



IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.1168 of 2023

(An appeal U/S.173(1) of M.V. Act, 1988).

The Manager(Claims) ... Appellant
Legal, H.D.F.C., ERGO
Insurance Co. Ltd.,
Cuttack

-versus-

Kailash Chandra Jena & Others ... Respondents

For Appellant : Mr. G.P. Dutta, Adv

**For Respondents : Mr.A.Tripathy,Adv
(R. Nos.1 & 3)**

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:21.11.2024

G. Satapathy, J.

1. Although this appeal has been listed under the heading "hearing U/O.XLI.Rule-11 of CPC", but it is heard U/O.XLI. Rule-12 of the CPC, since the respondent Nos.1 to 3(R-1 to 3) have already appeared and notice against R-4 is dispensed with.

2. The short grievance of the appellant in this appeal is wrong calculation of the quantum of compensation, inasmuch as since the deceased died as



a bachelor, instead of 50%, the learned 3rd Motor Accident Claims Tribunal, Nayagarh (in short, "the Tribunal") has deducted $\frac{1}{3}$ rd from the income of the deceased towards his personal and living expenses and also erroneously added extra Rs.40,000/- towards consortium.

3. Heard, Mr. G.P. Dutta, learned counsel for the appellant and Mr. Karunakar Das, learned counsel appearing on behalf of Mr.A.Tripathy, learned counsel for R-1 to 3-cum-claimants and perused the record.

4. The dispute with regard to calculation of quantum of compensation is not disputed by the learned counsel for the R1 to 3-cum-claimants on the ground that the same has been erroneously calculated. Accordingly, Mr. Das, learned counsel for the R1 to 3-cum-claimants agrees for deduction of half of the income of the deceased towards his personal living expenses and for excluding Rs.40,000/- towards consortium from the total compensation amount.

5. After hearing the learned counsel for the parties upon perusal of record, there appears no



dispute about the deceased-Manas Ranjan Jena dying in a motor vehicular accident on the alleged date and time of occurrence and the claimants-R-1 to 3 applied to Tribunal for compensation towards the death of their sole bread earner in the said motor vehicular accident. It is not disputed that the deceased-Manas Ranjan Jena while returning to his village from Berhampur by riding his new Royal Enfield motor cycle along with one Dillip Kumar Naik as a pillion rider, died near Pakidi Chhaka being dashed suddenly by one truck bearing Regd. No.OR-15H-1548 coming in a rash and negligent manner from opposite side and the said Dillip Kumar Naik sustained injury in such accident. The claim of the claimants-R-1 to 3 was registered as M.A.C. No.66 of 2017 by the Tribunal and after receiving written statement from the appellant-insurer, the learned Tribunal proceeded with the claim by taking evidence which ultimately ended with the impugned award passed in M.A.C. No.66 of 2017. Being aggrieved, the insurer challenged the same before this Court in this appeal.



6. On careful scrutiny of the impugned judgment on the face of the evidence on record, there is no dispute with regard to the findings of the learned Tribunal for the deceased dying in a motor vehicular accident due to rash and negligent act of the driver of the offending vehicle and the entitlement of the claimants-R-1 to 3 for the compensation as the legal representatives of the deceased. The only dispute is with regard to the calculation of compensation amount, but not with regard to the age, income and avocation of the deceased. It is also an admitted fact that the deceased died as a bachelor and by applying the law laid down by the Apex Court in various decision, half of the income of the deceased has to be deducted towards his personal and living expenses, but in this case, the learned Tribunal has deducted $\frac{1}{3}^{\text{rd}}$ from the income of the deceased towards personal and living expenses. At the same time, while granting compensation under the head of non-pecuniary damage, the learned Tribunal has also granted Rs.40,000/- more as a consortium which is



also not in dispute. Accordingly, the modified compensation would be calculated as 50% of the total monthly income of the deceased $\text{Rs.}4,85,562 \times 18$ (multiplier) + $\text{Rs.}70,000$ (non-pecuniary damage) + $2 \times (10\% \text{ of Rs.}70,000 \text{ towards } 10\% \text{ enhancement of non-pecuniary damage in every three years since the deceased died in the year 2017}) = \text{total Rs.}44,54,058$. Besides, the claimants are also entitled to an interest @6% w.e.f. the date of filing of claim application i.e. 14.07.2017. Accordingly, the modified compensation amount which the claimants-R-1 to 3 are entitled to get is $\text{Rs.}44,54,058/-$ with simple interest 6% per annum.

6. In the result the appeal succeeds and allowed in part on contest, but in the circumstance, no order as to costs. Subsequently, the compensation amount is modified to $\text{Rs.}44,54,058/-$ with @6% of interest which the R-1 to 3 are entitled to receive. The statutory deposit be refunded to the appellant-insurer on proof of deposit of the aforesaid compensation amount of $\text{Rs.}44,54,058/-$ together with accrued



interest thereon, which shall be deposited within 12 weeks hence before the learned Tribunal, who shall disburse a sum of Rs.35,00,000/- to the claimant-mother in shape of Fixed Deposit in any Nationalized Bank for a period of five years and Rs.5,00,000/- each in the name of claimants-father and sister in shape of Fixed Deposit in any Nationalized Bank for a period of five years and rest of the amount along with accrued interest thereon be paid to the claimants jointly in cash. It is, however, made clear that no premature withdrawal be allowed on Fixed Deposits with the permission to receive the quarterly interest payable thereon. The learned Tribunal is, however, authorized to take any decision with regard to allowing premature withdrawal to the parties, but the same be allowed in exceptional circumstances.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 21st day of November, 2024/S.Sasmal*

Signature Not Verified

Digitally Signed
Signed by: SUBHASHMITA SASMAL
Reason: Authentication
Location: High Court of Orissa
Date: 22-Nov-2024 14:10:20

MACT No.1168 of 2023

Page **6** of **6**