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**(2019) 01 OHC CK 0044**

**In the Orissa High Court**

**Case No : Motor Accident Appeal No. 183 Of 2018**

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Girish Chandra Das And Another

RESPONDENT

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**Date of Decision : 04-01-2019**

**Acts Referred:**

Motor Vehicle Act, 1988 — Section 166

**Citation : (2019) 127 CLT 807**

**Hon'ble Judges : A.K. Rath, J**

**Bench : Single Bench**

**Advocate : Mahitosh Sinha, P. Sinha, P.R. Sinha, P. K. Mahali, Pradeep Kumar Mishra**

**Final Decision : Disposed Of**

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## **Judgement**

A.k. Rath, J

1. Aggrieved by and dissatisfied with the award dated 12.09.2017, passed by the learned First Motor Accident Claims Tribunal, Jajpur, in MACC No.

181 of 2016, the insurer has filed this appeal.

2. For the death of their son Suraj Prasad Das in a motor vehicular accident, respondent nos. 1 and 2 have filed an application for compensation under

Section 166 of the Motor Vehicle Act, 1988 before the learned Tribunal. The case of the claimants was that on 24.06.2016 at about 5.30 A.M. to 6

A.M., while Suraj along with his friend Y. Rabindra was proceeding to Jindal Stainless Ltd. in a motorcycle bearing registration No. OD-02-S-6792 on

the extreme left side of road to attend his shift duty, on the road between Jajpur Road-Duburi near Bedi Feeling Station, the offending

TATA Magic vehicle bearing Registration No. OD-04-B-8188 came from the opposite direction in a high speed and dashed against the motorcycle, as

a result of which, he and the pillion rider fell down and sustained injuries. Immediately, the injured persons were shifted to Danagadi C.H.C. As their conditions became serious, they were referred to S.C.B. Medical College & Hospital, Cuttack. During treatment, Suraj succumbed to the injuries.

According to the claimants, they had incurred expenses for an amount of Rs. 50,000/- towards treatment of their son. The deceased was 24 years old

at the time of his accidental death. He was working as a Junior Engineer (HSM Operation) in Jindal Stainless Ltd. and was getting a salary of Rs.

25,001/- per month. He was the sole bread earner of his family. After his death, the family received a serious setback.

3. Pursuant to issuance of notice, the owner of the vehicle entered appearance and filed written statement stating inter alia that the vehicle (TATA

Magic) was insured with the Insurance Company-respondent no. 2.

4. The Insurer entered their appearance and filed their written statement denying the assertions made in the claim application. The specific case of the

insurer was that deceased had contributed to the alleged accident. He was standing at the side of the busy road in careless manner. Therefore the

offending vehicle had got no contribution to the accident.

5. Stemming on the pleadings of the parties, learned Tribunal framed as many as four issues.

6. To substantiate the case, the claimants had examined two witnesses on their behalf and fourteen documents had been exhibited on their behalf. No

evidence was adduced by the opposite parties.

7. Learned Tribunal came to hold that due to rash and negligent driving by the driver of the offending vehicle (TATA Magic) bearing Registration No.

OD-04-B-8188, the deceased died. The offending vehicle was validly insured with the insurer, Held so, it directed the insurer to pay an amount of Rs.

39,55,204/- along with interest @7.5% per annum from the date of filing of the claim application, i.e. 07.11.2016 till payment.

8. Heard Mr. Mahitosh Sinha, learned Senior Advocate for the appellant-Insurance Company and Mr. Pradeep Kumar Mishra, learned Advocate for

the claimants-respondent nos. 1 and 2.

9. Learned counsel for the appellant submits that learned Tribunal fell in patent error in law in not deducting Transport Allowance of Rs. 800/-, Leave

Travel Allowance of Rs. 625 and Bonus of Rs. 1,500/- as well as Professional Tax

of Rs. 200/- from the salary of the deceased. He submits that the award of Rs. 1,30,000/- towards general damages is not proper and justified and it should be Rs. 70,000/-. Further, the award is exorbitant. To buttress his submission, he places reliance on the decision in the case of National Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763 : AIR 2008 SC 845.

10. Per contra, Mr. P.K. Mishra, learned counsel for the claimants-respondent nos. 1 and 2 submits that on a holistic view of the matter, learned

Tribunal has awarded an amount of Rs. 39,55,204/- with interest @7.5% per annum. The award is just and proper. Bonus of Rs. 1,500/- cannot be deducted from the salary of the deceased, as he was serving in a reputed company.

11. On a cursory perusal of the record and Salary Certificate (Ext.12), which is produced in Court today, it is evident that the monthly salary of the

deceased for the month of September, 2016 was Rs. 25,001/-. He was also getting Transport Allowance of Rs. 800/- and Leave Travel Allowance of

Rs. 625/-, which have to be deducted from the salary of the deceased, while calculating the monthly income. So calculated, the award comes to Rs.

36,46,000/-.

12. In view of the above, the appellant-Insurance Company is directed to pay a sum of Rs. 36,46,000/- (Rupees Thirty Six lakhs forty six thousand)

along with interest @7.5% per annum to the claimants-respondent nos. 1 and 2 from the date of filing of the claim application, till payment. The entire

amount of compensation with interest shall be deposited before the learned Tribunal within a period of six weeks from today, whereafter the same

shall be proportionately deposited in the names of the claimants and disbursed to them by the learned Tribunal in terms of its order.

13. The impugned award is modified to the above extent. The appeal is accordingly disposed of.