
(2021) 11 OHC CK 0069
In the Orissa High Court
Case No : MACA No.60 of 2014

New India Assurance Company Ltd

APPELLANT

Vs

Chhatrai Mahanta and Others

RESPONDENT

Date of Decision : 10-11-2021

Acts Referred:

Citation : (2021) 11 OHC CK 0069

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

Bench : Single Bench

Advocate : Susanta Kumar Dash, K.C. Nayak

Judgement

B. P. Routray, J

1. Heard Mr. S.K. Dash, learned counsel appearing for the Appellant -Insurer and Mr. K. C. Nayak, learned counsel appearing for Respondent Nos.1 to 3 - Claimants.

2. The present appeal is against the award of learned 2nd MACT, Cuttack in MAC Case No.474 of 2010. The Appellant here in this appeal has challenged the quantum of compensation granted in favour of the Claimants on account of death of the deceased on 31st December, 2009 due to motor vehicular accident.

3. It is contended by Mr. Dash that the Tribunal while disbelieving Ext.9 with regard to determining monthly income of the deceased, has abruptly come to conclusion to Rs.4000/- as his monthly income on notional basis. Therefore, the income of the deceased having not established on record should be accepted on complete notional basis in view of the prescription of the statute and judgments pronounced by the Hon'ble Apex Court.

4. Having perused the impugned judgment it is seen that the tribunal's finding is not about disbelieving the contents of Ext.9. What the tribunal has observed is that, Ext.9 cannot be taken as the sole basis to determine the exact income of the deceased per month. It is the specific observation of the Tribunal that in

absence of positive evidence about the profession and earning of the deceased at the relevant point of time, it would be reasonable to hold the income of the deceased notionally at Rs.4000/-. The use of word 'notionally' by the tribunal does not mean to express notional income expressed in the schedule of the M.V. Act, but it is the essence of Tribunal's order that, the learned Judge has taken a reasonable income of the deceased in absence of any definite material. The monthly income of Rs.4000/- as determined by the tribunal taking into account the oral evidence as well as the contents of Ext.9 is not seen with any infirmity. The rest of the calculations arrived by the Tribunal are also in accordance with the settled principles of law. Thus, this court does not find any ground to interfere with such determination of quantum of compensation by the Tribunal and accordingly the contention of the Appellant is rejected.

5. However as seen from the earlier orders of this court dated 6th December, 2014 and 25th June, 2015 that though the matter was settled between the parties in the Lok Adalat for payment of compensation by consolidated sum of Rs.4, 25,000/-, but the said order of Lok Adalat has been recalled subsequently on 25th June, 2015 on the application of the Claimants - Respondents. The Claimants - Respondents are pursuing for payment of interest and as per them such grant of interest has been inadvertently not reflected in the order of the Lok Adalat. But in the meantime the amount arrived at the Lok Adalat has been deposited by the Appellant - Insurer and the same has already been received by the Claimants - Respondents.

6. Keeping in view such peculiarity happened during pendency of the Appeal, this court is not inclined to change the amount as derived in the Lok Adalat but at the same time the Appellant - Insurer is directed to pay interest @ 6% per annum on the said amount of Rs.4,25,000/- from the date of filing of the claim application, i.e. 7th August, 2010 till the date of order of the Lok Adalat, i.e. 6th December, 2014.

7. The statutory deposit be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the interest amount before the tribunal.

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

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