

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.26694 of 2017
(Through hybrid mode)**

***ICICI Lombard General Insurance
Com. Ltd. and another***

Petitioners

Mr. G. P. Dutta, Advocate

-versus-

Praveen Raj Parichha and another

Opposite Parties

Mr. P. K. Panda, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
20.09.2022**

**Order
No.**

10.

1. Mr. Dutta, learned advocate appears on behalf of petitioners (insurance company). He submits, under challenge is award dated 18th July, 2017, whereby there was direction upon his client to pay compensation of Rs.75,000/- in addition to cost of Rs.1000/- and interest at 8% per annum in event payment was not made within one month thereof. On query from Court he submits, the writ petition was presented on 20th December, 2017 but though there was interim order dated 7th May, 2018, made by coordinate Bench directing interim stay of impugned award, his client was not required to make any deposit.

2. Facts are, he submits, that the insured took a motor accident

policy. It covered permanent disability at a maximum of Rs.1,00,000/-. He relies on disability certificate dated 5th April, 2017 issued by City Hospital Berhampur to demonstrate that the diagnosis on injury was stated to be 'temporary' and therefore not covered under the policy on permanent disability.

3. The second contention is, private opposite party successfully obtained **judgment dated 24th September, 2019** for compensation from Motor Accident Claims Tribunal (MACT), Berhampur in **MAC Case no.33 of 2018 (Praveen Raj Parichha vs. Smt. S. Padmavathi and others)**. Compensation awarded therein to private opposite party was Rs.11,60,500/-. Mr. Dutta then relies on view expressed by a Division Bench of Allahabad High Court in **Kalawati v. Balwant Singh**, reported in **AIR 1985 Allahabad 124**, paragraph 15 reproduced below.

“15. The provisions of Section 110-AA of the M. V. Act are similar in purport. Section 110-AA bars more than one claim but leaves the claimant, to choose the forum. Whether he files the claim before the Accidents Claims Tribunal or before the Commissioner under the Compensation Act, will depend on his volition. But the law is clear that he cannot claim compensation for loss or injury arising out of the same accident more than once. This conclusion would conclude the appeal but we would examine a few cases and also examine the

contention canvassed in this appeal.”

He also relies on similar view expressed by a learned Single Judge of Karnataka High Court in **New India Insurance Co. Ltd., Belagavi v. Rekha Anil Shelke**, available at **AIRONLINE 2018 KAR 1851**, paragraph 12.

4. He submits, section 167 in Motor Vehicles Act, 1988 correspond to section 110-AA in repealed Motor Vehicles Act, 1939. Section 167 is reproduced below.

“167. Option regarding claims for compensation in certain cases.—Notwithstanding anything contained in the Workmen’s Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen’s Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.”

5. Mr. Panda, learned advocate appears on behalf of private opposite party. He draws attention paragraph 10 in impugned award. It is quoted below.

“10. Admittedly, here is a case where the doctors found disability in respect of both legs and both arms of the applicant, who was a young man of 29 years to the extent of 75% even after one year of the accident vide certificate dt.05.04.2017 (Ext.7). No doubt, they have

*endorsed “temporary” against the Column No.2- “this condition is likely to be improve” but that does not mean the condition would definitely improve. There is no certainty in the matter. It may improve or may not improve. When two views are possible then the view that would be favourable to the applicant shall be taken into consideration more so when the doctors specifically mentioned the extent of disability of 75%, under the heading “**Permanent physical impairment / mental disability (in %)**”. Considering the percentage of disability to the extent of 75%, the damage that was done to both the legs and the hands, the age of the applicant and loss of his future prospects, we are of the unanimous finding that he shall be correspondingly awarded i.e., 75% of the maximum compensation of Rupees One Lakh that is provided in the terms and conditions of the policy, which comes to Rs.75,000/- ”*

6. He submits, the point on section 167 was not urged before the Permanent Lok Adalat (PLA) and therefore cannot be a ground taken in this Court. Mr. Dutta submits, fact that private opposite party had claimed compensation before the Tribunal was a subsequent discovery. He submits further, the judgment is subject of appeal preferred by Oriental Insurance Company Limited.

7. Perused the disability certificate. It says, certification is on evaluation as per guidelines and shown against relevant disability in the table therein. The table has columns, inter alia, on diagnosis and permanent physical impairment/mental disability (in %). The diagnosis is Quadriparesis. The certificate also says affected part of body are both legs and both arms. Under column of permanent

physical impairment/mental disability, 75% has been stated. This is followed by comment that the condition is likely to improve (temporary). Appreciation of this information given in the certificate makes it clear that private opposite party suffered permanent physical impairment, percentage of which is likely to improve. The certificate is dated 5th April, 2017, as aforesaid and valid till 4th April, 2022. There has been no disclosure on part of petitioner to show that private opposite party has completely recovered, for conclusive evidence that the injury resulting in physical disability was not permanent.

8. Present section 167 bars relief to be claimed both under said the 1988 Act as well as Workmen's Compensation Act, 1923. Undisputedly, private opposite party had applied and obtained judgment from MACT for compensation on 3rd party coverage of motor insurance policy taken by owner of the offending vehicle. Private opposite party had also claimed under the policy held by him, on having met with the accident resulting in his permanent disability, albeit on a percentage, regarding locomotor disability on both arms and legs. Claim on his policy was prosecuted before the PLA on allegation of deficiency in public utility service of insurance. It was not made on basis of any provision in the 1923 Act. In the circumstances, both **Kalawati** (supra) and **Rekha Anil Shelke** (supra) are of no aid to petitioner.

9. The writ petition is found to be without merit. It is dismissed and consequently, the interim order vacated.

(Arindam Sinha)
Judge

Prasant