

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.691 OF 2012

From the Judgment / Order dated 27.01.2011 passed by the learned ADJ-cum-MACT, Boudha in M.V. Misc. Case No.02 / 2009.

Narayan Sahoo.

::: Appellant.

-:: VERSUS ::-

Arun Kumar Barik & Another

::: Respondents.

Appeared in this case by Video Conferencing Mode /

Hybrid Mode.

For Appellant ::: Mr. K.C. Nayak, Advocate

For Respondents::: Mr. S. Satpathy, Advocate
for Respondent No.2

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PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing-04.04.2022:: Date of Judgment-.19.04.2022

B.P.Satapathy, J. This appeal has been filed by the Appellant/Claimant challenging the judgment dated 27.01.2011 passed by the learned Additional District Judge and IIIrd MACT, Boudh in MACT Case No.02 / 2009.

2. It is the submission of Mr. Nayak, learned counsel for the Appellant that in view of the injury sustained by the appellant in the accident occurred on 11.05.2008, he filed the claim application in MACT Case No.2/2009 praying for

grant of compensation of Rs.10,00,000/- along with interest @ 18 % per annum from the date of filing of the application till its realization.

3. It is the submission of Mr. Nayak, learned counsel for the Appellant that in support of his injury, the appellant not only produced various documents, which was duly exhibited by the learned Tribunal, but also the appellant produced the disability certificate vide Ext.-20.

4. It is submitted by Mr. Nayak, learned counsel for the Appellant that the said disability certificate vide Ext.20 was duly exhibited without any objection from the contesting Respondents. As reflected in the said disability certificate, the Petitioner was held disable to the extent of 60% and the said disability is of permanent nature.

5. It is also submitted that because of the accident occurred on 11.05.2008 not only the appellant sustained severe injury, but also he remained under treatment for a petty long period. As the appellant did not recover from injury in full, he appeared before the medical board and medical board issued the disability certificate vide Ext.20 by holding the appellant disable to the extent of 60%. It is therefore argued that the learned Tribunal without proper appreciation of the relevant documents produced and exhibited by the appellants in support of the injury and the disability certificate vide Ext.20, allowed compensation of Rs.7,000/- only with interest @ 6% per annum.

6. Mr. Nayak accordingly prayed for interference of this Court with the impugned judgment.

7. Mr. Satapathy, learned counsel appearing for the Respondent-Company while supporting the impugned judgment argued that the disability certificate was disbelieved by the learned Tribunal rightly as the same was issued in the year 2010 though the accident in question occurred on 11.05.2008 and the said disability has got no relationship with the injury sustained by the appellant.

8. Accordingly, Mr. Satapathy, learned counsel appearing for the Respondent-Company prayed that the appeal bears no merit and be dismissed.

9. Mr. Nayak, learned counsel appearing for the Appellant-Company on the stand taken by the learned Tribunal in disbelieving the disability certificate, brought to the notice of this Court, the decision of this Court in the case of ***Divisional Manager, New India Assurance Co., Ltd. vs. Ananda Chandra Rout and Another*** reported in ***2019(I) OLR-432***. In the said decision, this Court has held that if any exhibit is exhibited without any objection, the same forms part of the record. This Court further held that the question of examination of a doctor to establish the extent of injury does not arise.

10. Mr. Nayak, learned counsel for the Appellant also relied on the decision of the Hon'ble Apex Court reported in ***AIR 2005 SC-3467***. In the said decision, Hon'ble Apex

Court held that if any document is exhibited without any objection, the objection cannot be raised for the first time before the higher forum.

11. Mr. Nayak, also brought to the notice of this Court, the decision of the Hon'ble Apex Court in the case of ***Raj Kumar vs. Ajay Kumar and Another*** reported in **2011 (1) T.A.C 785 (S.C.)**. In the said reported decision, Hon'ble Apex Court decided the principles of assessment of loss of future earnings taking into account the permanent disability of an injured.

12. Mr. Nayak in view of the aforesaid decision of this Court as well as the Hon'ble Apex Court argued that the impugned judgment needs interference by this Court and the same be remanded to the learned Tribunal for fresh adjudication.

13. Mr. Satapathy, learned counsel appearing for the Respondent-Company did not dispute such proposition of the learned counsel for the appellant with regard to remand of the matter.

14. Having heard learned counsel for the Parties and in view of the decision as cited (supra), this Court is of the view that the learned Tribunal without proper appreciation of the document exhibited by the appellant more particularly the disability certificate vide Ext.20 only allowed compensation of Rs.7,000/- on the face of the original compensation claimed at Rs.10,00,000/-. This Court therefore has no

hesitation to quash the impugned judgment dated 27.01.2011 passed in MACT Case No.02 / 2009 by the learned Additional District Judge and IIIrd MACT, Boudh. While setting aside the impugned judgment and remanding the matter, this Court directs the learned Tribunal to rehear the matter by giving opportunity of hearing to all the parties concerned. This Court further directs that since the incident is of the year 2008, learned Tribunal shall do well to complete the retrial within a period of six months from the date of receipt of this order.

15. It is also observed that Parties are at liberty to lead any further evidence both oral and documentary in support of their respective claim before the learned Tribunal.

16. With the aforesaid observations and directions, the MACA stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 19th April, 2022/Subrat