**(2023) 05 OHC CK 0140**

**In the Orissa High Court**

**Case No :** MACA No.1105 Of 2012

Nrusingh Charan Nath & Ors — APPELLANT

Vs

Rabinarayan Satpathy & Anr — RESPONDENT

**Date of Decision :** 09-05-2023

**Acts Referred:**

**Citation :** (2023) 05 OHC CK 0140

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

**Bench :** Single Bench

**Advocate :** A.Dash, P.Mishra

**Final Decision :** Disposed Of

# Judgement

B. P. Routray, J

1.The matter is taken up through Hybrid mode.

2. Heard Mr. Dash, learned counsel for the Appellant and Mrs.Mishra, learned counsel for Insurer-Respondent No.2.

3. Present appeal by the Claimants are directed against judgment dated 5th May, 2012 of 2nd M.A.C.T., Cuttack, in Misc Case No.676 of 1998, wherein compensation to the tune of Rs.1,64,500/- 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 by motor vehicular accident on 27th June, 1998.

4. The date of accident is 27th June, 1998 and the involvement of the offending vehicle in the accident as well as the liability of the Insurer is not disputed since the amount of compensation as directed by the Tribunal has already been paid by the Insurer. The Claimants have prayed for enhancement of compensation amount mainly on the ground by enhancing income of the deceased and adding future prospect thereto.

5. As seen from the impugned award, the deceased was accepted as a boy aged 18 years whose notional income has been taken at Rs.15,000/- as per second Schedule. The Tribunal disbelieved the earning of the deceased and fixed his income notionally at Rs.15,000/- per annum. This is found erroneous in view of the categorical evidence adduced by P.W.1 & 2, more so in absence of any rebuttal evidence produced from the side of the Insurer.

6. As per assessment of this Court, treating the deceased as owner of a cycle repairing shop as per the evidence of his father, his monthly income can be fixed at Rs.2000/- taking note of his place of residence. Adding future prospect to the extent of 40% to the same, the annual income comes to Rs.33,600/-. Deducting 50% from the same towards personal expenses, the annual loss of dependency comes to Rs.16,800/-. Applying multiplier 18, the total loss of dependency becomes Rs.3,02,400/-. Adding Rs.25,000/- to each parent towards loss of filial consortium and further adding a sum of Rs.30,000/- towards funeral expenses and loss of estate, the total compensation amount is determined at Rs.3,82,400/-, payable along with interest @6% per annum.

7. It is admitted at the bar that the compensation amount of Rs.1,64,500/- along with interest as directed by the Tribunal has already been paid and received in the meantime. Thus, the Insurer is found liable to pay the balance amount of compensation.

8. In the result, the appeal is disposed of with a direction to the Insurer-Respondent to deposit the balance amount of compensation of Rs.2,17,900/- (Two lakhs seventeen thousand nine hundred) along with interest @6% per annum, from the date of filing of the claim application i.e. on 31st July 1998 till realization, 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.

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

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