IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.327 of 2017

Regional Manager, M/s. Oriental Insurance Company Ltd. .... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Mahindra Sunamudi and Another .... ***Respondents***

Mr. R.C. Pradhan, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
29.8.2022

Order No.

08. 1. The matter is taken up through hybrid mode.

2. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant and Mr. R.C. Pradhan, learned counsel for claimant – Respondent No.1.

3. Present appeal by the insurer is against the impugned judgment dated 30th June, 2016 of the learned 7th MACT, Bhubaneswar passed in MACT Case No.62 of 2014 wherein compensation to the tune of Rs.5,00,000/- along with interest @ 9% per annum from the date of filing of the claim application has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 29th January, 2014.

4. Mr. Dutta, learned counsel submits on behalf of the Appellant – insurer that in absence of any material towards functional disability of the injured – claimant, the tribunal has erroneously accepted the same at 30%.

5. After hearing Mr. Pradhan, learned counsel for the injured-Respondent No.1 and perusal of the impugned judgment it reveals that the tribunal based on the disability certificate filed by the claimant under Ext.11 took his functional disability at 30% to compute loss of future earning to the tune of Rs.1,83,600/-. A perusal of the copy of the evidence of the claimant as P.W.1, produced in course of hearing by Mr. Dutta and a copy of the claim application, it reveals that nowhere the injured has stated about his nature of permanent disability. The disability certificate under Ext.11 which has been relied on by the claimant only reveals that he is suffering from loco-motor disability without specific malfunction of any body part. Admittedly, the claimant was unable to prove his nature of avocation though he has stated to be a medical practitioner. The tribunal disbelieving such contention of the claimant as a medical practitioner assessed his income at Rs.6000/- on guess-work. In other words, the injured claimant has failed to prove his nature of job or profession for earning. Therefore the assessment of the tribunal about 30% functional disability is found without any substance. Even if the contention in terms of his claim as a medical practitioner would be believed, then also it is not established or stated by the claimant how such disability is affecting his profession. Moreover in Ext.11, it is mentioned that the disability is temporary in nature which would prevail till 2nd April, 2020 only.

6. Considering all such factors, in the opinion of this court there may not be any loss of future earnings. In other words, the Petitioner has failed to establish, in absence of any material, that, he would sustain any loss of earning in future due to any affected disability to

him. Thus, he is not found entitled for any amount towards loss of future earnings. Accordingly the amount counted by the tribunal to the tune of Rs.1,83,600/- towards loss of future earning is liable to be deducted from the compensation amount. Doing so, the compensation amount is reduced to Rs.3,16,400/-

7. In the result, the appeal is allowed in part and the compensation amount is reduced to Rs.3,16,400/- payable along with interest @ 6% per annum.

8. Accordingly the appeal is disposed of with a direction to the Appellant – insurer to deposit the reduced compensation amount of Rs.3,16,400/- (three lakh sixteen thousand four hundred) before the tribunal along with interest @ 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 – Respondent No.1 on such terms and proportion to be decided by the learned Tribunal.

9. 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.

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

(B.P. Routray)
Judge

M.K.Panda