

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**MACA No.199 of 2018**

***National Insurance Company Limited*** .... ***Appellant***  
Mr. J.R. Deo, Advocate on behalf of Mr. G. Mishra, Senior  
Advocate

*-versus-*

***Rohit Mahato and another*** .... ***Respondents***  
Mr. K. Panigrahi, Advocate for Respondent No.1

**CORAM:**  
**JUSTICE B. P. ROUTRAY**

**ORDER**  
**20.10.2022**

**Order No.**  
06.

1. Heard Mr. J.R. Deo on behalf of Mr. G. Mishra, learned Senior Advocate for the Appellant-Insurance Company as well as Mr. K. Panigrahi, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 03.11.2017 of learned 3<sup>rd</sup> M.A.C.T., Rourkela in M.A.C. Case No.295 of 2015, wherein compensation to the tune of Rs.34,95,000/- has been granted along with interest @6% per annum to the claimant from the date of filing of the claim application, i.e. 02.11.2015 on account of injury sustained by him in the motor vehicular accident dated 29.07.2015.

3. The entire contention of the insurer is on the quantum of compensation. It is submitted on behalf of the insurer that the monthly income to the tune of Rs.12,000/- of the claimant based on Ext.16 is not acceptable in absence of adequate evidence to prove the contents of Ext.16.

4. On the other hand, it is submitted by Mr. K. Panigrahi, learned counsel for the Respondent No.1-claimant that income of Rs.12,000/- per month by the injured-claimant as per Ext.16 was not disputed by the insurer before the learned Tribunal and therefore, the same has been rightly acted upon by the Tribunal.

5. It is seen that as per the claim of the injured, he sustained 85% of permanent disability and thus the Tribunal has counted 100% loss of income due to the disability. The entire dispute is on the question of income of the injured. As per PW-1 (claimant), he was working as Senior Operator in M/s.Gajanan Enterprisers, a stone crusher plant. In course of cross-examination, he has admitted that one attendance register and an acquittance roll were maintained in the crusher unit. Admittedly, neither those documents were produced nor the employer was examined on the aspect of employment of the injured and his remuneration that he was getting Rs.12,000/- per month. Ext.16 seems to be a certificate issued by the Proprietor of M/s.Gajanan Enterprisers. Thus, learned counsel for the insurer is found justified in his contention to disbelieve the contents of Ext.16 in absence of evidence of the author of the document.

6. It is further seen from the cross-examination of the injured (P.W.1) that he has read up-to Standard X only. Therefore, considering his evidence that he was working as an operator in stone crusher plant, he can be treated as a skilled labourer. As per Government Notification in SRO No.323/2015, the rate of minimum wages prescribed for skilled labourer was Rs.253.50 per day, which can be taken for the purpose of counting his

income. Accordingly, the monthly income comes to Rs.7605/-. Adding 40% towards future prospects and without disturbing other findings of the learned Tribunal including 100% loss of income and the age of the injured, the total loss of income due to the injury sustained in the accident is determined at Rs.19,16,460/-. Adding Rs.4,70,553/- thereto as granted by the learned Tribunal towards other expenses, the total compensation comes to Rs.23,87,013/-, payable along with 6% interest.

7. In the result, the Appellant – Insurance Company is directed to deposit the modified compensation of Rs.23,87,013/- (rupees twenty-three lakhs eighty-seven thousand thirteen) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e., 02.11.2015 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on such terms and proportion to be fixed by the Tribunal.

8. 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 before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

9. The MACA is disposed of with aforesaid directions.

10. The copies of the deposition of P.W.1 filed by Mr. J.R. Deo, learned counsel for the Appellant is kept on record.

11. An urgent certified copy of this order be granted on proper application.

**( B.P. Routray )**  
**Judge**



B.K. Barik