

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.368 & 169 of 2021

MACA No.368 of 2021

**The Manager, M/s. National
Oriental Insurance Co., Ltd.**

Appellant

-versus-

**Chaitanya Mahananda &
Another**

Respondents

-AND-

MACA No. 169 of 2021

Chaitanya Mahananda

Appellant

-versus-

Bhibhuti Bhusana Chhotaray & Another

Respondents

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

15.07.2022

Order No

09. 1. This matter is taken up through Hybrid Mode.

2. Since both the appeals arise out of a common impugned judgment and issues are same, both are heard analogously and disposed of by this common order.

3. While MACA No.368 of 2021 has been filed by the Insurer challenging the judgment dated 22.03.2021 passed in MAC Case No.341 of 2015 by the learned 1st M.A.C.T., Puri, MACA No.169 of 2021 has been filed by the Claimants seeking

enhancement of the compensation so awarded vide the aforesaid judgment.

4. Heard Mr. G.P.Dutta, learned counsel for the Insurer-Company & Mr. P.K.Mishra, learned counsel for the Claimant as well as Mr. B.N.Udgata, learned counsel for the self-same Insurer in MACA No.169 of 2021.

5. Mr. Dutta, learned counsel for the Insurer along with B.N. Udgata submitted that learned Tribunal without considering the materials placed by the company held the claimant-respondents entitled to get compensation of Rs.9,51,600/- along with interest @ 7 % per annum payable from the date of application till its realization.

6. It is submitted that learned Tribunal while assessing the compensation never take into consideration the objection raised by the appellant with regard to the assessment of the disability of the injured.

7. It is submitted that learned Tribunal erroneously assessed the same at 30% without any medical opinion. It is also submitted that learned Tribunal without having any material assessed the compensation at Rs.3,00,000/- towards medical expenses.

8. It is also submitted that even though a specific plea was taken by the Insurer that the licence of the accused driver was not valid as on the date of accident which took place on 12.09.2015, but no right of recovery was allowed by learned Tribunal while directing the Appellant to pay the compensation.

9. It is accordingly submitted by both the learned counsel appearing for the Insurer to interfere in the impugned judgment.

10. Mr. Mishra, learned counsel Claimants on the other hand submitted that learned Tribunal after proper appreciation of the material available on record has rightly assessed the compensation and no interference is called for. But on being confronted by this Court, Mr. Mishra failed to satisfy this Court on the ground raised by the appellant with regard to grant of interest @ 7 % per annum.

11. Heard learned counsel for the Parties.

12. Perused the materials available on record. Considering the stand taken by the learned counsel for the Parties, this Court when arrived at a conclusion that learned Tribunal has rightly assessed the compensation at Rs.9,51,600/-, learned counsel for the Claimants supported the said view of this Court. But with regard to the grant of interest @ 7 % per annum, when this Court came to a conclusion that the compensation amount will carry interest @ 6 % per annum, Mr. Mishra, learned counsel for the Claimant-Respondent supported the said view of this Court.

13. Learned counsel for the Insurer left the aforesaid view to the discretion of this Court.

14. In view of such stand taken by the learned counsel for the Parties in both the appeals, this Court while confirming the award passed by learned Tribunal held that the said compensation amount will carry interest @ 6 % per annum instead of 7 % per annum payable from the date of application

till its realization. But this Court while coming to such a conclusion, also held that the Insurer will be entitled to recover the amount from the Owner-Respondent. While holding so, this Court directs the Insurer to deposit the compensation amount along with interest @ 6 % per annum payable from the date of application till its realization before learned Tribunal within a period of eight weeks from the date of receipt of this order.

15. It is observed that on such deposit of the amount, learned Tribunal shall disburse the same in favour of the Claimants in terms of its order passed on 22.03.2021.

16. It is however, observed that if the Insurer fails to deposit the amount within the time stipulated by this Court, the compensation amount so awarded by the learned Tribunal will carry interest @ 7 % per annum for the period starting from the expiry of the period of eight weeks till its payment.

17. Since this Court is allowing right of recovery, it is observed that if any such application is moved by the Insurer, learned Tribunal shall consider the same strictly in accordance with law and by giving reasonable opportunity of hearing to Owner-Respondent.

18. It is further observed that only after payment of compensation amount along with interest so assessed by this Court within the time indicated hereinabove, the Insurer in MACA NO.368 of 2021 shall be permitted to take refund of the statutory deposit along with accrued interest thereon from the Registry of this court on proper identification.

19. With the aforesaid observations and directions, both the MACAs stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

