

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.251 of 2020

MACA No.251 of 2020 & 7 of 2021

Rabindranath Baral (in MACA No.251/2020)

***The Divisional Manager, M/s.
National Insurance Company Ltd.*** (in MACA No.7/2021)
.... ***Appellants***

Mr. B.P. Mohanty, Advocate (in MACA No.251/2020)
Mr. N.B. Das, Advocate (in MACA No.7/2021)

-versus-

Hemant Kumar Mohapatra & Anr. (In MACA No.251/2020)

Rabindranath Baral and Another (In MACA No.7/2021)

.... ***Respondents***

Mr. N.B. Das, counsel for Respondent No.2
(in MACA No.251 of 2020)

Mr. B.P. Mohanty, counsel for Respondent No.1
(in MACA No.7 of 2021)

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

**ORDER
22.11.2022**

Order No.

- 06.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. N.B. Das, learned counsel for the insurer and Mr. B.P. Mohanty, learned counsel for the injured – claimant.
 3. Both the appeals being arise out of same impugned judgment, are heard together and disposed of by this common order.

4. Both the appeals are directed against the same impugned judgment dated 28th February, 2020 of learned 1st MACT, Puri passed in MAC No.89 of 2012, wherein compensation to the tune of Rs.5,36,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 7th April, 2012 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 22nd January, 2010. The tribunal has fixed 50% liability on each of the parties.

5. MACA No.251 of 2020 has been filed by the claimant challenging the award and MACA No.7 of 2021 has been filed by the insurer challenging the same award.

6. The insurer has questioned contribution of 50% negligence on the injured. As per submission of Mr. Das, the injured – claimant is wholly responsible for the cause of accident and therefore, entire negligence should be attributed on him. Conversely, the claimant submits that the negligence for the cause of accident is entirely on the driver of the other motor cycle and therefore, contribution of negligence to the extent of 50% on him by the tribunal is erroneous. It is further submitted by the claimant that he is entitled to future prospects on his income and that, the medical expenses has been paid at lesser amount.

7. First coming to the challenge on the negligence aspect, it is seen that the accident took place between two motorcycles, one driven by the present injured-claimant and the other by one Hemanta Kumar Mohapatra. Initially Nimapara P.S. Case No.24 dated 3rd February,

2010 was lodged by one Abhimanyu Rath, son-in-law of Hemanta Kumar Mohapatra. The police upon completion of investigation submitted charge-sheet against the present injured – claimant. Subsequently present claimant filed a complaint case and on the basis of order passed therein, Nimapara P.S. Case No.11 dated 25th January, 2011 was registered. In the subsequent case, police submitted the final form as a mistake of fact. However, on the protest of the claimant, the Magistrate conducted enquiry u/s 202 Cr.P.C. and took cognizance against Hemanta Kumar Mohapatra for his equal negligence towards the cause of accident along with the present claimant.

8. It is contended on behalf of the injured – claimant that keeping in view the evidence adduced by P.W.1 and 2 before the tribunal, entire negligence should have been fixed on said Hemanta Kumar Mohapatra. Further, as stated earlier, according to the insurer this present injured – claimant is entirely negligent for the cause of the accident.

9. Admittedly the accident was due to front collision between both the motor cycles. Hemanta Kumar Mohapatra, the owner of the other motor cycle, against whom the claim has been raised, has not come to contest the case. But upon perusal of the police investigation report submitted in both the police cases and the oral evidence adduced on behalf of the injured – claimant, the conclusion arrived by the tribunal contributing 50% negligence on both the drivers cannot be faulted with. It needs to be stated here that the finding of the police arrived in the earlier case to submit the charge-sheet against the present injured has never been challenged by him and admittedly he is facing criminal

prosecution in the said case. Therefore, the conclusion of the tribunal to fix 50% negligence on the injured-claimant himself is confirmed and the contentions of both the insurer as well as the claimant to the contrary is rejected.

10. Next coming to see the quantification of the compensation, it is seen that the tribunal has failed to add future prospects to the income of the injured. Accepting the income of the injured at Rs.1,80,000/- as determined by the tribunal, which remains undisputed by the parties before this court, and adding future prospects to the extent of 10%, the annual income comes to Rs.1,98,000/-. Since the extent of functional disability up to 20%, as determined by the tribunal, is not questioned by any of the parties, the same is also accepted.

11. The further contention of Mr. Mohanty, made on behalf of the injured to increase the medical expenses, is not found acceptable keeping in view the nature of injuries and his period of treatment.

12. Thus considering addition of future prospects up-to 10% to the income of the injured, as stated above, the compensation amount is enhanced to Rs.2,88,000/-, payable along with interest @ 6% per annum.

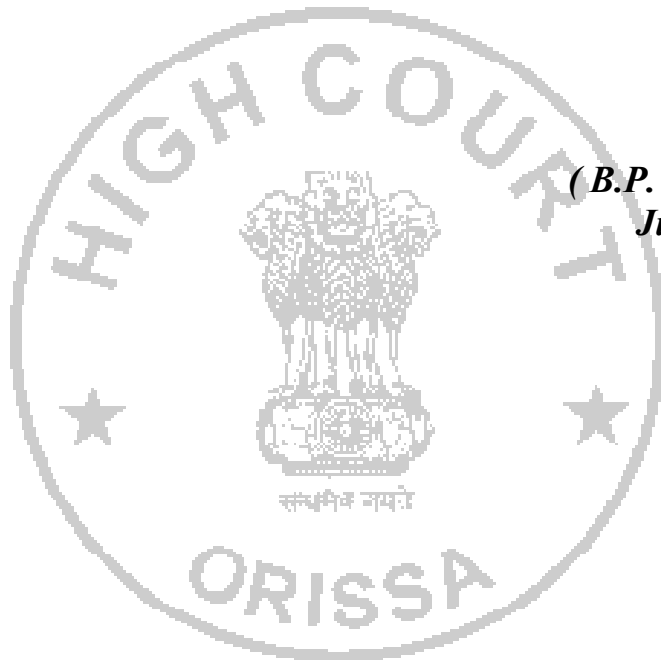
13. In the result, both the appeals are disposed of with a direction to the insurance company, i.e. National insurance Co. Ltd. to deposit the modified compensation of Rs.2,88,000/- (two lakh eighty-eight thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 7th April, 2012, within a period of two months from today; where-after the same shall

be disbursed in favour of injured – claimant on such terms and proportion to be decided by the learned tribunal.

14. The statutory deposit made by the insurer before this court in MACA No.7 of 2021 along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

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

M.K.Panda



(B.P. Routray)
Judge