

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.673 of 2010

National Insurance Co. Ltd.

.... Appellant
Mr.S.S.Rao, Advocate

-versus-

Surendra Nayak and others

.... Respondents
Mr.B.B.Singh, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
19.12.2022

Order No.

13.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Rao, learned counsel for the Appellant-Insurer and Mr.Mohapatra, learned counsel for claimant-Respondent No.1.
3. Present appeal by the insurer is against the judgment dated 19th November, 2009 of the Second Motor Accident Claims Tribunal, in Misc.Case No.1391 of 1991, wherein compensation to the tune of Rs.82,000/- has been granted along with interest @7% per annum with effect from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident on 20th June, 1991.
4. Mr.Rao submits that the driver of the offending vehicle did not have a valid license on the date of accident nor the vehicle had a valid permit. As such, he prays to absolve the liability of the Insurer from paying the compensation amount.

5. It is seen that no evidence has been adduced from the side of the Insurer before the Tribunal. The police upon completion of investigation submitted the chargesheet against the driver of the offending vehicle i.e., Bus bearing Registration No.OAU-1055 for commission of offence under Section 279/337/338 of the I.P.C.

6. Admittedly, no offence under the M.V.Act has been alleged in the police charge-sheet against the accused driver. Thus, the prima facie presumption is that the vehicle and its driver have not violated any penal provision prescribed under the M.V. Act. Nonetheless in absence of any evidence from the side of the Insurer either for absence of driving license or valid permit, such contention raised by Mr.Rao has no force.

7. Mr.Rao, learned counsel for the Insurer further questions quantification of the compensation amount. Conversely, the claimants have also filed the cross-objection praying for enhancement of the compensation amount.

8. When it is contended on behalf of the Insurer that the Tribunal has granted excessive amount towards compensation in absence of any permanent disability, the claimants submit that no loss of income or attendant cost has been granted by the Tribunal.

9. Perusal of the impugned judgment reveals that, a sum of Rs.60,000/- is awarded for compensation along-with Rs.20,000/- for medical expenses and Rs.2,000/- for pain and suffering. Such approach of the Tribunal is found incomprehensible in absence of detailed discussion.

10. Admittedly, no physical disability is alleged from the side of the injured-claimant. As per the oral evidence adduced by him as P.W.1 and the discharge certificates under Exts.4 & 5 as

well as other treatment papers, it reveals that he sustained two fractures, one on the right forearm and another on the right humerus. The total period underwent as an indoor patient by the injured is around 132 days. Further, it is mentioned in the cross-appeal filed by the claimant that he was a labourer on the date of accident and earning Rs.3,000/- per month. The date of accident is 20th June, 1991.

11. Considering all such factors including the period of treatment as an indoor patient, the minimum wage rate prevailing on the date of accident and the place of residence of the injured claimant, in the opinion of this Court, a total compensation of Rs.60,000/- would suffice the purpose. It needs to be mentioned here that both S.C.B. Medical College and Hospital, Cuttack as well as NIRTAR, where the injured had undergone treatment, are Government hospitals.

12. Accordingly, the appeal is disposed of with a direction to the Insurer-Appellant to deposit the compensation amount of Rs.60,000/-(Sixty thousand) 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; whereafter the same shall be disbursed in favour of the claimant on such terms and proportion to be fixed by the Tribunal.

13. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

14. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal

