

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.94 of 2022 & MACA No.263 of 2022

In MACA No.94 of 2022

Bhujanga Bhusan Pati

.... ***Appellant***
Mr. D.C. Dey, Advocate

-versus-

Surendra Barla and another

.... ***Respondents***
Mr. P.K. Mahali, Advocate for Respondent No.2
Mr. R. Behera, Advocate for Respondent No.1

In MACA No.263 of 2022

The D.M., M/s.National Insurance Co. Ltd.

.... ***Appellant***
Mr. P.K. Mahali, Advocate

-versus-

Bhujanga Bhusan Pati and another

.... ***Respondents***
Mr. D.C. Dey, Advocate for Respondent No.1

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

**ORDER
23.11.2022**

Order No.

MACA No.94 of 2022 and MACA No.263 of 2022

- 04.
1. Heard Mr. D.C. Dey, learned counsel for the claimants, Mr. P.K. Mahali, learned counsel for the Insurance Company and Mr. R. Behera, learned counsel for the owner.
 2. Both the appeals being arise out of the same judgment dated 20.01.2022 of the learned 3rd MACT, Cuttack in M.A.C. Case No.835 of 2015, wherein compensation to the tune of Rs.12,93,545/- has been granted along with simple interest @6% per annum to the claimant from the date of filing of the claim

application, i.e. 13.11.2015 on account of injury sustained by him in a motor vehicular accident dated 25.06.2015, are heard together and disposed of by this common order.

3. MACA No.94 of 2022 has been filed by the claimant-injured praying for enhancement and MACA No.263 of 2022 has been preferred by the Insurance Company challenging the award.

4. Mr. P.K. Mahali, learned counsel submits for the insurer that the offending vehicle, i.e. TATA Magic bearing Registration No.OD-16-3043 has been implanted in the accident to manage the compensation. He further submits that initially in the FIR no such mention of the offending vehicle was there. But the Police submitted the charge-sheet against said vehicle upon collusion with the claimants.

5. It is seen that the FIR was lodged immediately after the accident stating that one four wheeler vehicle was negligent for the cause of accident. Subsequently the Police upon investigation have collected the registration number of the offending vehicle and accordingly submitted the charge-sheet for commission of offences under Sections 279/337/338/304-A, I.P.C. along with Section 187 of the M.V. Act against the driver of the offending vehicle.

6. P.W.2-the claimant-injured has categorically said in his evidence regarding negligent driving of the driver of the offending vehicle and his evidence has been left un-rebutted. Therefore, in view of the evidence of P.W.2 and the Police

investigation report, the involvement of the offending vehicle in the accident is established and as such, the contention raised by the Insurance Company to dispute the same is rejected.

7. Next coming to the quantum of compensation, Mr. Mahali submits that the injured-claimant has reimbursed the medical expenses from the employer and in this regard the certificate issued by the employer of the injured, obtained under the RTI Act, has been filed. It is seen from the said information dated 13.4.2016 given by the employer that the injured-claimant, namely, Bhujanga Bhusan Pati has reimbursed a sum of Rs.8,58,851/- towards medical expenses.

8. Being asked, Mr. Dey explains on behalf of the claimant-injured that the injured might have received the same subsequently after giving evidence before the Tribunal. Thus it is established that the injured-claimant has received Rs.8,58,851/- from his employer towards medical expenses. The same is liable to be deducted from the amount granted by the Tribunal towards medical expenses.

9. On the other hand, Mr. Dey prays on behalf of the injured-claimant for enhancing the compensation amount mainly on the ground that the amount towards attendant charges and future medical expenses needs to be enhanced.

10. It is seen from the impugned judgment that the learned Tribunal has counted the compensation as per the following heads.

Sl. No.	Heads	Amount
(i)	Expenses relating to medical expenses	Rs. 10,73,545/-
(ii)	Compensation on account of future treatment	Rs. 50,000/-
(iii)	Conveyance & special diet	Rs. 50,000/-
(iv)	Attendant charges	Rs. 20,000/-
(v)	Pain, suffering, loss of amenities	Rs. 1,00,000/-
(vi)	Loss of future earnings	Nil
	Total	Rs. 12,93,545/-

11. The sustenance of 55% permanent disability as per Ext.17, by the injured is not disputed. This is a loco-motor disability and the learned Tribunal considering such aspect has granted Rs.50,000/- towards future treatment. The learned Tribunal has added further Rs.20,000/- towards attendant charges during the period of treatment.

12. In absence of any specific evidence towards requirement of future treatment and considering the fact that the injured-claimant can reimburse his medical expenses from the employer, the sum granted by the Tribunal towards future treatment cost is found reasonable and does not warrant for interference.

13. In absence of any specific evidence towards requirement of attendant in future by the injured due to his disability, no merit is seen in the submission of the claimant for getting any such amount for future contingencies. As such, the amount granted by the learned Tribunal towards attendant charges for the treatment period is thus confirmed.

14. Resultantly, the amount of compensation is liable to be reduced by Rs.8,58,851/-, as received by the injured-claimant

towards medical reimbursement, and the modified compensation amount is determined at Rs.4,34,694/-.

15. At this stage, Mr. Mahali submits that the offending vehicle did not have valid fitness certificate on the date of accident and in support of his contention, he files a copy of the certificate granted by the Regional Transport Officer, Sundargarh regarding fitness history of the offending vehicle.

16. Perusal of the same reveals that the fitness was valid for the period from 18th March, 2013 to 17th March, 2015 and again from 10th August, 2015 to 9th August, 2016. That means the fitness was not obtained for the period from 18th March, 2015 to 9th August, 2015.

17. Mr. R. Behera, learned counsel for the owner is unable to answer regarding the missing fitness of the offending vehicle on the date of accident as pointed out by Mr. Mahali. Accordingly, in absence of any answer from the side of the owner, it is presumed that the offending vehicle did not have a valid fitness on the date of accident and as such, the Insurance Company is granted with right of recovery of the compensation amount from the owner in accordance with law.

18. In the result, both the appeals are disposed of with a direction to the Insurance Company-National Insurance Co. Ltd. to deposit the modified compensation amount of Rs.4,34,694/- (rupees four lakhs thirty-four thousand six hundred ninety-four) before the Tribunal along with simple interest @6% per annum from the

date of filing of the claim application, i.e. 13.11.2015 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. However, the penal interest @12% per annum as directed by the learned Tribunal is waived.

19. On deposit of the award amount by the insurer before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made in MACA No.263 of 2022 before this Court with accrued interest thereon shall be refunded to the insurer.

20. The copies of exhibits and depositions, produced in course of hearing, are kept in the connected appeal, i.e. MACA No.262 of 2022.

21. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge