

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.256 of 2015

***Divisional Manager, National
Insurance Company Ltd.***

....

Appellant

Mr. Nibas Chandra Mishra, Advocate

-versus-

Girish Chandra Sahoo and Others

....

Respondents

Mr. B.B. Das on behalf of Mr. P.R. Singh,
counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
6.12.2022

Order No.

11. 1. The matter is taken up through hybrid mode.
2. Heard Mr. N.C. Mishra, learned counsel for the Appellant and Mr. B.B. Das on behalf of Mr. P.R. Singh, learned counsel for the claimant – Respondent No.1. None appears on call for other Respondents though name of a set of lawyers is indicated in the list.
3. Present appeal by the insurer is against the impugned judgment dated 17th November, 2014 of the learned 1st MACT, Angul passed in MAC Case No.109 of 2009, wherein compensation to the tune of Rs.4,69,600/- along with interest @ 7% per annum from the date of filing of the claim application has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 17th June, 2004.
4. It is contended by Mr. Mishra, learned counsel on behalf of the Appellant that the accident is resulted as the truck bearing registration

number ORN 9428 dashed the Mini bus bearing registration number OR 05B 4571, where the injured was going as a passenger. Mr. Mishra thus submits that the entire negligence is on the driver of the truck and the driver of the Mini bus is not negligent for the cause of accident. The Appellant being the insurer of the mini bus is therefore not liable to indemnify the compensation amount.

5. Upon perusal of the FIR, a copy of which is produced in course of hearing by Mr. Mishra, it reveals that the offending truck dashed against the mini bus from behind and as a result of the accident, some of the passengers were thrown out of the mini bus. Police has submitted charge sheet against the drivers of both the vehicles stating them equally negligent for the cause of accident. It is seen that the tribunal under issue No.I has concluded that, both the drivers of the bus as well as the truck are responsible for the accident for not only driving their vehicles rashly and negligently but also in high speed. However in the ordering portion, the tribunal has directed for payment of entire compensation amount by the present Appellant, who is insurer of the offending bus. It needs to be mentioned here that the offending truck was admittedly not insured on the date of accident.

6. In view of the evidence brought on record through P.W.1 and P.W.2, who are the injured himself and another eye witness, and keeping in view the police investigation report, the conclusion arrived by the tribunal to hold both the drivers negligent for the cause of accident is confirmed. This court is accordingly of the opinion that both the drivers are equally negligent for the cause of accident. So logically, the liability for compensation should be divided equally among both owners.

7. Now coming to the question of quantification of compensation, it is submitted on behalf of the Appellant that the assessment of loss of future income to the tune of Rs.2,85,600/- made by the tribunal is erroneous since the extent of physical disability does not justify functional disability of the injured at all.

8. It is seen from the impugned judgment that, the tribunal while assessing future loss of income took the income of the injured at Rs.5000/- per month, then deducted 1/3rd towards personal expenses and derived the proportionate loss income @ 42%. This approach and procedure adopted by the tribunal is found completely erroneous. It is for the reason that in case of injury, no need is there for deducting personal expenses and secondly, the functional disability of the injured has not been assessed properly.

9. According to the claimant he was working as a Programmer in the Department of MCA in Trident Academy of Creative Technology and getting monthly remuneration of Rs.5000/-. He was aged about 32 years on the date of accident. The disability certificate under Ext.9 and Ext.17 does not speak about the nature of disability. Both the certificates simply mention that percentage of physical disability is to the extent of 42%. The injured claimant (PW.1) has not said anything in his evidence regarding the nature of disability suffered by him. However, the evidence of P.W.3, who is a doctor, is important to refer here. P.W.3 has stated that he is a Medicine Specialist and he never treated the injured – claimant. In the examination-in-chief he has stated that *“he was suffering from Post Traumatic Sole Paresis. There is very remote chance of recovery of Sri Sahoo”*. In the cross-examination it is explained by said P.W.3 that: - *‘Sole’ as mentioned*

in Ext.17 means 'foot'. The word 'Paresis' means 'Neural Weakness'. It is not a fact that Paresis means only weakness. It is a fact that the word 'traumatic' means 'injury'. Said P.W.3 has further explained that "with disability of this nature as pointed out in Ext.17, a person can do all mental work but cannot perform heavy physical work. It is a fact that a person can pursue his routine activities but not smoothly."

10. Keeping in view the aforesaid evidence of P.W.3, it can be opined that, the disability suffered by the injured, the nature of which is never mentioned in the disability certificates itself, is not a mental disablement but a physical one and that, by such disability though he cannot perform heavy physical work but the same would not certainly affect his day today work. Thus, in the opinion of this court, the functional disability is assessed up-to 20%, keeping in view the avocation of the injured as a Programmer.

11. No reason is found to interfere with assessment of monthly income of the injured at Rs.5000/-. As such, his loss of future earning is computed at $\text{Rs.5000} \times 12 \times 20\% \times 16 = \text{Rs.1,92,000/-}$.

12. There being no further dispute raised either with regard to treatment expenses or any other head of count, no reason is found to interfere with the compensation amount further. Accordingly, the compensation amount is liable to be reduced by Rs.93,600/- only and doing so, the compensation amount is re-fixed at Rs.3,76,000/-.

13. Accordingly, the claimant is found entitled for compensation amount of Rs.3,76,000/-, payable along with interest @ 6% per

annum, and to be shared equally by the owners of the truck (Respondent No.5) and the present Appellant – Insurer.

14. At this stage Mr. Mishra further submits that the driver of the offending mini bus was not having a valid driving licence on the date of accident and the same is clear from Ext.A/2.

The tribunal has discussed such aspect elaborately at para-13 of the impugned judgment and keeping in view the contents of Ext.A and A/2, no merit is seen in the submission of Mr. Mishra to anyway interfere with the conclusion of the tribunal regarding the same. Therefore, such contention raised on behalf of the Appellant to dispute validity of the driving licence of the driver of the offending bus is rejected.

15. In the result the appeal is disposed of with a direction to the insurer – Appellant to deposit 50% of the modified compensation amount of Rs.3,76,000/- (three lakh seventy six thousand) before the tribunal along with interest @ 6% per annum from date of filing of the claim application within a period of two months from today, whereafter the same shall be disbursed in favour of the claimant – Respondent No.1 on such terms and proportion to be decided by the learned tribunal.

16. It goes without saying that the balance 50% of the compensation amount, is to be paid by the owner of the offending truck, i.e. present Respondent No.5, namely Smt. Sakuntala Agrawal and upon failure of payment by Respondent No.5, the injured – claimant is at liberty to realize the same from her in accordance with law.

17. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant on proper application and on production of proof of deposit of the awarded amount before the tribunal.

18. The copies of depositions and exhibits, as produced by Mr. Mishra in course of hearing, are kept on record.

19. An urgent certified copy of this order be issued as per rules.

M.K.Panda



(B.P. Routray)
Judge