

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.281 of 2019

The Manager, Bajaj Allianz General Insurance Company Limited ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Antaryami Maharana and another ***Respondents***

Mr. P.K. Mishra, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

04.04.2022

Order No.

08.

1. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Mishra, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 25.01.2019 of the learned 4th MACT, Ganjam, Berhampur in MAC Case No.311 of 2014 wherein compensation to the tune of Rs.69,31,900/- along with interest @7% per annum from the date of filing of the claim application, i.e.,20.12.2014 was granted by the learned Tribunal to the claimant on account of injury sustained by him in a motor vehicular accident dated 22.4.2014.

3. Mr. A.A. Khan, learned counsel for the Appellant submits that the alleged Auto-rickshaw has been planted in the accident though was not involved. To support his contention, it is submitted that as per the FIR one unknown vehicle caused the accident and no material is there against the present offending

vehicle, i.e., Auto-rickshaw bearing Registration No.OR-07-N-0578 showing its involvement in the accident.

4. On the other hand, Mr. P.K. Mishra, learned counsel for the Respondent No.1-claimant replies that though it is mentioned about an unknown vehicle in the FIR, but the Police after investigation found materials against the present offending vehicle and accordingly submitted the charge-sheet against its driver for criminal prosecution. The insurer-Appellant has not rebutted the evidence of the claimant on this aspect by adducing sufficient evidence.

5. Upon hearing both parties, it is seen from the impugned judgment that one witness, viz., OPW-1 was examined by the insurer, who is the Officer of the Appellant-Company. Admittedly he has no direct knowledge about the occurrence. On the other hand, the evidence adduced on behalf of the claimant through P.W.1 –the brother of the injured is supported by police papers. Though none of those two witnesses examined on behalf of the respective parties are not the eye-witnesses to the occurrence, but the documents brought on record under Exts.1 to 9 disclose materials about involvement of the offending vehicle in the accident. Interestingly the same documents relied by the claimant have also been relied by the insurer. Therefore, no substance is found in the contention of the Appellant to discard involvement of the offending vehicle in the accident. As such, the finding of the learned Tribunal to fix negligence on the part of the driver of the offending vehicle is confirmed.

6. Next coming to examine the quantum of compensation. It is submitted on behalf of the Appellant that the learned Tribunal has granted higher compensation by counting the loss of future earning and other aspects on higher side.

7. It is seen that the claimant is an unmarried young boy aged about 31 years on the date of accident. The disability sustained by him is upto 90% resulting 100% of loss of earning. These aspects remain undisputed. The only challenge is improper calculation under different heads. Learned Tribunal has added 50% future prospects to the loss of earning and further granted Rs.5 lakhs towards loss of expectation of life even after counting future prospects. Upon thorough examination of the same, the computations of compensation under different heads are modified as follows;

“Medical Expenditure	-	Rs. 3,00,000/-
Conveyance charges	-	Rs. 50,000/-
Special diet	-	Rs. 50,000/-
Attendant charges	-	Rs. 3,00,000/-
Pain and suffering	-	Rs. 1,00,000/-
100% loss of earning (with 40% future prospect)	-	Rs.40,42,944/-
Loss of amenities	-	Rs. 2,00,000/-
Loss of marriage prospect-		Rs. 2,00,000/-

Total	-	Rs.52,42,944/-
		Rounded to Rs.52,43,000/-”

8. In the result, the compensation is modified to the above extent and the Appellant-Insurance Company is directed to deposit the modified amount of Rs.52,43,000/- (Rupees Fifty-two Lakhs Forty-three Thousand only) along with interest @6% per annum from the date of filing of the claim application i.e.

20.12.2014 before the learned Tribunal within a period of eight weeks 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.

9. 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 with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

10. With the aforesaid directions, the MACA is disposed of.

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

(*B.P. Routray*)
Judge