

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.772 of 2020

And

MACA No.32 of 2021

MACA No.772 of 2020

The Divisional Manager,

....

Appellants

M/s.The New India Assurance Co. Ltd.

Mr.B.Das Mohapatra, Advocate

-versus-

Bijaya Kumar Sahoo and another

....

Respondents

Mr.B.N.Rath, Advocate for Respondent Nos.1 & 2

AND

MACA No.32 of 2021

***Bijaya Kumar Grahacharya and
another***

....

Appellants

Mr.B.N.Rath, Advocate

-versus-

Bijaya Kumar Sahoo and another

....

Respondents

Mr.B.Das Mohapatra, Advocate

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

28.07.2022

Order No.

5.

1. Heard Mr.Das Mohapatra, learned counsel for the claimants and Mr.Rath, learned counsel for the Insurer.

2. Both the appeals being directed against the same judgment are taken up together and disposed of by this common order.

3. MACA No.772 of 2020 has been preferred by the claimants praying for enhancement of the compensation amount and MACA No.32 of 2021 has been preferred by the Insurer challenging the compensation amount.

4. The challenge in both the appeals is against the impugned judgment dated 7th October, 2020 passed by the learned 2nd Addl. District Judge-cum- 3rd MACT, Cuttack in MAC No.784 of 2017, wherein compensation to the tune of Rs.9,77,200/- along with interest @7% 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 22nd May, 2016.

5. First dealing with the challenge advanced by the Insurer, Mr.Das Mohapatra, learned counsel for the Insurer contends that the deceased being a student, no future prospects can be added to his notional income. In addition to the same, It is further contended that the deceased is a minor being aged about 17 years 9 months on the date of accident. Such challenge as advanced on behalf of the Insurer is not sustainable in view of the principles decided in the case of *Kirti and another vrs. Oriental Insurance Company Limited*, reported in (2021) 2 SCC 166.

Therefore no illegality is seen in approach of the Tribunal in adding 40% towards future prospects to the notional income of the deceased.

6. Next coming to the prayer for enhancement according to the claimants, it is submitted by Mr.Rath that the deceased was a final year student of diploma engineering and earning Rs.10,000/- months by private tuition. Therefore, he prays for enhancement of compensation suitably.

7. As seen from the impugned judgment, the Tribunal disbelieving such claim of income on the part of the deceased from private tuition, fixed his notional income at Rs.6,000/- per month . However, such fixation of notional income of Rs.6,000/- per month in the year 2016 for a final year student of diploma engineer is found at lower side and accordingly it is enhanced to Rs.7,500/-.

8. As such, considering the submissions of both the parties and taking into account all the relevant factors like age, multiplier and status of the deceased as a student etc, an enhanced compensation of Rs.10,50,000/- along with interest @6% per annum is proposed to the parties in course of hearing. This is

agreed by Mr.Rath, learned counsel for the claimants. Mr.Das Mohapatra, learned counsel for the Insurer leaves it to the discretion of the Court. As such, the amount is fixed to that extent.

9. The Insurer is directed to deposit the compensation of Rs.10,50,000/-(Ten lakhs fifty thousand) before the Tribunal along with interest @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 in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

10. With aforesaid modification in the compensation amount, both the appeals are disposed of.

11. The statutory deposit made by the Appellant in MACA No.772 of 2020 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