

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.260 of 2019 & MACA No.717 of 2019

In MACA No.260 of 2019

IFFCO TOKIO General Insurance Company Limited ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Jawan Nath and another ***Respondents***
Mr. D.K. Mohapatra, Advocate for Respondent No.1

In MACA No.717 of 2019

Jawan Nath ***Appellant***
Mr. D.K. Mohapatra, Advocate

-versus-

IFFCO TOKIYO General Insurance Company Limited and another ***Respondents***
Mr. G.P. Dutta, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
28.09.2022

Order No.

MACA No.260 of 2019 & MACA No.717 of 2019

- 07.
1. Heard Mr. G.P. Dutta, learned counsel for the Insurance Company and Mr. D.K. Mohapatra, learned counsel for the claimant.
 2. Both the appeals being arise out of the same judgment dated 24.12.2018 of learned 3rd MACT, Jagatsinghpur wherein compensation to the tune of Rs.17,99,680/- has been granted along with interest @7% per annum to the claimant from the date

of filing of the claim application, i.e., 09.07.2014 on account of injury sustained by him in the motor vehicular accident dated 09.02.2014, are heard together and disposed of by this common order.

3. MACA No.260 of 2019 has been filed by the insurer challenging the award and MACA No.717 of 2019 has been filed by the claimant praying for enhancement of the compensation amount.

4. Mr. G.P. Dutta, learned counsel for the Insurance Company advancing his submission contends that the injured-claimant after filing his affidavit evidence before the learned Tribunal did not turn up for cross-examination and thus his evidence was discarded. Subsequently he renewed his driving license on 27.01.2017 for transport vehicles and therefore, the loss of future income and addition of future prospects thereon made by the Tribunal are liable to be dropped.

5. On the other hand, Mr. D.K. Mohapatra, learned counsel for the injured-claimant contends that the actual medical expenses incurred by the injured have not been counted by the Tribunal and secondly, the income of the injured has been counted at lesser amount without any valid point.

6. It is seen from the impugned judgment that the injured-claimant after filing his evidence affidavit did not turn up for cross-examination despite directions of the court on the ground of mental unsoundness. Since he was not cross-examined, the

Tribunal discarded out his evidence entirely. Besides the claimant, four other witnesses were examined from his side including P.W.5, the Psychiatric Professor of S.C.B. Medical College & Hospital, Cuttack. As per the evidence of P.W.5, a copy of which is produced in course of hearing by Mr. Dutta, the claimant was suffering from schizophrenic disorder in terms of the Permanent Disability Certificate under Ext.12. The copy of the Disability Certificate under Ext.12 indicates that the injured suffered from mental illness due to chronic schizophrenia and reassessment of his mental condition was recommended after 10 years. The medical examination of the claimant by the board was done on 6.4.2015 as per evidence of P.W.4, Dr. Dharanidhar Senapati, Medicine Specialist, DHH, Jagatsinghpur, who was a member of the District Medical Board. As per evidence of P.W.5, the Psychiatric Professor, he examined the injured on 27.6.2016. Thus a combine reading of evidences of P.W.4, P.W.5 and the Disability Certificate (Ext.12) reveals that on 6.4.2015 to 27.6.2016, the injured was suffering from mental illness due to schizophrenia. As per the claimant, such mental illness was developed by the injury sustained in the accident.

7. The copy of the extract of the driving license of the injured-claimant as submitted by Mr. Dutta in course of hearing with his prayer to adduce the same in additional evidence is taken on record. Perusal of the same reveals that the driving license of the injured-claimant, namely, Jawan Nath was renewed for transport vehicles on 27.1.2017. Mr. Mohapatra, learned counsel for the claimant does not dispute such renewal of driving license of the claimant on 27.1.2017.

8. In terms of Rule 15 of the Motor Vehicle Rules, the physical as well as mental fitness is *sine qua non* for renewal of driving license. Therefore, the presumption lies that the injured-claimant was physically as well as mentally fit on 27.1.2017 to drive a transport vehicle. If this is compared with the evidence of P.W.4 and P.W.5, the inference arises that the injured remained mentally ill for the period from 6.4.2015 to 26.1.2017. In other words, his mental illness was removed with effect from 27.1.2017.

9. On being asked, Mr. Mohapatra, learned counsel for the claimant could not able to counter such inference on the injured-claimant regarding his fitness from 27.1.2017 onwards.

10. Therefore, the finding of the learned Tribunal to the effect that the injured lost his income permanently due to mental impairment is set aside. On this count, the loss of future earnings due to permanent disability and addition of future prospects thereon to the tune of Rs.12,31,200 + Rs.4,92,480/- = Rs.17,23,680/- needs to be reduced substantially by confining upto 27.1.2017 only. The date of accident is 9.2.2014 and thus the loss of income has to be counted for three years only. The aforesaid amount thus reduced to Rs.2,87,280/-. Accordingly, the total compensation amount is reduced to Rs.3,63,280/- in terms of the calculation of the learned Tribunal.

11. Next coming to the contention of the claimant for enhancement of treatment expenses and the amount granted towards pain and suffering, it is seen that the Tribunal has granted

Rs.20,000/- towards treatment expenses and Rs.25,000/- towards pain and suffering.

12. Considering the nature of injury and his treatment period, the treatment expenses is enhanced to Rs.50,000/-. But no reason is seen to enhance the amount granted towards pain and suffering.

13. In the result, the compensation amount is modified to Rs.3,93,280/-.

14. Both the appeals are disposed of with a direction to the Insurance Company to deposit the modified compensation of Rs.3,93,280/- before the learned Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 9.7.2014 within a period of two months from today; whereafter the same shall be disbursed in favour of the claimant by keeping 50% of the amount in fixed deposit in any nationalized Bank for a period of five years.

15. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court in MACA No.260 of 2019 with accrued interest thereon shall be refunded to the Insurance Company.

16. The copies of the depositions filed in course of hearing including the copies of extract of DL and the Disability Certificate are kept on record.

17. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

B.K. Barik

