

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.199 of 2019

And

MACA No.254 of 2020

MACA No.199 of 2019

Rabindra Kumar Rout

....

Appellant

Mr.Kalpataru Panigrahi, Advocate

-versus-

Sree Ramapada Jena and another

....

Respondents

Mr.P.K.Mahali, Advocate for Respondent No. 2

AND

MACA No.254 of 2020

National Insurance Company Ltd.

....

Appellant

Mr.P.K.Mahali, Advocate

-versus-

Rabindra Kumar Rout and another

....

Respondents

Mr.Kalpataru Panigrahi, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

10.03.2022

Order No.

10.

I.A.No.471 of 2020

1. As submitted by Mr.Mahali, he has already removed the defects by filing the authenticated fee and deficit court fees in the morning. As such, the defects are ignored.

2. Upon hearing both parties, delay in filing the appeal i.e., MACA No.254 of 2020 is condoned.

3. The I.A. is disposed of.

MACA No.199 of 2019 & MACA No.254 of 2020

5. Heard Mr.Panigrahi, learned counsel for the claimant-Appellant and Mr.Mahali, learned counsel for Insurer-Respondent.

6. Both the appeals are directed against the judgment dated 18th December, 2018 passed by learned 1st Addl. District Judge-cum-1st M.A.C.T., Cuttack in M.A.C.No.552 of 2014, wherein compensation to the tune of Rs.28,27,312/- has been granted to the claimant on account of injury sustained by him in the motor vehicular accident dated 15th June, 2014.

7. The case of the claimant is that due to the injuries sustained he suffered 70% disability and he is an advocate by profession having annual income of Rs.2,30,590/- for the financial year 2013-14. The injured claimant prays for enhancement of the compensation mainly on the ground that the learned Tribunal has committed error by taking average of the annual income of the deceased for last three consecutive years.

8. Mr.Panigrahi pressed the decision in the case of ***Shashikala and others v. Gangalakshamma and another***, reported in **2015** (20 T.A.C.867(S.C)). The further argument advanced by Mr.Panigrahi that, as per the certificate issued by NIFTAR, he is orthopedically handicapped requiring concession for his movement in railway. The said certificate, which is appended as Annexure-A to I.A.No.35 of 2022, is sought to be adduced as additional evidence in the present appeal. The prayer to adduce additional evidence is allowed and the said certificate under Annexure-1 is brought on record.

9. Conversely, Mr.Mahali, learned counsel for the Insurer submits that the Tribunal in all aspects has granted higher compensation in favour of the claimant without sufficient materials. It is further submitted that computation under different heads being on higher side, the same needs to be reduced based on evidence brought on record. Mr.Mahali also submits that the driver of the offending vehicle was not having a valid driving license on the date of accident and in that respect he seeks to prove the certificate granted by the Licensing Authority, Paschim Medinapur, West Bengal appended to I.A.No.44 of 2022. The said document i.e., the extract of driving license consisting of four pages is taken on record as additional evidence by allowing the prayer of Mr.Mahali.

10. Upon perusal of the impugned judgment it reveals that the Tribunal while calculating the income of the claimant has taken into consideration the income tax returns filed for the assessment years 2012-13, 2013-14 & 2014-15 revealing income of Rs.1,83,410/-, Rs.1,99,840/- and Rs.2,30,590/- under Exts.9, 10 & 11 respectively. From the copies of those exhibits as produced in course of hearing, it reveals that Ext.11 (the I.T.R. for AY - 2014-15) was submitted on 26th July, 2014 i.e. after the date of accident.

11. The Supreme Court in the case of ***Shashikala***(supra) have observed as follows:

“10. The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of

the assessee was Rs.2,02,911/-. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only xerox copy was filed and the claimants have failed to examine income-tax authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the average of the income for two assessment years 2005-06 and 2006-07. Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years. The deceased was aged 45 years and doing business: Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work.”

12. In the instant case, the income of the claimant for the assessment year 2013-14 was Rs.1,99,840/- under Ext.10 and the income for the assessment year 2014-15 under Ext.11 which he filed after the date of accident was Rs.2,30,590/-. Therefore the amount of Rs.2,04,613/-, which has been concluded by the Tribunal to determine the loss of income, is no way found unreasonable.

13. The contention of the claimant that he needs assistance permanently for moving is not substantially supported from the certificate granted by NIFTAR. The said certificate is limited for the purpose of movement in Railway only, which is on a different context and the Concession granted in the Certificate of NIFTAR is due to the disability mentioned in Ext.8. Therefore no case is made out for enhancement on this score. The further contention that 70% disability amounts to 100% functional disability is without any substance. The decision cited by Mr. Panigrahi in this respect in the case of *Jithendran v. New India Assurance Co. Ltd., AIR ONLINE 2021 SC 946* is a case where the injured had sustained severe head

injury and was totally immobilized and suffered from severe impairment of cognitive power. Here in the instant case the disability is with respect to leg injury resulting physical impairment up to 70%. The physical impairment is affecting right leg and left knee in terms of the disability certificate under Ext.8. Therefore the submission of the claimant to treat the physical disability up to 100% functional disability is not found acceptable in view of his profession as an advocate.

14. Now coming to the challenges advanced by the Insurer, his main contention is that the Tribunal has granted higher compensation under each head in violation of the principles decided in the case of ***Raj Kumar v. Ajay Kumar, 2011 (1) SCC 343***. It is further submitted that the percentage of disability as recorded under Ext.8 cannot be treated towards loss of earning capacity. In the case of ***Raj Kumar*** (supra), the Supreme Court have held as follows:

“13. We may now summaries the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

15. Admittedly, neither the insurer nor the owner has adduced any evidence in support of their case. As seen, the learned Tribunal has counted compensation under the head loss of future income of Rs.12,89,062/-; attendant's cost, transportation charges, fooding and nourishment Rs.3,00,000/-; medical expenditure (past and future) of Rs.10,38,250/- and Rs.2,00,000/- towards mental agony, pain and suffering and loss of amenities. The computation under such heads as calculated by the learned Tribunal does not appear contrary to the principles laid down in the case of **Raj Kumar** (supra). The learned Tribunal has considered different documents including the injury report, period of treatment, the profession and income of the injured everything into consideration for arriving at his conclusion. The same is not seen with any fault. As such, I do not find any merit in the contention of the Insurer to interfere with the impugned compensation.

16. In the result, the contention of the parties either to enhance or to reduce the compensation is found without merit. Both

the appeals are disposed of confirming the amount granted by the learned Tribunal.

17. The Insurer, Respondent No.2 in MACA No.199 of 2019 and Appellant in MACA No.254 of 2020 is directed to deposit the entire amount of compensation before the learned Tribunal within a period of two months from today which shall be disbursed to the injured claimant in terms of its direction contained in the impugned judgment. The penal interest of 12% is waived.

18. The statutory deposit made by the Insurer in MACA No.254 of 2020 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.

19. Urgent certified copy of the order be granted on proper application.

(*B.P. Routray*)
Judge