

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.174 of 2020

MACA Nos.174 & 725 of 2020

Prasanta Nayak

(In MACA No.174/2020)

***The Divisional Manager,
Oriental Insurance Co. Ltd.***

(In MACA No.725/2020)

.... Appellants

Mr. S.B. Das, Advocate (in MACA No.174/2020)
Mr. P.K. Mahali, Advocate (in MACA No.725/2020)

-versus-

Golokh Chandra Malik and Another (In MACA No.174/2020)

Prasanta Nayak and Another (In MACA No.725/2020)

.... Respondents

Mr. P.K. Mahali, counsel for Respondent No.2
(in MACA No.174/2020)

Mr. S.B. Das, counsel for Respondent No.1
(in MACA No.725/2020)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

**ORDER
21.9.2022**

Order No.

- 09.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. S.B. Das, learned counsel for the injured claimant and Mr. P.K. Mahali, learned counsel for the insurance company.
 3. Both the appeals being arise out of same judgment, are heard together and disposed of by this common order.
 4. Both the appeals are against the same impugned judgment dated 14th January, 2020 of learned 3rd MACT, Cuttack passed in MAC

Case No.886 of 2015 wherein compensation to the tune of Rs.19,37,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 23rd November, 2015 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 26th August, 2015.

5. In MACA No.174 of 2020 the claimant has come up praying for enhancement of the compensation amount. In MACA No.725 of 2020 the insurer has challenged the award.

6. Mr. Mahali, learned counsel submits on behalf of the insurer that the injured – claimant was intoxicated at the time of accident and therefore no negligence can be attributed towards the driver of the offending Bolero vehicle. He further submits that F.I.R. was lodged after seven days of the occurrence.

7. On the other hand Mr. Das, learned counsel for the claimant contends that the amount of compensation needs to be enhanced since no amount towards future attendant cost and future medical expenses has been granted.

8. The facts of the case is that while the injured – claimant was attending call of nature in front of his house on the left earthen plank of the village road, the offending Bolero vehicle dashed him being driven in rash and negligent manner. The F.I.R. was lodged after seven days of the accident and the copy of the F.I.R. reveals that as the informant being father of the injured was busy in treatment of the injured, the same could not be lodged immediately. Nothing unusual is seen in the explanation offered in the body of the F.I.R. explaining the delay in lodging the same. Therefore, the contention as raised by

Mr. Mahali to disbelieve negligence on the part of the driver of the offending vehicle is not found convincing and thus rejected.

9. Next coming to the question of quantum of compensation, it is submitted by Mr. Mahali, learned counsel that the same has been counted on higher side by taking the income of the injured at Rs.6000/- per month without any documentary proof. At the same time considering the submissions made by Mr. Das, learned counsel on behalf of the injured for enhancement of the compensation amount, perusal of the impugned judgment reveals that the tribunal by accepting the profession of the injured as a driver, has assessed his income at Rs.6000/-. Such amount taken by the tribunal being found normal and usually paid to the drivers during the year 2015, no reason is found to interfere with the same. The functional disability of the injured as assessed at 100% keeping in view his profession as a driver and the nature of permanent disability mentioned in Ext.7. Accordingly, the loss of future income as calculated by the tribunal at the tune of Rs.16,12,800/- is found appropriate. The tribunal added Rs.24,200/- towards actual loss of income during the period of treatment and further consolidated amount of Rs.3,00,000/- towards pain and suffering, transportation, medical expenses, special diet, loss of enjoyment of life, present and future attendant cost, etc. So what is contended by Mr. Das that the tribunal has failed to add future attendant cost is not found correct on record. Considering the age of the injured as 31 years on the date of accident, the consolidated amount of Rs.3 lakhs granted for all such heads cannot be faulted with and accordingly the contention raised by the injured for enhancement of the compensation amount is rejected.

10. In the result both the appeals are dismissed being without merit.

11. The insurer, i.e. Oriental Insurance Co. Ltd. is directed to deposit the awarded compensation amount along with interest as per direction of the tribunal within a period of two months from today, where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on the same terms and proportion as contained in the impugned judgment.

12. The statutory deposit made by the insurer in MACA No.725 of 2020 before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

13. The copies of Ext.1 & Ext.7 as produced in course of hearing by Mr. Mahali, are kept on record.

14. The LCRs. be returned forthwith.

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

(B.P. Routray)
Judge