IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>MACA Nos.112 & 106 of 2021</u>

(From the judgment dated 7th December, 2020 passed by the learned 1st Additional District Judge-cum-1st MACT, Cuttack in M.A.C. Case No.240 of 2017)

<u>MACA No.112 of 2021</u>

The Manager, M/s.Sri Ram General Insurance Company Limited …… **Appellant**

Versus

Rama Karua @ Karva and another …... **Respondents**

Advocate(s) appeared in this case :-

For Appellant : Mr.G.P.Dutta, Advocate

For Respondents : Mr.D.C.Swain, Advocate for Respondent No.1

<u>MACA No.106 of 2021</u>

Rama Karua @ Karva …… **Appellant**

Versus

Pravat Chandra Rath and another …… **Respondents**

Advocate(s) appeared in this case :-

For Appellant : Mr. D.C.Swain, Advocate

For Respondents : Mr.Mr.G.P.Dutta, Advocate for Respondent No.2

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray,J.

1. Both the appeals being filed against the same judgment dated 7th December, 2020 of the learned 1st Additional District Judge-cum-1st MACT, Cuttack in M.A.C. Case No.240 of 2017, are heard together and disposed of by this common judgment.

2. The claimant is the Appellant in MACA No.106 of 2021 whereas MACA No.112 of 2021 has been preferred by the Insurer.

3. This is a case of injury concerning motor vehicular accident dated 17th January, 2016 involving the offending vehicle bearing registration No.OR-02-BM-6768. At the time of accident, the claimant was going in a bicycle with another, who died as the result of the said accident. The Tribunal upon adjudication has directed for payment of compensation of Rs.6,70,000/- along with interest @6% per annum. For the said purpose, the Tribunal assessed the monthly income of the injured claimant at Rs.5,000/- on notional basis and computed the amount as follows:

1.	Loss of future income	-	Rs.4,20,000/-
2.	Attendance costs &		

	nourishment etc.	-	Rs. 25,000/-
3.	Medical expenditure	-	Rs. 50,000/-
4.	Future medical expenses	-	Rs. 25,000/-
5.	Mental agony, pain and suffering etc.	-	Rs.1,50,000/-
	Total	-	Rs.6,70,000/-

4. The challenge of the claimant is that the Tribunal has failed to appreciate 80% disability due to the injuries in the accident as per the disability certificate under Ext.11, but granted compensation counting 50% disability only.

5. On the contrary, it is submitted on behalf of the Insurer that the Tribunal has committed grave error by counting the disability up to 50%, which is without any material evidence. It is submitted that though the injury report and discharge certificate under Exts.5 & 10 speaks of fracture of injury in the right leg, but strangely enough the disability certificate under Ext.11 speaks about deformity in the left leg due to shortening. The disability certificate is dated 1st March, 2017, whereas the accident took place on 17th January, 2016. It is therefore contended that the deformity of the left leg mentioned in the disability certificate is no way connected with the injuries relating to the accident and the Tribunal without any basis counted the disability up to 50%. So, as per

the contention of the Insurer, the claimant is not entitled for any compensation towards loss of future income.

6. Considering such rival contentions and upon perusal of the record, it reveals that Ext.5, the injury report in fact speaks of fracture of both thigh bones and shaft of right leg. Similarly, the discharge certificate under Ext.10 reveals about fracture of femur and tibia of right leg. There is no mention of any injury to the left leg either in Ext.5 or Ext.10. Now looking to the disability certificate, which is dated 1st March, 2017 granted by Capital Hospital, Bhubaneswar, it is found mentioned at Column-B that, "Old fracture femur operated with malunion deformity left leg with shorting of stiff Knees". It is further mentioned in the said Column-B that "he has 80% permanent physical impairment in relation to his both legs".

Therefore it is clear from Ext.11 that the claimant sustained 80% permanent physical impairment in relation to his both legs including the deformity of left leg. As such, the entire contention of the Insurer to discard the disability certificate from consideration being unconnected to the injuries in the accident in question is not found fully correct. It is though true that no injury in left leg has been mentioned either in the injury report or in the discharge certificate, still the consideration for the disability sustained by the claimant as per Ext.11 is for both legs and it is not the case as contended by the Insurer that entirely for the deformity in the left leg, the disability has resulted.

7. The Tribunal has taken the disability up to 50% by discrediting the contentions under Ext.11. Though the Tribunal has not stated any reason for such assessment of disability up to 50% only, still it can be safely inferred that mention of both the legs in the disability certificate might be the reason for consideration in the mind of the Tribunal. Such assessment done by the Tribunal who has seen the witness (claimant) cannot be brushed aside entirely as insisted by the Insurer. The assessment of a trial judge, who has the advantage of seeing the witness, should not ordinarily be thrown away without a strong evidence to the contrary. As discussed hereinbefore, I agree with the assessment of the Tribunal to compute the disability to the extent of 50% and as such no reason is found to interfere with the same.

8. What is contended by the claimant to count the disability at 80% in absence of any contrary evidence produced from the side of the insurer, has no merit for consideration for the simple reason that before

looking for rebuttal evidence the burden is on the claimant to satisfy the court about his case first.

9. Another contention is raised by the claimant to add 40% future prospects towards future loss of income which the Tribunal has forgotten to add. It is seen that the Tribunal while computing the future loss of income for the disability has assessed the same taking Rs.5,000/- as monthly income of the claimant and applied multiplier 14. The course adopted by the Tribunal is, Rs.5,000/- x 12 x 14 x 50/100. It is no more *res integra* that future prospects is required to be added for counting future loss of income in case of permanent injury and disability. There is no dispute relating to the age of the claimant and the consequent applicability of 14 multiplier. Thus, if 25% towards future prospects, which comes to Rs.1250/- is added in the assessed monthly income of the claimant, the proper course would be Rs.6250/- x 12 x 14 = Rs.5,25,000/-. Thus the claimant is found entitled to a further amount of Rs.1,05,000/- payable along with interest @6% from the date of filing of the claim application.

10. In the result, both the claim applications are disposed with a direction to the Insurer i.e., M/s. Sri Ram General Insurance Company

Limited to pay a total compensation of Rs.7,75,000/- (Seven lakhs seventy five thousand) before the Tribunal along with interest @6% per annum from the 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 on such terms and proportion to be decided by the Tribunal.

11. The statutory deposit made by the Insurer-Appellant in MACA No.112 of 2021 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.

(B.P.Routray)
Judge

HIGH COURT ORISSA

C.R.Biswal/Secy.