

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.29 of 2021 & MACA No.55 of 2021

In MACA No.29 of 2021

Satish Chandra Jena

.... ***Appellant***
Mr. K. Das, Advocate

-versus-

***The Principal, University College of
Engineering, At/P.O.-Burla, Dist.-
Sambalpur and another***

.... ***Respondents***

Mr. A.A. Khan, Advocate for Respondent No.2
Mr. S.B. Udgata, Advocate for Respondent No.1

In MACA No.55 of 2021

***The Divisional Manager, Oriental
Insurance Company Limited***

.... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Satish Chandra Jena and another

.... ***Respondents***

Mr. K. Das, Advocate for Respondent No.1
Mr. S.B. Udgata, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

18.11.2022

Order No.

MACA No.29 of 2021 and MACA No.55 of 2021

08. 1. Heard Mr. K. Das, learned counsel for the claimant, Mr. A.A. Khan, learned counsel for the Insurance Company and Mr. S.B. Udgata, learned counsel for the owner.
2. Both the appeals being arise out of the same judgment dated 28.01.2020 of the learned 3rd MACT, Bhubaneswar in M.A.C.

Case No.284 of 2005, wherein compensation to the tune of Rs.28,54,000/- has been granted along with interest @7% per annum to the claimant from the date of filing of the claim application, i.e.10.05.2005 on account of injury sustained by him in a motor vehicular accident dated 8.1.2005, are heard together and disposed of by this common order.

3. MACA No.29 of 2021 has been filed by the injured-claimant for enhancement of the compensation amount and MACA No.55 of 2021 has been filed by the Insurance Company challenging the award.

4. Mr. A.A. Khan, learned counsel for the Insurance Company challenges the award mainly questioning quantification of the compensation amount as excessively high.

5. Mr. Das, learned counsel for the claimant-injured submits that the Tribunal has granted Rs.50,000/- only towards future attendant cost, which requires to be enhanced to suitable extent keeping in view the age of the injured.

6. Mr. S.B. Udgata, learned counsel for the owner submits that the offending vehicle being validly insured and no violation of policy condition being alleged, the entire liability is to be indemnified by the insurer.

7. It is seen that five witnesses have been examined on behalf of the claimant to prove their case including the treating doctor and the Insurance Company examined one witness Viz. OPW-1, the investigator of the Insurance Company.

8. Admittedly the Police upon completion of investigation have submitted the charge-sheet against the driver of the offending car bearing Registration No.OR-17-A-5559. The cause of accident was due to dashing of the offending car with the scooter driven by the injured from backside. Therefore, the negligence for accident on the driver of the offending car, as concluded by the learned Tribunal, is confirmed.

9. Next coming to the quantum aspect, it is seen that learned Tribunal has granted compensation on the following count.

Sl. No.	HEAD		CALCULATION
(i)	Loss of income	=	Rs. 15,36,000/-
(ii)	50% future prospects	=	Rs. 7,68,000/-
(iii)	Medical expenses	=	Rs. 2,00,000/-
(iv)	Pain, suffering and shock	=	Rs. 1,00,000/-
(v)	Future medical treatment	=	Rs. 1,00,000/-
(vi)	Loss of income during treatment	=	Rs. 50,000/-
(vii)	Travelling and special diet	=	Rs. 50,000/-
(viii)	Attendance charges	=	Rs. 50,000/-
	Total compensation awarded	=	Rs.28,54,000/- (Rupees twenty-eight lakhs fifty-four thousand) only

10. The income of the injured has been assessed at Rs.8,000/- per month and the functional disability is computed to the extent of 100%. Keeping in view the nature of disability as mentioned in Ext.14, the computation of 100% functional disability by the learned Tribunal cannot be faulted with. Further the monthly income which has been assessed at Rs.8,000/-, based on the salary certificate filed under Ext.7 and the evidence of P.W.1 as well as P.W.3, is found reasonable. The loss of future income

being calculated based on the principles settled in the case of ***Raj Kumar vs. Ajay Kumar and another, (2011) 1 SCC 343***, no reason is found to interfere with the same. The other heads of counting compensation are also found reasonably adequate and do not warrant any interference by this Court.

11. It needs to be mentioned here that the contention of the claimant for enhancing the future attendant cost is seen without substance, particularly keeping in view the monthly income of the injured and place of residence.

12. In the result, both the appeals are dismissed and the insurer, i.e. Oriental Insurance Company Limited (Appellant in MACA No.55 of 2021) is directed to deposit the entire compensation amount along with interest before the Tribunal as per its direction within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on same terms and proportion contained in the impugned order. However, the penal interest of 8%, as directed by the learned Tribunal, is waived.

13. On deposit of the award amount by the insurer before the Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made in MACA No.55 of 2021 before this Court with accrued interest thereon shall be refunded to the insurer.

14. The copies of the depositions and documents filed by the Mr. K. Das, learned counsel for the claimant in course of hearing are kept on record.

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

(B.P. Routray)
Judge

B.K. Barik

