

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.503 of 2017

***Divisional Manager, Oriental
Insurance Company Ltd.***

.... ***Appellant***

Mr. M. Sinha, Advocate

-versus-

Nilambara Patra and Another

.... ***Respondents***

Mr. A. K. Behera, Advocate

CORAM:

SHRI JUSTICE B. P. ROUTRAY

**ORDER
19.7.2022**

Order No.

- 09.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. M. Sinha, learned counsel for the insurer – Appellant and Mr. A.K. Behera, learned counsel for claimant – Respondent No.1.
 3. Present appeal by the insurer is directed against the impugned judgment dated 6th March, 2017 of learned 1st MACT, Jajpur passed in MAC No.150 of 2012 wherein compensation to the tune of Rs.8,32,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2012 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 5th May, 2012.
 4. The case of the claimants before the learned Tribunal was that on 5th May, 2012 while he was going to his office in the bicycle, the offending tractor bearing registration number OR-02-F-2018 coming

in rash and negligent manner with a high speed from the front, dashed against him resulting the accident. As a result of the same the claimant sustained spinal cord injuries and was under treatment in different hospitals. The claimant, as per the disability certificate issued under Ext.2, sustained traumatic paraplegia (post-operative). It is the further case of the claimant that he was getting monthly remuneration by working as a Sampler in a private company. But the learned Tribunal, disbelieving such amount of income as claimed, assessed his income at Rs.4,200/- per month by taking the daily wage rate at Rs.140/-. The learned Tribunal accordingly determined the compensation to the amount stated above.

5. Mr. Sinha, learned counsel for the Appellant challenges the award of the tribunal by stating that, first, the involvement of the offending tractor in the accident is doubtful for the reason that in the F.I.R. it was stated to be an unknown vehicle and none of the witnesses before the police have stated the registration number of the vehicle and the F.I.R. was lodged after four days of the alleged occurrence. Secondly, it is contended that as per the evidence of the claimant he has not lost his service in the company where he was earlier serving and as such, there is no loss of future earning. But the tribunal has granted loss of future earning to the extent of Rs.7,25,760/- which is unsustainable in view of the statement of the claimant that he has not lost his job.

6. Mr. Behera, learned counsel for the claimant on the contrary submits that, it is not so stated by the claimant in his evidence. In fact,

the claimant has been paralyzed as a result of the injuries sustained in the accident.

7. On the backdrop of such rival contentions made, perusal of the certified copy of the evidence as produced by Mr. Sinha, learned counsel in course of hearing, it reveals that the claimant as P.W.1 has stated in his cross-examination to the effect that, *“till today I am in service under the company in which I was earlier working.”* The claimant in his examination-in-chief has stated that he was working as Sampler in a private company, namely Griffith India Pvt. Ltd. and presently getting consolidated amount of Rs.6,996/- from the company after the accident and in support of the same, he exhibited the salary slip for the month of June, 2015 and May, 2015 under Ext.4 and Ext.4/a.

8. It is true that the tribunal has determined the income of the claimant by taking the daily wage rate at Rs.140/- and so it is not the case that any fixed amount of salary has been taken by the tribunal for determining the income of the claimant by believing his service as a Sampler in the private company as stated by the claimant. So, what is contended by Mr. Sinha to discredit the version of the claimant as well as the finding of the learned tribunal that the claimant is not entitled for getting any amount towards future loss of earning for he is serving in his job even after the accident, is not found a conceivable statement. It is for the reason that the claimant in his evidence has stated to be getting consolidated amount from his job and secondly, no evidence has been led from the side of the insurer to rebut such

contention of the claimant. It is to be reiterated here that the disability certificate as brought on record under Ext.2 is not disputed through any rebuttal evidence from the side of the insurer and the contention of the claimant that he was receiving the consolidated amount is enough to establish his case of loss of earning coupled with the disability up to 90%. As such the claimant is found entitled for loss of future earning keeping in view the extent of disability up to 90% as per Ext.2. But while computing the same, the factum receipt of consolidated amount by the claimant from his company after the accident and disability cannot be thrown aside completely as the tribunal has done.

9. Thus considering the statement of the claimant made in his evidence that presently he is getting consolidated amount of Rs.6,996/- from the company, the loss of future earning is required to be computed 50% less than the amount per month counted by the Tribunal. Further 40% of the same (Rs. 840) needs to be added thereto towards future prospects.

10. So far as the contention of the Appellant regarding non-involvement of the offending tractor is concerned, the same is rejected outright keeping in view the evidence of the claimant which is supported by police papers and there is no rebuttal evidence from the side of the insurer.

11. The further contention of the Appellant that the offending vehicle had no permit is also rejected in absence of any material about

the same and the clear finding of the tribunal in the impugned judgment that the permit is valid till 27th March, 2013.

12. Accordingly, the loss of future earning is assessed at Rs.5,08,032/- (i.e. Rs. 2940 X 12 X 16 = Rs.5,64,480 X 90 / 100). Adding Rs.1,05,847/- thereto towards cost of medicines, the same comes to Rs.6,13,879. Further adding Rs.50,000/- towards cost of attendant and nutrition charges including future medicine cost, the same comes to Rs.6,63,879/-. Considering the period of treatment which is 45 days as per the claim of the claimant, an amount of Rs.6,300/- is also added towards actual loss of earning. Thus, the total compensation comes to Rs.6,70,179/- which is rounded to Rs.6,70,200/- and the claimant is found entitled to get the same from the insurer – Appellant.

13. In the result the appeal is disposed of with a direction to the Appellant – insurer to deposit the reduced compensation of Rs.6,70,200/- (six lakh seventy thousand two hundred) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 28th December, 2012 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the learned Tribunal.

14. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda

