

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.745 of 2013

***Divisional Manager, New India
Assurance Company Ltd.***

.... Appellant

Mr. N.S. Ghose, Advocate

-versus-

Rabinarayan Pattanaik and Another

.... Respondents

Mr. J.R. Dash, counsel for Respondent No.1

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

3.8.2022

Order No.

- 09.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. N.S. Ghose, learned counsel for the insurer – Appellant and Mr. J.R. Dash, learned counsel for claimant – Respondent No.1.
 3. Present appeal by the insurer is against the impugned judgment dated 23rd November, 2012 of the learned 3rd MACT, Puri passed in MAC Case No.840 of 1992 wherein compensation to the tune of Rs.2,23,200/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 29th October, 1992 has been granted on account of injuries sustained by the injured-claimant in the motor vehicular accident dated 2nd November, 1991.
 4. Mr. Ghose, learned counsel submits on behalf of the Appellant that the insurer is not liable to pay interest from the date of filing of

the claim application till its appearance. It is further submitted that the insurer appeared in the year 2003 only. It is further submitted by Mr. Ghose that the extent of functional disability counted by the tribunal is erroneous and no such permanent disability of the claimant can be believed to count any loss of earning.

5. On the other hand, Mr. Dash, learned counsel for the claimant submits that the claim application was filed on 29th October, 1992 and it is not his fault for delayed appearance of the insurer. Admittedly the claimant has taken all steps for issuance of notice before the tribunal. It is also submitted that the claimant has proved the disability certificate under Ext.8 which is not disputed by the insurer.

6. Upon hearing both parties and perusal of the impugned judgment reveals that the tribunal has directed for payment of interest from the date of filing of the claim application, i.e. 29th October, 1992. From the copy of the LCR it is seen that the requisites were filed for issuance of notice since 19th July, 1993 by the claimant and therefore, no point is made in favour of the insurer to exempt them from payment of interest since no fault is found on the part of the claimant in pursuing his case.

7. Secondly, the challenges advanced with regard to the disability certificate, the tribunal has accepted functional disability up to 40% based on the disability certificate marked in evidence under Ext.8. The disability of the claimant as per Ext.8 is regarding deformity of right lower limb, i.e. non-union of right tibia. This Ext.8 was not disputed by the insurer before the Tribunal and such disability mentioned in Ext.8 is found corroborating the treatment papers of the claimant

marked under Ext.2. The photograph shown in Ext.8 also justifies about the disability. Therefore, no error is found in the assessment of the tribunal in holding the extent of functional disability to 40% in favour of the claimant, keeping in view his profession as an agent of LIC and the corresponding deformity is in the right lower limb. No fault is seen in such approach of the tribunal. Therefore, the contention of the insurer in this regard is also rejected.

8. The income and other aspects are not questioned in course of hearing. Further perusal of the impugned judgment does not reveal any such infirmity in the award of compensation to warrant interference.

9. Resultantly the appeal is dismissed.

10. The Appellant – insurer is directed to deposit the entire compensation amount along with interest before the tribunal in terms of its direction within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1 as contained in the impugned judgment.

11. 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.

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

(B.P. Routray)
Judge