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**(2021) 12 OHC CK 0169**  
**In the Orissa High Court**  
**Case No : MACA No. 894 Of 2013**

Mamatarani Mohapatra And Others

APPELLANT

Vs

Kishore Rout And Another

RESPONDENT

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**Date of Decision :** 24-12-2021

**Acts Referred:**

**Citation :** (2021) 12 OHC CK 0169

**Hon'ble Judges :** B. P. Routray, J

**Bench :** Single Bench

**Advocate :** Kalpataru Panigrahi, Santosh Kumar Mohanty

**Final Decision :** Disposed Of

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## Judgement

B.P. Routray, J.

1. Heard Mr. K. Panigrahi, learned counsel for the claimants - Appellants and Mr. S.K. Mohanty, learned counsel for the insurer - Respondent No.2.

2. The present appeal by the claimants has been directed against the judgment dated 6th July, 2013 of learned 1st MACT, Cuttack in MAC Case No.209 of 2008.

3. The learned tribunal upon adjudicating the dispute has directed to grant compensation to the tune of Rs.3,93,500/- along with interest @ 6.5% per annum from the date of filing of the claim application, i.e. 17th February, 2008 on account of death of the deceased in a motor vehicular accident on 9th December, 2007.

4. The case of the claimants is that the deceased while going by riding a bicycle, the offending vehicle, i.e. motor cycle bearing registration No.OR 04 G 3954 dashed against him being driven in a rash and negligent manner causing his death. It is the further case of the claimants that the deceased was working as a Manager-cum-Salesman in Chandan traders and getting salary of Rs.6000/- per month.

5. It is further submitted on behalf of the claimant - Appellants that the learned Tribunal has disbelieved the case of the claimants on the aspect of monthly income of the deceased to the tune of Rs.6000/- as a Manager-cum-Salesman and on the other hand took his notional income at Rs.3000/- per month relying on the decision of Hon'ble Supreme Court in the case of Laxmi Devi and Others v. Mohammad Tabbar and Another, AIR (2008) SC 1858. It is submitted that despite the evidence adduced in the court, learned Tribunal has erred in disbelieving the case of the claimants with regard to his income. It is also submitted that the deductions towards personal expenses should be counted at 1/4th of the total income instead of 1/3rd as taken by the learned Tribunal. Learned counsel for the Appellants further urged to add future prospects of income in favour of the claimants.

6. Having heard learned counsel for the insurer and upon perusal of the impugned judgment, I do not find any illegality in the approach of the learned Tribunal in disbelieving the case of the claimants about monthly income of the deceased in absence of any documentary proof. Thus, the finding of the learned Tribunal with regard to acceptance of notional income of the deceased at Rs.3000/- based on the principle decided in the case of Laxmi Devi (supra) is confirmed.

7. So far regarding the deduction towards personal expenditure is concerned, keeping in view the principles propounded in the case of National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680 and considering the number of dependants which are 5, the deduction should be 1/4th of the total amount instead of 1/3rd. Further considering the age of deceased as 33 years accepted by the learned Tribunal, the future prospects applicable to the present case is taken at 40%.

8. Similarly, the claimants are also entitled to further amount under the head of parental/filial consortium relying on the principles decided by Hon'ble Apex Court in the case of Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram and Others, (2018) 18 SCC 130. Accordingly, the compensation is calculated as follows:-

Sl.

Head

Compensation awarded

i

Monthly income

Rs.3000/-

ii

Future prospects

Rs.1200/-

income)

(i.e.

40%

of

iii

After deducting 1/4th towards personal expenditure, monthly income comes to

Rs.3150/-

iv

Applying multiplier '16' the loss of dependency comes to

Rs.3150 X Rs.6,04,800

12

X 16

=

v

Towards loss of estate, loss of consortium (spousal) and funeral expenses

Rs.70,000/-

vi

Loss of consortium parental/filial

(Rs.40,000/- + Rs.40,000/- )

= Rs.80,000/-

Total

Rs.7,54,800/-

9. So the total compensation amount is arrived at Rs.7,54,800/-which shall carry interest @ 6% per annum from the date of filing of the claim application, i.e. 17th February, 2008.

10. It is submitted by Mr. Mohanty, learned counsel for the insurer that the amount as directed by the learned Tribunal along with interest has been deposited by the insurer and the same has been released in favour of the claimants. Keeping the same in view, the insurer -Respondent No.2 is directed to deposit the differential amount, i.e. Rs.3,61,300 along with interest @ 6% per

annum before the learned Tribunal within eight weeks from today and the same shall be disbursed in favour of the claimants in such proportion and terms to be decided by the learned Tribunal.

11. The appeal is accordingly disposed of.

12. An urgent certified copy of this order be issued as per rules.

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