

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1089 of 2017 And MACA No.170 of 2018

MACA No.1089 of 2017

Aswini Kumar Behera

....

Appellant

Mr.B.N.Samantaray, Advocate

-versus-

Pravat Kumar Das and another

....

Respondents

Ms.N.Mohanty, Advocate for Respondent No.2

AND

MACA No.170 of 2018

National Insurance Co.Ltd.

....

Appellant

Ms.N.Mohanty, Advocate

-versus-

Aswini Kumar Behera and another

....

Respondents

Mr.B.N.Samantray, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

03.11.2022

Order No.

2.
 1. The matter is taken up through Hybrid mode.
 2. Heard Mr.Samantray, learned counsel for the claimant and Mrs.Mohanty, learned counsel for the Insurer.
 3. Both the appeals arise out of the same judgment dated 11th August, 2017 passed by the First Motor Accident Claims Tribunal, Kendrapara, in MAC Case No.03 of 2015, wherein

compensation to tune of Rs.4,50,000/- along with interest @6% per annum has been granted from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident dated 7th December, 2014.

4. Both the appeals filed by the Insurer and Claimant respectively are challenging the award. The Insurer while challenging the negligence aspect as well as the quantum of compensation, the claimant questions the finding of the Tribunal fixing 50% negligence on him towards the cause of accident.

5. Mrs. Mohanty contends for the Insurer that involvement of the offending motorcycle bearing registration No. OD-29A-2937 has been implanted to manage the compensation. She further submits that loss of income as well as medical expenses are not duly established through evidence on record. On the other hand, Mr. Samantray submits that the findings of the Tribunal that the injured was riding the other motorcycle at the time of accident is without any basis and therefore, attribution of 50% negligence upon him by the Tribunal is erroneous.

6. As per the claim application, while the injured claimant was standing on the extreme left side of the road, the offending motorcycle dashed against him and the other motorcycle of his friend was parked there. Three witnesses have been examined on behalf of the claimant and no evidence was adduced by the Insurance Company. P.W.1 is the injured claimant himself, P.W.2 is the eyewitness of the accident and P.W.3 is an employee of the Office of C.D.M.O., Kendrapara. As per P.W.1, while he along with his friend were standing on the left side of the road, the

offending motorcycle dashed against them. As per P.W.2, when the injured claimant was coming in a bicycle on the extremely left side of the road, the offending motorcycle dashed against him. The Tribunal has elaborately discussed the same and came to the conclusion that in view of the discrepancies stated by the witnesses as well as in the contents of the F.I.R., it is established that the injured was riding the other motorcycle at the time of accident and thus has contributed 50% negligence towards the cause of the accident. The Tribunal has further taken note the fact of lodging of F.I.R. by the conducting lawyer. It is the settled principle that in claim applications though the appellate court has the power to re-appreciate the evidence, but still it should do such appreciation in a limited case only. In the instant case, when discrepancies in the contents of the F.I.R., in the claim petition and in the evidence of P.Ws.1 & 2 are discernible, the conclusion of the Tribunal to fix equal negligence on the drivers of both motorcycles cannot be faulted with. While agreeing with the findings of the Tribunal, this Court further observes that the claimant has suppressed relevant fact towards the cause of accident. As such, this Court does not find any reason to interfere with the findings of the Tribunal contributing 50% negligence each to the driver of the offending motor cycle and the claimant.

7. With regard to the quantum of compensation, what is submitted on behalf of the Insurer that future loss of income counted to the extent 50% loss of functional disability due to the injures is not sustainable. It needs to be stated here that the nature of injuries as mentioned in Ext.5 includes injuries to the head.

Further, disability certificate under Ext.8 certifies that he sustained locomotor disability to the extent of 60%, which is permanent physical impairment. The injured is a motor mechanic and earning Rs.5,000/- per month in the opinion of the Tribunal. The Insurer has not adduced any rebuttal evidence against the evidence produced from the side of the claimant and thus, the finding of the Tribunal with regard to avocation of the injured and his income is confirmed. If the avocation of the injured as a motor mechanic is accepted, then the assessment of the Tribunal about loss of functional disability to the extent of 50% due to the injuries cannot be faulted with.

8. A further submission is made by Mrs. Mohanty that the total sum of Rs.1,50,000/- as granted by the Tribunal towards cost of treatment, hospitalization etc, is excessive. The same is found without merit. The injured underwent treatment in the hospital for a considerable period, which is around one month. Therefore, considering the nature of injuries and the period of treatment, the amount of Rs.1,50,000/- (One lakh fifty thousand) as granted by the Tribunal cannot be considered as excessive.

9. Thus upon going through the impugned judgment as well as the copies of depositions and exhibits filed by Mr. Samantray in course of hearing, and considering the grounds of challenge, no ground is seen to interfere with the award.

10. In the result, both the appeals are dismissed.

11. The Insurer-National Insurance Co. Ltd. is directed to deposit the entire compensation along with interest as per the direction of the Tribunal within a period of two months from

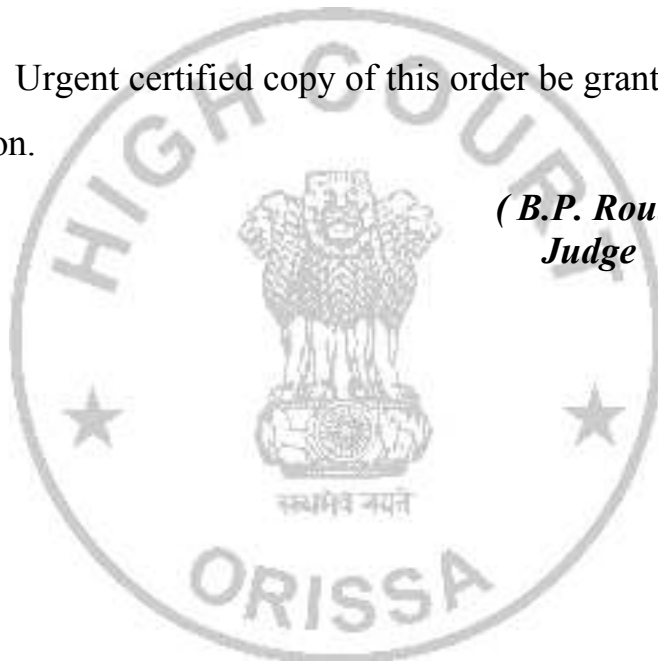
today; which shall be disbursed in favour of the claimant on same terms and proportion fixed by the Tribunal.

12. The statutory deposit made by the Insurer in MACA No.170 of 2018 with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

13. Copies of the documents filed by Mr.Samatray are kept on record.

14. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge



C.R.Biswal