

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5461 OF 2023
(Arising out of SLP (C) No.28102/2019)

KUBRABIBI & ORS.

APPELLANT(S)

VERSUS

ORIENTAL INSURANCE CO LTD & ORS.

RESPONDENT(S)

J U D G M E N T

Leave granted.

Heard learned counsel for the appellants as also learned counsel for the respondents and perused the appeal papers.

In respect of the accident which occurred on 14.11.2000 wherein the husband of the appellant/claimant No.1 and father of the appellants/claimants Nos. 1 and 2 had expired, the Motor Accidents Claim Tribunal (For short 'MACT') has awarded the compensation of Rs.11,87,000/- with interest @ 7.5% per annum.

The Insurance Company had assailed the said Award before the High Court. The High Court through its judgment dated 05.03.2019 has allowed the appeal in part and reduced the compensation to Rs.4,75,000/-.

The claim of the appellants was that the deceased was aged about 35 years at the time of accident and was working as a mechanic and was also running a jeep as transport business. In that view, it was claimed that as a mechanic, he was earning Rs.5,000/- per month and a further sum of Rs.3,000/- per month by running the jeep for transport on hire. The MACT having referred

to the evidence which was tendered has reckoned the income at Rs.6,000/- per month and has awarded the compensation of Rs.11,87,000/-. The High Court while reducing the amount has, apart from reducing the monthly income to Rs.3,000/-, has also reckoned the multiplier of `15' instead of `16'. It is in that light, the total compensation was reduced.

It is unfortunate that in a case of the present nature, the High Court while assessing the evidence available on record, has sought to seek strict evidence with regard to the income of the deceased. When the wife and children of the deceased were before the Court, they would not be in a position to secure all evidence when the deceased earning member was not in secure job. Despite the same we note that in the instant case, a perusal of the judgment and award passed by the MACT, would indicate that an effort was made to examine the owner of the two wheeler repair shop where the deceased was said to be working. The High Court has discarded the same on the ground that no documents, to indicate that he is the owner of the shop and he had employed three persons, has been produced.

In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to

be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs.200/- per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of evidence by the High Court is without being sensitive to nature of lis before it.

In that view of the matter, we are of the opinion that the consideration as made by the MACT is more plausible than the manner in which the High Court has proceeded to consider the matter. Therefore, we hereby set aside the judgment dated 05.03.2019 passed by the High Court and restore the Award dated 13.03.2007 passed by the MACT. The amount as awarded therein shall now be deposited by the Insurance Company within four weeks from the date of receipt of a copy of this Judgment.

The appeal is, accordingly, disposed of.

Pending application(s) shall also stand disposed of.

.....J.
[A.S. BOPANNA]

.....J.
[PRASHANT KUMAR MISHRA]

NEW DELHI;
AUGUST 28, 2023

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 28102/2019
(Arising out of impugned final judgment and order dated 05-03-2019
in FA No. 5348/2007 passed by the High Court of Gujarat at
Ahmedabad)

KUBRABIBI & ORS.

Petitioner(s)

VERSUS

ORIENTAL INSURANCE CO LTD & ORS.

Respondent(s)

(IA No. 166726/2019 - EXEMPTION FROM FILING O.T. AND IA No.
170986/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 28-08-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Dharmendra Kumar Sinha, AOR

For Respondent(s) Mr. Rajesh Kumar Gupta, AOR

Mr. S.L. Gupta, Adv.
Mr. Asutosh Sharma, Adv.
Ms. Gunjan Sharma, Adv.
Mr. Varinder Kumar Sharma, AOR
Mr. Kuldeep Singh Tomar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of signed judgment.

Pending application(s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed judgment is placed on the file)