

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.276 of 2020

(From the judgment dated 27th September, 2019 passed by the learned 4th M.A.C.T., Keonjhar in M.A.C. Case No.61/186 of 2018-17)

Manager Legal, Tata AIG General Insurance Co. Ltd. ***Appellant***

-versus-

Usha Agarwal and others ***Respondents***

Advocate(s) appeared in this case:-

For Appellant : Mr. G.P. Dutta, Advocate

For Respondents : Mr. P.K. Mishra, Advocate
For Respondent Nos,1 to 3

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th February, 2023

B.P. Routray, J.

1. Present appeal by the insurer, i.e. Tata AIG General Insurance Co. Ltd. is directed against judgment dated 27th September, 2019 passed by learned 4th M.A.C.T., Keonjhar in M.A.C. Case No.61/186 of 2018-17, wherein compensation to the tune of Rs.66,19,284/- has been granted along with simple interest @7% per annum to the claimants from the date of filing of the claim application, i.e. 09.08.2017 on account of death of the deceased namely, Deep Chand Agarwal in the motor vehicular accident dated 01.03.2017.

2. The entire challenge is disputing the amount of loss of dependency calculated by the learned Tribunal

3. Mr. Dutta, learned counsel submits on behalf of the Insurance Company that the deceased was the Proprietor of the business establishment namely, M/s. Ajanta Textiles, Municipality Shop No.7, Daily Market, Barbil. After death of the deceased his widow, present claimant-Respondent No.1 managed it very well and gained almost equal profit as the deceased was getting. In support of his contention, the IT Returns filed for the Assessment Year 2017-18, 2018-19 and 2019-20 are relied on, filing copies of the same by way of an affidavit dated 19.10.2022. The decisions of the Supreme Court rendered in the cases of *Sushma H.R. and another vs. Deepak Kumar Jha and others 2022 (4) T.A.C. 422 (S.C.)*, *New India Assurance Co. Ltd. vs. Yogesh Devi and others 2012 (2) T.A.C. 1 (S.C.)*, *State of Haryana and another vs. Jasbir Kaur and others, 2003 (3) T.A.C. 569 (S.C.)* are relied on by Mr. Dutta in support of his submission.

4. Mr. Mishra, learned counsel for the claimants-Respondent No.1 to 3 strenuously objects the submission of the insurer with regard to the income derived from the business establishment of the deceased. As per Mr. Mishra, the widow of the deceased with her own ability is managing the business of her late husband and it is not correct that she has not lost dependency for the death of her husband. He further submits that the experience and skill what the deceased had to run his business is not the same the widow has. So to deduct loss of dependency only for the reason that the widow is managing the business is not appropriate. Mr. Mishra relies on the decision of the

Supreme Court in the case of *K. Ramya and others vs. National Insurance Co. Ltd. and another*, 2022 (4) T.A.C. 380 (S.C.).

5. In the case of *Sushma H.R. and another* (supra), the Supreme Court has observed as follows:

“6. On this aspect it is true that there is no material on record to indicate that the Bakery business which was being run during the life time of the deceased has been closed after his death. Even if that aspect of the matter is kept in view, there is also no contrary material on record to indicate that the appellants herein who is a young lady and minor son are well versed in Bakery business. In that light keeping in view the young age of the appellants without experience, it cannot be expected that the Bakery can be run by them in the same manner as it was being run by the deceased nor is there definite evidence on record in this regard.

7. Therefore in the matter of determining the compensation certain larger aspects have to be kept in perspective and even if it is expected that the Bakery business is continued, the loss due to the death of the husband and his expertise in such business certainly would be at least to the extent of 50% of the normal way in which the business was conducted. If this aspect of the matter is kept in view and in that light the income that was being earned during his life time which was almost Rs.50,000/- per month is kept in perspective even from the income tax return for the years 2012-2013, the loss of dependency in any event cannot be less than Rs.25,000/- per month. Therefore, on reckoning the same for the purpose of determining the loss of dependency, 40% is to be added towards future prospects. Thus from the amount of Rs.35,000/-, if one third is deducted for personal expenses and the remainder is taken into consideration with the multiplier of the ‘17’, the

amount of loss of dependency will work out to Rs.47,59,993/-.”

6. In the case of *K. Ramya and others* (supra), it is held by the Supreme Court as follows:

“21. Now, the sole issue which remains before this Court is whether the entire amount under ‘Income from House Property and Agricultural Land’ should be deducted or not. In this respect, we are guided by the observations of this Court in *State of Haryana v. Jasbir Kaur*, (2003) 7 S.C.C. 484 : 2003 (3) T.A.C. 767, wherein it was noted that—

8. xxxx

The land possessed by the deceased still remains with his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered. (Emphasis applied)

In our opinion, the above mentioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual’s managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations.

22. In the instance case, documents produced on record indicate two salient aspects with respect to ‘Lakshmi Complex’, which was the sole source of rental income for the deceased. The partition deed related to the land

on which the commercial building is situated, highlights that the building was constructed on account of the joint investment made by the Deceased and his partners. Furthermore, as per the rental records, 'Lakshmi Complex' was leased out to more than ten different commercial entities. Hence, keeping in mind that-first, the rental amount which is sought to be deducted partakes the character of investment; and second, that the managerial skills required for supervising the said building would require sophisticated contract management skills and goodwill among the business community, it is necessary that we determine the value of managerial skills of the Deceased on the higher side.”

7. Perusal of afore-cited cases reveals the proposition that, for counting the loss of dependency, where the business entity subsists even after death of the deceased and is managed by the dependants, the managerial skill and expertise of the deceased to run the business is to be considered along with specific facts and circumstances brought on record.

8. In the case at hand, it is seen that the income of the deceased was Rs.4,93,237/- as per the ITR for AY 2014-15, Rs.5,03,623/- for the AY 2015-16 and Rs.6,19,922/- for AY 2016-17, under Ext.10, Ext.10/a and Ext.10/b. Further, the IT Returns produced for AY 2017-18, 2018-19 and 2019-20 along with the affidavit of the Appellant, the same are not disputed by the claimants-Respondent Nos.1 to 3. It is seen that the ITR for AY 2017-18 has been filed by the widow-Usha Agarwal as the representative of the deceased and the IT Returns for AY 2018-19 and 2019-20 have been filed by the widow in her capacity. The incomes disclosed as per those IT Returns are Rs.5,06,504/- for AY 2017-18,

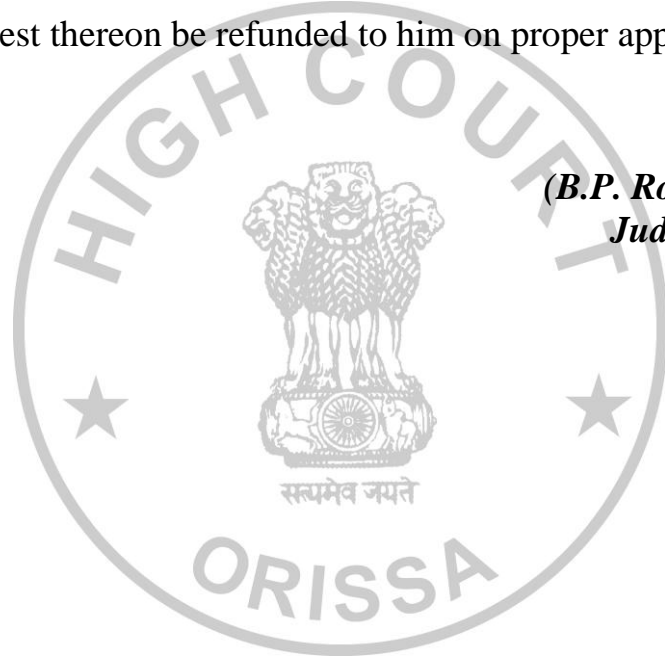
Rs.3,82,254/- for AY 2018-19 and Rs.5,55,148/- for AY 2019-20. A cumulative comparison of those incomes shown in the IT returns from AY 2014-15 to 2019-20, it is found that no substantial loss of income has been sustained by the dependants upon death of the deceased. One thing needs to be emphasized here that admittedly the source of income of the deceased as well as the claimants is the same business entity, i.e. M/s. Ajanta Textiles, which is effectively managed by the widow to earn profits. The income shown in the IT returns for AY 2018-19 and 2019-20 by the widow is from that same source only.

9. It is true that the compensation must be just compensation. On the advent of such facts with regard to the income of the deceased and the widow after death of the deceased, the managerial skills of the deceased based on the fact of profitable running of M/s. Ajanta Textiles, can be assessed at 50% of the loss of dependency computed. As such, the loss of dependency, as computed by the learned Tribunal to the tune of Rs.68,89,284/- is liable to be reduced to 50% on such specific facts discussed in this particular case. Doing so, the total loss of dependency is determined at Rs.32,94,642/-. Adding Rs.1,20,000/- towards consortium to the widow and two daughters as well as Rs.30,000/- towards general damages, the total compensation is computed at Rs.34,44,642/-, payable along with interest @6% per annum.

10. In the result, the appeal is disposed of with a direction to the Appellant (Tata AIG General Insurance Co. Ltd.) to deposit the reduced compensation amount of Rs.34,44,642/- (rupees thirty-four lakhs forty-four thousand six hundred forty-two) along with interest

@6% per annum from the date of filing of the claim application, i.e. 09.08.2017 before learned Tribunal 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 decided by learned Tribunal.

11. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application.



(B.P. Routray)
Judge

B.K. Barik/Secretary