao, learned counsel for the Insurer and Mr.Mohanty, learned counsel for the claimants.

3. Both the appeals arise out of the same judgment dated 23rd March, 2021 passed by the learned 2nd Additional District &

Sessions Judge-cum-4th M.A.C.T., Puri, in M.A.C. Case No.231-219 of 1995-1992, wherein compensation to tune of Rs.2,44,750/- along with interest @6% per annum has been granted from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 17th February, 1992.

4. MACA No.367 of 2021 has been filed by the Insurance Company. Mr. Rao for the Insurer submits that the policy was not valid on the date of accident as the premium for the policy was paid on the next day of the accident. He further questions the quantum of compensation as erroneous and excessive high.

5. MACA No.186 of 2021 has been filed by the claimants praying for enhancement of the compensation amount on the ground that no consortium has been granted to the children. The widow of the deceased died during pendency of the claim application and she was deleted.

6. It is seen that three witnesses were examined on behalf of the claimants and no oral evidence has been adduced from the side of the Insurer. Along with the police papers, a copy of the Insurance policy has been adduced under Ext.F by the Insurer.

Perusal of the same, as produced in course of hearing by Mr.Rao, reveals that the policy commenced from 17th February, 1992 and was valid till 16th February, 1992. The date of accident is 17th February, 1992. Mr. Rao has filed I.A.No.822 of 2021 along with a copy of the premium payment register to substantiate his contention. Said copy of the register, as sought to be adduced by way of additional evidence, is a Photostat copy and no evidence has been adduced to prove the entries made thereof, though the requirement is that the author should prove the entries thereof by adducing oral evidence. But here, neither the original register is produced nor any affidavit of the author is filed. Mr.Rao though submits that he can produce the original of the said register, nonetheless, it is true that when the policy itself speaks its' date of effectiveness from 17th February, 1992 then the same has to be treated effective from 17th February, 1992 irrespective of the date of payment of the premium, and in no circumstances it will go beyond that date. Therefore, the contention raised on behalf of the Insurer to treat effectiveness of the policy from 18th February 1992, i.e. the next date, has no merit for consideration. Accordingly, all such contentions raised by Mr.Rao to dispute validity of the policy on the date of accident is rejected.

7. With regard to quantum of compensation, the claimants have filed their appeal praying for enhancement of the same. It is needless to say that the cross appeal filed in MACA No.367 of 2021, i.e. the appeal preferred by the Insurance Company is not pressed by Mr.Mohanty on behalf of the claimants-Respondents therein. Accordingly, the said cross-appeal is dismissed as not pressed.

8. So far as the prayer for enhancement is concerned, it is seen that all the claimants are the children of the deceased and therefore, they are certain entitled for grant of consortium as per settled principles.

9. It is seen that the age of the deceased has been determined between 51 to 55 years by the Tribunal, which is disputed by Mr.Rao. According to the postmortem report, he was 60 years. But the Tribunal considering the age of the wife and the children has taken the age of the deceased between the slab of 51 to 55. This approach of the Tribunal is found erroneous in absence of any material document. When the age of the deceased is mentioned as 60 years in the postmortem report it has to be accepted in absence of any other material. Thus, the finding of the Tribunal in this regard is modified and the age of the deceased is

determined as 60 years. There being no material dispute with regard to income, the same is accepted at Rs.1,500/- per month. Adding future prospectus to the extent of 10% thereto, in terms of the principles decided in the case of ***National Insurance Company Ltd. vrs. Pranay Sethi and others*****, (2017)16 SCC 680,** the monthly income of the deceased comes to Rs.1,650/-. Taking the number of dependents as six i.e., five children and wife, 1/4th is liable to be deducted towards personal expenses. The annual loss of dependency thus comes to Rs.14,850/-. Applying multiplier nine, the total loss of dependency comes to Rs.1,33,650/-.

10. Keeping in view the date of accident, i.e. 17th February, 1992, Rs.10,000/- towards consortium is granted to each children amounting to Rs.50,000/- in total and Rs.25,000/- towards general damages. Thus, the total compensation is determined at Rs.2,08,650/-, payable along with interest @ 6% per annum.

11. In the result, both the appeals are disposed of with a direction to the Insurer, i.e. M/s. New India Assurance Co. Ltd. to deposit the modified compensation amount of Rs.2,08,650/-(Two lakhs eight thousand six hundred fifty) along with interest at the

rate of 6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed amongst the claimants (present Appellants in MACA No.186 of 2021) on such terms and proportion to be decided by the Tribunal.

12. The statutory deposit made by the Insurer in MACA No.367 of 2021 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.

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

(B.P. Routray)
Judge

C.R.Biswal