IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.497 of 2017

The Divisional Manager, The Oriental Insurance Company Ltd. .... ***Appellant***

Mr. M.C. Nayak, Advocate

-versus-

Sri Anup Singhal and others .... ***Respondents***

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

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
08.08.2022

Order No.

I.A. No.127 of 2019 & I.A. No.41 of 2019

11. **1.** Learned counsel for the Appellant does not want to press these I.As.

2. Accordingly, the I.As. are dismissed as not pressed.

I.A. No.677 of 2020 & MACA No.497 of 2017

3. Heard Mr. M.C. Nayak, learned counsel for the Appellant-Insurance Company as well as Mr. P.K. Nayak, learned counsel for Respondent No.1-claimant.

4. Present appeal by the insurer is directed against the judgment dated 31.01.2017 of learned 3rd M.A.C.T., Rourkela in M.A.C.T. Case No.361 of 2011 wherein compensation to the tune of Rs.10,41,440/- has been granted along with interest @6% per annum to the claimant from the date of accident, i.e.12.06.2011

on account of injury sustained in the motor vehicular accident dated 12.6.2011.

5. It is submitted on behalf of the Appellant that one more additional ground, i.e. regarding the fact that the injured-claimant himself was the owner of the offending jeep, be permitted to be taken in the appeal.

6. The same is objected by learned counsel for the claimant that no such material is there to justify such contention that the claimant is the owner of the offending jeep. However it is pointed out that in the insurance policy, the name of the claimant has been mentioned as the owner of the vehicle. This is seriously disputed by the claimant.

7. According to Mr. P.K. Nayak, learned counsel for the claimant-Respondent No.1, the claimant was never the owner of the offending jeep and in the Registration Certificate one Balaji Udyog was the owner.

8. It is explained by both the parties that the present claimant is one of the partners of the said Balaji Udyog and admittedly the insurer has satisfied the award in respect of another occupant of the same vehicle in MACA No.360/2011.

9. Having considered the rival contentions of respective parties, when the admitted position is that 'Balaji Udyog' was the owner of the vehicle, the claimant cannot be treated as a owner of the same even though he is accepted as a partner of said Company. Rather it would not be incongruous to treat him as an occupant of

the vehicle for the purpose of MV compensation. Therefore, the contention of the Appellant that the Appellant should be treated as owner of the offending vehicle to disentitle him from compensation is not found with substance. The same is accordingly rejected.

10. Next coming to the submissions advanced in challenging the quantum of compensation, it is contended by Mr. M.C. Nayak, learned counsel for the Appellant that the Tribunal has accepted the income of the injured based on IT return filed for the assessment year 2011-12 under Ext.13 without further discussion his income in respect of the previous years. Such contention is also found without merit because admittedly it is the evidence of the injured that he filed IT return for the assessment year 2011-12 and not prior to that. The date of accident being 12.6.2011, no illegality is seen in the approach of the learned Tribunal in relying all such IT returns coupled with ocular evidence of the injured as P.W.1. The computation which is found in terms of the principle decided in the case of ***Raj Kumar vs. Ajay Kumar and another,*** (2011) 1 SCC 343, no valid reason is seen to interfere with the same to disturb the findings.

11. However, it is seen that the interest has been paid from the date of accident which Mr. M.C. Nayak, learned counsel for the Appellant prays to modify from the date of filing of the claim application in terms of the provisions contained in Section 171 of the M.V. Act. As such, in view of the mandate under Section 171 of the M.V. Act, the date of payment of the interest is modified from the date of filing of the claim application.

12. In the result, the appeal is disposed of with a direction to the Appellant – Insurance Company to deposit the entire compensation amount of Rs.10,41,440/- (rupees ten lakhs forty-one thousand four hundred forty) 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 on such terms and proportion to be decided by the learned Tribunal.

13. 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.

(B.P. Routray)
Judge

B.K. Barik