

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.481 of 2020

***Manager (Legal),
New India Assurance Co. Ltd.***

***.... Appellant
Mr.S.Satpathy, Advocate***

-versus-

***Prakash Sahoo and another Respondents
Mr.L.M.Nanda, Advocate for Respondent No.1***

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
28.10.2022**

Order No.

9.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Satpathy, learned counsel for the Appellant-Insurer and Mr.Nanda, learned counsel for claimant-Respondent No.1.
3. Present appeal by the Insurer-Appellant is against the judgment dated 10th February, 2020 of the learned District Judge-cum – Ist M.A.C.T., Jagatsinghpur, in MAC Case No.250 of 2016, wherein compensation to the tune of Rs.18,09,000/- has been granted along with interest @7% per annum with effect from the date of filing of the claim application on account of injury sustained by the claimant in the motor vehicular accident on 20th November, 2015.
4. The Tribunal has granted compensation on the following counts:-

Sl No.	Heads	Amount (Rs.)
1.	Loss of future income (@Rs.6000/- per month)	12,24,000/-
2.	Expenditures incurred towards the Hospital charges, medicine charges, operation charges etc. tentatively since the date of accident i.e., since 02.01.2016 to 20.01.2016	2,50,000/-
3.	Conveyance charges i.e., transport charges	10,000/-
4.	Attendance charges during treatment at the hospital	10,000/-
5.	Expenses for Special diet & nutrition	10,000/-
6.	Loss of comfort & amenities for his future life due to the effect of the injuries for his 100% permanent disability due to optic atrophy (low vision) and Mental illness (Schizophrenia)	1,00,000/-
7.	Pain and sufferings for whole period of life due to the effect of injuries	1,00,000/-
8.	Loss of beauty due to the injuries	50,000/-
9.	Loss of expectation of life	50,000/-
10.	Cost of litigation	5,000/-
	Total	18,09,000/-

5. Mr.Satpathy contends that, first of all, the sustenance of injury by the claimants in the accident dated 20th November, 2015 is doubtful in view of the date of accident mentioned in Ext.6 and other medical papers. Secondly, the quantum of

compensation determined by the Tribunal is excessively high and needs to be reduced.

6. With regard to first challenge, it is seen from the records that Ext.6 is the discharge summery dated 27th November, 2016 issued by S.C.B. Medical College and Hospital, Cuttack. In the said discharge summery, the date of accident is mentioned as 27th November, 2015. Taking advantage of this discrepancy in the discharge summery, it is contended by the Insurer that when the date of accident is 20th November, 2015 as per the claim, sustenance of injuries in the said accident is found doubtful as there is possibility that the claimant subsequently faced with another accident on 27th November, 2022.

It reveals from the police papers that the F.I.R. was lodged on 9th December, 2015 stating the date of accident on 20th November, 2015. The injury requisition made by the police is dated 9th December, 2012 and the injury report supplied by the doctor is dated 18th August, 2016. The claimant in his evidence as P.W.1 has consistently said that he faced with the accident on 20th November, 2015. But in the cross-examination being asked by the Insurer, he (P.W.1) could not able to say where he was from 20th to 28th November, 2015.

7. Upon consideration of all such discrepancies mentioned in the discharge certificate coupled with the statement of the injured, though it makes out a ground in favour of the Insurer, but the same cannot be held sufficient to conclusively opine that the injured did not sustain such injury in the accident

dated 20th November, 2015. It is for the reason that as per the disability certificate under Ext.7, the injured suffered with multiple disabilities including mental illness. It is possible that some typographical error might have been crept in the contents of the discharge certificate. The injury report produced under Ext.5 justifies the injuries sustained by the claimant in a road traffic accident and no rebuttal evidence has been adduced by the injured to deny the contentions of the claimant regarding sustenance of injuries in the accident. Thus the doubt posed by the Insurer regarding the date of accident, for a wrong date mentioned in the discharge certificate, would not satisfy their contention to disbelieve sustenance of such injuries by the claimant in the motor accident/road traffic accident.

8. Moreover, when Ext.7 (the disability certificate) shows 100% disability of the injured due to mental illness, a poor memory on his part to forget his where-about for certain days would not be an uncommon fact affecting his case. Therefore, the doubt expressed by Mr. Satpathy has no valid point for consideration. It is confirmed that the claimant sustained such injuries in the motor vehicular accident dated 20th November, 2015 as per the F.I.R. under Ext.1.

9. With regard to quantum of compensation, it is seen from the impugned judgment that the Tribunal has assessed monthly income of the injured at Rs.6,000/- to determine loss of income to the tune of Rs.12,24,000/-. The discussions made by the Tribunal regarding income of the injured are seen without any exaggeration or unreasonableness. Keeping in view the nature of disability mentioned in Ext.7 and without any doubt about 100%

loss of functional disability, no ground is seen to interfere with the amount granted towards loss of income. Similarly, the other amounts granted towards medical expenditures and loss of amenities and pleasure of life are found reasonable considering the nature of injury, period of treatment and age of the injured.

10. Upon thorough perusal of the impugned judgment and the documents produced on record, this Court does not find any ground to interfere with the impugned judgment. However, the rate of interest is reduced to 6% from 7% against the direction of the Tribunal and the penal interest is waived.

11. In the result, the appeal is disposed of with a direction to the Insurer-Appellant to deposit the entire compensation amount 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 contained in the impugned judgment.

12. 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.

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

(B.P. Routray)
Judge