IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.387 of 2021

Divisional Manager,
M/s.New India Assurance Company Ltd. .... ***Appellant***
Mr.G.P.Dutta, Advocate

-versus-

Kanakalata Dash and others .... ***Respondents***
Mr.P.K.Mishra, Advocate for Respondent Nos.1 to 5

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
25.4.2022

Order No.
6.

1. Heard Mr.G.P.Dutta, learned counsel for the Appellant-Insurer and Mr.P.K.Mishra, learned counsel for claimants-Respondent Nos.1 to 5.

2. Present appeal by the Insurer is against the judgment dated 6th September,2021 of learned 3rd Additional District Judge-cum-4th MACT, Cuttack in MAC Case No.241 of 2004, wherein compensation to the tune of Rs.22,28,000/- has been granted along with interest @ 6% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident on 18th November, 2003.

3. Mr.Dutta submits at the outset that the Tribunal while dismissing the claim application against the owner saddled the

liability on the Insurer to pay the compensation, which is not permissible under law.

4. Considering the such submission and upon perusal of the impugned judgment, it reveals that the owner was set *ex-parte* on 9th March, 2015 and admittedly any dispute about validity of the insurance policy or injury due to accident is not raised. Thus it appears that the Tribunal was in some confusion in dismissing the claim application against the owner. As such, said direction of the Tribunal is clarified/modified to the extent that the claim application is allowed *ex-parte* against the owner and on contest against the Insurer.

5. The date of accident is 18th November, 2003. The injuries sustained by the deceased in the accident and his survival on vegetative state till the date of death, i.e. on 11th September, 2010 is not disputed. His period of treatment and death arising out of injuries due to accident is also not seriously disputed.

6. Thus upon hearing both parties and considering the grounds of challenge advanced, a reduced compensation of Rs.16,00,000/-(Sixteen lakhs) along with interest @6% per annum is proposed to the parties in course of hearing. This is agreed by Mr.Misha, learned counsel for the claimants-Respondent Nos.1 to 5. Mr.Dutta, learned counsel for the Insurer leaves it to the discretion of the Court. As such, the amount is fixed to that extent.

7. The Insurer-Appellant is directed to deposit the reduced compensation of Rs.16,00,000/-(Sixteen lakhs) 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. However, the penal interest @12% is waived.

8. With aforesaid modification in the compensation amount, the appeal is disposed of.

9. The statutory deposit made by the Appellant 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.

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

(B.P. Routray)
Judge

C.R.Biswal