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**(2011) 03 OHC CK 0004**  
**In the Orissa High Court**  
**Case No : MACA No. 79 of 2006**

Sabitri Panigrahi and Others

APPELLANT

Vs

Sri Bharat Kumar Swain and Another

RESPONDENT

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**Date of Decision :** 25-03-2011

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 170

**Citation :** (2011) 03 OHC CK 0004

**Hon'ble Judges :** B.N. Mahapatra, J

**Bench :** Single Bench

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## Judgement

B.N. Mahapatra, J.—This appeal has been directed against the judgment dated 30.09.2004 passed by the 1st Motor Accident Claims Tribunal, Mayurbhanj, Baripada in M.A.C.T. Misc. Case No. 54 of 2002.

2. The facts in a nutshell giving rise to the present appeal are that on 06.02.2002 at about 10 A.M. the deceased Bharati Kumar Parida while discharging his duty as a Constable in the Golei Chhak, Jagatpur in connection with requisitioning vehicles for the Grama Panchayat election, the offending truck bearing registration No. ORU-6831 belonging to Respondent No. 1 came at a high speed from Mahanadi side and dashed against the deceased. As a result of such accident, the deceased sustained grievous injuries on his leg, chest and head. Immediately after the accident he was shifted to S.C.B., Medical College & Hospital, Cuttack for treatment and while undergoing treatment he succumbed to the injuries on the same day. According to the claimants, the accident took place because of rash and negligent driving by the driver of the offending vehicle. The vehicle was insured with opposite party No. 2 and the insurance policy was valid from 10.02.2001 to 11.02.2002 covering the date of the accident. The deceased was aged about 40 years and his monthly income was Rs. 7,000/-during relevant time. The claimants were facing a lot of difficulties and financial hardship after the death of the deceased. They were the widow, son, daughter and mother of the deceased respectively. With these averments, the claim petition was filed

claiming compensation of Rs. 12,00,000/-

3. Though the Respondent No. 1, the owner of the vehicle had filed his written statement he did not take part in hearing of the case and hence he was set ex parte. The Insurance Company opposite party No. 2 filed a petition u/s 170 of the M.V. Act before the Tribunal which was allowed. The Insurance Company in its written statement while denying the allegations made in the claim petition had pleaded that the amount of compensation claimed was too high, arbitrary and imaginary and they are not liable to pay any compensation to the Petitioner-Appellants.

4. On the basis of the pleadings of both the parties, the Tribunal framed three issues. After taking into consideration both oral and documentary evidence adduced by the parties, the Tribunal came to the finding that due to rash and negligent driving of the offending truck the deceased died. The driver of the offending vehicle had a valid driving licence on the date of the accident. Taking into consideration the age and income of the deceased at the time of his death, the Tribunal calculated the compensation applying 13 multiplier. The net monthly salary of the deceased was determined at Rs. 4,424/-on the basis of Ext.A. Deducting 1/3rd towards his personal expenses the Tribunal determined the compensation at Rs. 4,60,100/-. The claimants have also been awarded a sum of Rs. 2,000/-towards funeral expenses and Rs. 3,000/-towards loss of estate and Rs. 5,000/-towards loss of consortium. Thus, the total amount of compensation was determined at Rs. 4,70,100/-and the Tribunal directed the Insurance Company to pay the amount of compensation within a period of two months along with interest at the rate of 9 % per annum from the date of application dated 15.03.2002 till the date of realization. Being aggrieved by the said judgment the Appellant-claimants filed the present appeal.

5. Mr. B.K. Rout, learned Counsel appearing for the Appellant claimants submitted that the amount of compensation awarded by the Tribunal is extremely low. In support of his contention, he raised the following four points.

(a)Even though the gross income of the Petitioner was Rs. 6,684/-per month at the relevant time of accident, the Tribunal is wrong in taking into account the net income of Rs. 4,424/-after deducting payments made towards GPF, Insurance Premium, Professional Tax and repayment of loan etc. from gross salary for the purpose of computation of compensation;

(b)Deduction of 1/3rd of income towards personal expenses of the deceased is at higher side the contribution towards personal expenses should be limited to 1/4th, in view of the decision of the apex Court in the case of Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 (2) T.A.C. 677 (SC);

(c)The Tribunal is wrong in not taking into consideration the future income of the deceased who was about 40 years old at the time of accident;

(d)The multiplier applied is not correct considering the age of the deceased. The

multiplier should be 15 as provided in Second Schedule to M.V. Act.

6. According to learned Counsel for the Insurance Company, 1/3rd deduction towards personal expenses is just and proper. The rate of interest allowed " 9% is high and excessive and the same should be 6% per annum.

7. On the rival contentions, the issues that fall for consideration by this Court are as follows:

(i) Whether for the purpose of computation of compensation the gross salary is to be reduced by payment made towards professional tax only or it shall be further reduced by deducting payments made towards G.P.F., insurance premium, repayment of loan etc?

(ii) Whether the deduction of 1/3rd of the income towards personal expenses in case of the deceased having four dependants is correct?

(iii) Whether the Tribunal is justified in applying 13 multiplier when the deceased died at the age of 40 years?

(iv) Whether the Tribunal is justified in not taking into account future income of the deceased while determining just compensation?

(v) Whether 9% rate of interest per annum as allowed by the Tribunal is just and proper?

8. To deal with issue No. (i), it would be profitable to refer to some of the decisions of the Apex Court. The Apex Court in paragraph 8 of its judgment in *Shyamwati Sharma and Ors. v. Karam Singh and Ors.* 2010(2) OJR (456) held as follows:

We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life Insurance premium, repayments of loans etc. should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.

Placing reliance on its earlier decisions in *New India Assurance Co. Ltd. Vs. Charlie and Another*, and *New India Assurance Co. Ltd. v. Kalpana (Smt.) and Ors.* 2007 (1) TAC 795, the Hon"ble Supreme Court in paragraph 22 of its judgment in *National Insurance Company Ltd. v. Indira Srivastava and Ors.* 2008(I) TAC 424 (S.C.) held as follows:

However, therein although the words "net income" has been used but the same itself would ordinarily mean gross income minus the statutory deductions.

In view of the above settled legal proposition, this Court is of the view that while determining the monthly income of the deceased, payment towards G.P.F., life insurance premium, repayment of loan should not be deducted from the gross income. Only statutory deduction towards tax should be deducted from the gross salary.

In the present case, as per Ext.A, gross salary of the deceased was Rs. 6,604/- and Rs. 30 was deducted towards professional tax. If the said tax is deducted from gross salary, the resultant figure comes to Rs. 6,574/-(Rs. 6,604/--Rs.30/-) which should have been taken into account while computing the amount of compensation.

9. Issue No. (ii) relates to deduction towards personal expenses of the deceased. The Hon''ble Supreme Court in paragraph 14 in Smt. Sarala Verma and Ors. v. Delhi Transport Corporation and Anr. 2009(2) TAC 677 (S.C.) held as follows;

Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one third ( $\frac{1}{3}$ rd ) where the number of dependent family member is 2 to 3, one fourth ( $\frac{1}{4}$ th ) where the Number of dependent family members is 4 to 6 and one fifth ( $\frac{1}{5}$ th) where the number of dependent family members exceed six.

In the instant case, the deceased was married and he had four dependants, i.e., his wife, son, daughter and mother. In view of the same, this Court is of the view that in the present case  $\frac{1}{4}$ th of the gross-income should be deducted towards the personal expenses of the deceased.

10. Issue No. (iii) relates to application of proper multiplier. Learned Tribunal in its judgment applied 13 multiplier. In order to apply multiplier 13 age of the deceased at the time of death as found from evidence of PW-1 and the post mortem report was taken into consideration. PW-1 in her statement stated that at the time of accident the deceased was 40 years. Post mortem report reveals that at the time of death, age of the deceased was 40 years. Since the age of the deceased at the time of accident was 40 years, the proper multiplier is 15 as per second schedule attached to M.V. Act which should have been applied by the Tribunal.

11. Issue No. (iv) relates to the future income of the deceased. The amount of compensation has been determined taking into account the income of the Appellant, his age at the time of death and by applying the multiplier. Since the claimant-Appellants claim multiplier 15 as against 13 applied by the Tribunal on the basis Schedule-2 attached to the M.V. Act, which does not provide future income, the same cannot be taken into consideration in the case of the Appellants for the purpose of computation of compensation.

12. Issue No. (v) relates to payment of interest on the amount of compensation. Even though the learned Counsel for the Respondent-Insurance Company contended that 9% interest adopted by the Tribunal is high and excessive, which should have been 6%, he has not adduced any material evidence in support of his contention. Therefore, this Court finds no error in the order of the Tribunal allowing 9% interest per annum.

13. In view of the above, the monthly income of the deceased is taken as Rs.

6,574/- and deducting 1/4th thereof which comes to Rs. 1,643/-towards his personal expenses and applying the multiplier 15, the amount of compensation is determined at Rs. 8,87,580/- (Rs. 6,574/-Rs. 1643/-x 12 x 15).

14. Opp. Party No. 2-Insurance Company is directed to deposit compensation amount of Rs. 8,87,580/- along with 9% interest per annum from the date of application, i.e., 15.03.2002 till the date of realization before the Tribunal within two months from today. While calculating the interest component any amount deposited earlier shall be taken into account. On deposit of amount of compensation along with interest as directed above, the learned Tribunal shall disburse the same to the claimant-Appellants in the manner it has directed in its order.

15. With the above direction, the appeal is allowed in part and disposed of accordingly.