IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.291 of 2017

MACA No.291 & 50 of 2017

Manager, M/s. Bajaj Allianz General Insurance Company Ltd.	***(in MACA No.291/2017)***
Miss Sujata Jena	***(in MACA No.50/2017)***

.... ***Appellants***

Mr. G.P. Dutta, Advocate (in MACA No.291/2017)
Mr. K. Panigrahi, Advocate (in MACA No.50/2017)

-versus-

Miss Sujata Jena & Another	***(In MACA No.291/2017)***
Md. Kurban Ansari and Another	***(In MACA No.50/2017)***

.... ***Respondents***

Mr. K. Panigrahi, counsel for Respondent No.1 (in MACA No.291 of 2017)

Mr. G.P. Dutta, counsel for Respondent No.2 (in MACA No.50 of 2017)

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
17.11.2022

Order No.

13. 1. The matters are taken up through hybrid mode.

2. Heard Mr. G.P. Dutta, learned counsel for the insurer and Mr. K. Panigrahi, 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. The appeals are directed against impugned judgment dated 20th December, 2016 of learned 3rd MACT, Bhanjanagar passed in MAC No.107 of 2010, wherein compensation to the tune of Rs.10,00,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 6th September, 2010 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 1st August, 2010.

5. MACA No.291 of 2017 has been filed by the insurer challenging the award and MACA No.50 of 2017 has been filed by the claimant praying for enhancement of the compensation amount.

6. Mr. Dutta, learned counsel submits on behalf of the insurer that, the driver of the offending vehicle did not have a valid driving licence and therefore, the insurance company has no liability to indemnify the compensation.

7. It is seen from the discussions of the tribunal made in the impugned judgment that, Ext.B, the copy of the driving licence of the accused driver stands in the name of one Kanheilal Shaw. But the name of the present accused driver is Motulab Hussain. Admittedly, said DL was seized in course of police investigation and therefore, taking note of Ext.B as produced from the side of the insurer, it is clear that the accused driver of the offending truck possessed a fake DL at the time of accident. Nevertheless, nothing has been brought on record from the side of the insurance company to reveal knowledge of the owner about the same or regarding competency of the accused driver in driving the truck. Therefore, in view of the principles

decided in the case of ***National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297*** *and* ***Nirmala Kothari vs. United India Insurance Company Limited, (2020) 4 SCC 49,*** the insurer is granted with the right of recovery of the entire compensation amount from the owner since he did not have the knowledge of possession of fake licence by the driver.

8. Next coming to the question of quantum of compensation, as submitted by Mr. Dutta, functional disability equal to the extent of physical disability has been counted by the tribunal erroneously. Mr. Panigrahi, learned counsel for the injured – claimant submits in reply that, functional disability of the injured is much more than assessed by the tribunal and therefore, no illegality is there in such approach of the tribunal.

9. The injured is a minor girl aged about 10 years. As per the disability certificate under Ext.11, the disability is amputation of left knee. Keeping in view the principles adopted in the schedule in the Employee's Compensation Act the functional disability is extended up-to 70%. Thus, without disturbing the annual notional income taken by the tribunal, as not disputed at Bar, the loss of future earning capacity is computed at Rs.2,64,600/-, with addition of 40% towards future prospects.

10. The tribunal has computed total compensation on the following counts:-

i)	Loss of future earning capacity	:Rs.3,44,250/-
ii)	Pain and sufferings	:Rs.2,00,000/-

iii)	Loss of amenities and attendant charges	:Rs.2,00,000/-
iv)	Loss of enjoyment of life & marriage prospects	:Rs.2,00,000/-
v)	For purchasing crutches	:Rs.50,000/-
vi)	Litigation cost	: Rs.5,750/-

11. Considering the fact that the injured is a minor girl aged about 10 years on the date of accident having a bright future, the heads of counting compensation as determined by the tribunal needs a revisit. It is seen that though the left knee was amputated still the tribunal has not granted any compensation towards disfigurement. The tribunal has also failed to count any compensation towards treatment expenses though as per the claimant she incurred a substantial amount of expenditure for the same. In the memorandum of appeal it is mentioned that the claimant incurred Rs.1,14,039/- towards treatment expenses including medicines and special diet, etc. Thus considering all such aspects the quantum of compensation is recomputed afresh as follows:

i)	Loss of future earning capacity	Rs.2,64,600/-
ii)	Pain and Suffering	Rs.2,00,000/-
iii)	Treatment expenses including attendant charges, special diet, etc.	Rs.2,00,000/-
iv)	Future attendant charges	Rs.1,00,000/-

v)	Loss of amenities, enjoyment and marriage prospects	Rs.5,00,000/-
vi)	Future medical expenses including prosthetic leg and crutches	Rs.1,50,000/-
vi)	Loss of beauty and disfigurement	Rs.1,00,000/-
vii)	Cost of litigation	Rs.5,750/-
	Total	**Rs.15,20,350/-**

12. Accordingly, total compensation of Rs.15,20,350/- along with 6% interest is payable to the injured – claimant.

13. In the result both the appeals are disposed of with a direction to the insurance company, i.e. Bajaj Allianz General Insurance Co. Ltd. is directed to deposit a total compensation of Rs.15,20,350/- (fifteen lakh twenty thousand three hundred fifty) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 6th September, 2010, 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. As observed earlier, the insurance company is granted right of recovery of the compensation amount from the owner.

15. The penal interest of 9% as directed by the tribunal is waived.

16. Mr. Dutta submits that the entire compensation amount in terms of the tribunal has already been deposited before this court along with the statutory amount.

17. The statutory deposit along with the compensation amount deposited by the insurer along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

18. The copies of evidence of P.W.1 and the disability certificate and other documents as produced in course of hearing are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda

HIGH COURT
ORISSA