A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.114 of 2021 and MACA No.164 of 2021

MACA No.114 of 2021
Ashok Kumar Das .... ***Appellant***
Mr.P.K.Mishra, Advocate

-versus-

Samanthapudi Sivarama Raju and another .... ***Respondents***
Mr.P.K.Mahali, Advocate for Respondent No.2

AND

MACA No.164 of 2021
The Divisional Manager, National Insurance Co. Ltd. .... ***Appellant***
Mr.P.K.Mahali, Advocate

-versus-

Ashok Kumar Das and another .... ***Respondents***
Mr.P.K.Mishra, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
03.11.2022

Order No.
11. 1. The matter is taken up through Hybrid mode.

2. Heard Mr.Mishra, learned counsel for the Claimant and Mr.Mahali, learned counsel for the Insurer.

3. Both the appeals arise out of the same judgment dated 28th August, 2020 passed by learned 1st M.A.C.T., Jagatsinghpur in M.A.C. Case No.422 of 2015, wherein compensation to tune of Rs.13,86,360/- along with interest @7% per annum has been granted from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident dated 7th February,2015.

4. MACA No.114 of 2021 has been filed by the injured-claimant praying for enhancement of the compensation amount on the ground that future prospectus on the income of the injured has not been added.

5. MACA No.164 of 2021 has been filed by the Insurer challenging the award mainly on the ground that the injured being an insured person is not entitled to get any compensation under the Motor Vehicles Act (hereinafter referred to as 'M.V. Act') and secondly, the quantum of compensation has been excessively computed.

6. Mr.Mahali contends that the injured claimant has availed the medical benefit under the Employee's State Insurance Act (hereinafter referred to as 'E.S.I. Act') being an employee of M/s 3

ACE Associates. As per Mr. Mahali, the claimant having once availed the benefit under the E.S.I. Act, his prayer to get compensation under the M.V. Act is not maintainable in view of the bar prescribed under Sections 53 and 61 of the E.S.I. Act.

7. Mr. Mishra submits in his reply that when the injury sustained by the claimant is by use of a motor vehicle, and not arising out of or in course of his employment, the bar under the E.S.I. Act is not applicable. In this regard, he relies on a recent order of this Court dated 16th September, 2022 passed in MACA No.75 of 2021.

8. Before adverting further, the admitted facts need to be stated here are that, the claimant was working as a Manager under M/s 3 ACE Associates on the date of accident and was an 'insured person' within the meaning of Section 2(14) of the E.S.I.Act. Due to the accidental injury, he suffered with 40% permanent locomotor disability. Further, he received medical benefits to the tune of Rs.6,17,318/- from the E.S.I. Corporation, Bhubaneswar towards treatment cost in KIMS Hospital, Bhubaneswar.

9. The Insurer by filing an application under Order 41 Rule 27 of the Code of Civil Procedure has prayed to mark the payment invoice issued by the KIMS Hospital showing acceptance of payment

from E.S.I. Corporation for treatment of the claimant. Since the claimant does not dispute about receipt of medical reimbursement under the E.S.I. Act to the aforesaid tune of Rs.6,17,318/- as mentioned in the invoice, the document is not found required to be marked in evidence through additional evidence.

10. Now coming to the question of maintainability of the claim under the M.V. Act, the case of the injured is that on 7th February, 2015 at about 2:00 PM when he was going in a motorcycle from Cuttack to Bhubaneswar near Hanspal bridge, the offending truck bearing Registration No. AP-05-TA-8136 dashed him from behind resulting with such injuries to him. The fact of sustenance of such injuries by the claimant by use of the offending vehicle on the public road is not disputed by the Insurer or the owner. It is not the case of the injured that at the time of accident he was either going or returning from his work place or he was going in connection with the business of his employer or in association thereof. It is therefore clear that the accident was completely unconnected to the nature of employment of the claimant. The injured also does not plead anything contrary that at the time of accident he was proceeding in connection with any business connected to his employment.

11. This Court in MACA No.75 of 2021 has observed that, when the accident is purely a motor vehicular accident arises by use of a motor vehicle and completely unconnected to the nature of employment of the injured, the claim for compensation under Section 166 of the M.V. Act is maintainable and the bar prescribed under the E.S.I. Act is not attracted.

12. Here in the instant case, the injured claimant has already received medical benefits towards the cost of his treatment in the hospital. So, the question arises that, whether the employee in respect of whom contributions were made under the E.S.I. Act would be entitled to get compensation under the M.V. Act after availing the benefits of medical treatment under the E.S.I. Act ?

13. Section 56 of the E.S.I. Act prescribes that an injured person, whose condition requires medical treatment and attendance, shall be entitled to receive medical benefit during any period for which contributions are payable in respect of him.

14. As per Section 46(e) of the E.S.I. Act, medical benefit includes medical treatment and attendance to the insured person. Medical benefit is one of the benefits provided under Chapter-V of the E.S.I. Act. No such provision is prescribed there in the E.S.I. Act

to limit the medical benefits to the employment injury only. The language used in Section 56 also does not restrict such medical benefit in respect of employment injuries only. The bar prescribed under Sections 53 & 61 of the E.S.I. Act applies against other enactments in respect of such benefits provided in the E.S.I. Act. As stated earlier, this Court by order dated 16th September, 2022 in MACA No.75 of 2021 has elaborately observed that the bar prescribed under the E.S.I. Act is not attracted when the accident is purely a motor vehicular accident arises by use of a motor vehicle and completely unconnected to the nature of employment of the injured.

15. When admittedly the medical benefit is not restricted for the employment injury only, but brings in its sweep all such benefits of medical treatment and attendance costs as per the language used in Sections 46 and 56 of the E.S.I. Act, and the accident in the instant case is completely unconnected to the nature of employment of the claim, the objection raised regarding maintainability of the claim application under the provisions of M.V. Act is without substance. However, while upholding the maintainability of the claim under Section 166 of the M.V. Act, it is held that such medical benefit

received by the claimant under the E.S.I. Act being an insured person, is liable to be adjusted from the compensation amount.

16. Next coming to the question of quantum of compensation, it is seen from the impugned judgment that the Tribunal has granted compensation on the following heads:

1.	Towards loss of income to the extent of 40%	Rs.3,51,000/-
2.	Expenditures incurred towards the Hospital charges, medicine charges, operation charges tentatively since 07.02.2015 during certain intervals till 31.07.2017 for 5 times in total	Rs.4,50,000/-
3.	Conveyance charges i.e. transportation charges in different occasions for moving to the hospital since 07.02.2015 up to 31.07.2017 in several times.	Rs.50,000/-
4.	Attendant charges in different times during his hospitalization for five times.	Rs.50,000/-
5.	Expenses for special diet and nutrition.	Rs.30,000/-
6.	Loss of comfort, amenities pleasure for the rest period of his life and inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life due to 40% permanent disability in locomotor category.	Rs.1,50,000/-
7.	For mental and physical shock, pain and sufferings already suffered or likely to be suffered in future.	Rs.1,50,000/-

8.	Loss of beauty and disfigurement of the right leg for the rest period of his life.	Rs.50,000/-
9.	Loss of expectation of life	Rs.50,000/-
10.	Future medical expenses	Rs.50,000/-
11.	Cost of litigation	Rs.5,000/-

17. Amongst all such heads counted for grant of compensation, medical expenses to the tune of Rs.4,50,000/-; conveyance charges, attendance charges and expenses for special diet to the tune of Rs.1,30,000/-; and future medical expenses to the tune of Rs.50,000/- are liable to be deducted since all such expenses are covered within the medical benefit.

18. Further, no justification is found to grant two separate amounts for loss of comfort, amenities and pleasure of life etc to the tune of Rs.1,50,000/- and loss of expectation of life to tune of Rs.50,000/-. As loss of expectation of life is inclusive within the loss of comfort, amenities and pleasure of life, grant of Rs.1,50,000/- would be enough for the purpose.

19. The income of the injured – claimant is not disputed. As per the contention of Mr. Mishra, learned counsel for the claimant, he is entitled for addition of 40% towards future prospects. By adding so, his annual income as counted by the Tribunal comes to Rs. 76,860/-

and taking 40% loss thereof, it becomes Rs. 30,744/-. By applying multiplier 16, total loss of income is computed at Rs. 4,91,904/-. Accordingly, the amount of compensation is modified as follows:-

1.	Loss of income (to the extent of 40%)	-	Rs. 4,91,904/-
2.	Loss of comfort, amenities pleasure for the rest period of his life and inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life due to 40% permanent disability in locomotor category.	-	Rs.1,50,000/-
3.	For mental and physical shock, pain and sufferings already suffered or likely to be suffered in future.	-	Rs.1,50,000/-
4.	Loss of beauty and disfigurement of the right leg for the rest period of his life.	-	Rs. 50,000/-
6.	Cost of litigation	-	Rs. 5,000/-

Thus, the total compensation of amount comes to Rs.8,46,904/- (eight lakhs forty-six thousand nine hundred four only).

20. In the result, both the appeals are disposed with a direction to the Insurer to deposit a sum of Rs.8,46,904/- (eight lakhs forty-six thousand nine hundred four only) along with interest @6% per annum

before the Tribunal 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 fixed by the Tribunal.

21. The statutory deposit made by the Insurer in MACA No.164 of 2021 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.

(B.P. Routray)
Judge

C.R.Biswal/Secy.