

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.256 of 2019 And MACA No.350 of 2021

MACA No.256 of 2019

Chandramani Nanda

.... ***Appellant***
Mr.D.C.Dey, Advocate

-versus-

Sarat Chandra Swain and another

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

AND

MACA No.350 of 2021

***The Sr. Divisional Manager (Legal),
M/s.National Insurance Co. Ltd.***

.... ***Appellant***
Mr.P.K.Mahali, Advocate

-versus-

Chandramani Nanda and another

.... ***Respondents***
Mr.D.C.Dey, Advocate for Respondent No.1

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
24.08.2022**

Order No.

I.A.No.796 of 2021

- 10.
1. The matter is taken up through Hybrid mode.
 2. Considering the period covered under Covid Pandemic and the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020, delay in filing the appeal is condoned.

3. The Court fee of Rs.10290/- is stated to have been paid by way of e-Court fee.

4. The I.A. is disposed of.

MACA No.256 of 2019 And MACA No.350 of 2021

5. Heard Mr.Dey, learned counsel for the injured-claimant and Mr.Mahali, learned counsel for the Insurer.

6. As per the order dated 30th March, 2022, the injured-claimant was produced before the Medical Board and the report of the Medical Board dated 17th June, 2022 produced by the Mr. K.K. Das, learned Additional Standing Counsel for the State is kept on record. As per the said report, the injured-claimant is persisting neurocognitive disability to the extent of 65%.

7. Both the appeals arise out of the same judgment dated 15th January, 2019 passed by the learned 2nd Add. District Judge-cum-3rd M.A.C.T., Cuttack in M.A.C.Case No.176 of 2014, wherein compensation to tune of Rs.20,60,385/- along with interest @6% per annum has been granted from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident dated 16th January, 2014.

8. MACA No.256 of 2019 has been filed by the injured-claimant for enhancement of the compensation amount. MACA

No.350 of 2021 has been filed by the Insurer challenging the award.

9. The case of the claimant is that while he was coming in a Verito Vibe Car bearing Registration No.OD-05-D-9596 along with other occupants, the offending Bus bearing Registration No.OD-14-A-1774 dashed against it to cause the accident resulting sever multiple injuries to the claimant. The Tribunal upon adjudication has directed for payment of compensation of Rs.20,60,385/- in total to the injured-claimant as compensation. The Tribunal computed the compensation as per the following table.

Loss of future income	Rs.15,59,232.00
Past medical expenditure including cost of medicine, special diet & the attendant	Rs. 3,51,153.00
Mental agony, pain, suffering and loss of amenities	Rs. 50,000.00
Future medical expenses	<u>Rs. 1,00,000.00</u>
Total	Rs.20,60,385.00

10. Mr.Mahali contends that the Tribunal has assessed the income of the injured at a higher side though as per the evidence of P.W.4, Dipti Ranjan Pattnaik, who is the owner of the

company, the injured was receiving Rs.5,000/- to 7,000/- per month. In order to examine such contention raised on behalf of the insurer, perusal of deposition of said P.W.4, a copy of which is produced in course of hearing, reveals that there was no specific statement given by said P.W.4 with regard to remuneration of present injured-claimant. It is seen that said P.W.4 has stated that the Branch Manager was receiving Rs.15,000/- per month and other employees were receiving Rs.5,000/- to Rs.7,000/-. Therefore the statement of said P.W.4 is not specific in respect of any remuneration given to the injured-claimant. On the other hand, the claimant produced his I.T. return for the assessment year 2010-2011 to reveal his income of Rs.1,62,420/-. It is further deposed by his mother that the injured was getting salary of Rs.22,000/- per month which is also supported in the examination of chief of P.W.4, Dipti Ranjan Pattnaik. However, the Tribunal disbelieving such contentions made by P.Ws.3 & 4 has accepted the amount mentioned in the I.T. return filed on behalf of the claimant. As such no flaw is seen in the approach of the Tribunal determining the annual income of the claimant at Rs.1,62,420/- in terms of copy of the I.T. return filed under Ext.16. Therefore the contention of Mr.Mahali on behalf of the Insurer to reduce the same is rejected.

11. Here it is submitted by Mr.Dey that such assessment of future loss of earning capacity upto 60% by the Tribunal is erroneous in view of nature of disability sustained by the claimant.

12. As stated earlier, the injured-claimant is having persistent neurocognitive disability up-to 65% in the opinion of the Medical Board. Such disability regarding neurocognitive power would entail 100% loss of earning capacity. Therefore the finding of the Tribunal to count the same at 60% is found erroneous and modified to the extent of 100%. Accordingly, the computation under the head of loss of future earning is determined at Rs.25,98,720/-, i.e., Rs.1,62,420/- x 16. Thus the differential amount comes to Rs.10,39,488/-, rounded to Rs.10,40,000/-. Accordingly, the total amount of compensation is enhanced to Rs.30,99,873/-.

13. In the result, both the appeals are disposed of with a direction to the Insurer i.e., M/s.National Insurance Co. Ltd. to deposit the enhanced compensation amount of Rs.30,99,873/- (Thirty lakhs ninety nine thousand eight seventy three) along with 6% per annum from the date of filing of the claim application

within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on such terms and proportion to be fixed by the Tribunal. However, the direction for payment of default interest is waived.

14. The statutory deposit made by the Appellant in MACA No.350 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.

15+. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal