IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.284 of 2022
And
MACA No.202 of 2022

MACA No.284 of 2022

M/s.The Oriental Insurance Co.Ltd. .... **Appellant**
Mr.S.J.Pradhan, Advocate

-versus-

Sahida @ Sajeda Bibi and another …. **Respondents**
Mr.B.N.Rath, Advocate for Respondent No.1

AND

MACA No.202 of 2022

Sahida @ Sajeda Bibi …. **Appellant**
Mr.B.N.Rath,Advocate

-versus-

Dillip Kumar Sahu and another …. **Respondents**
Mr.S.J.Pradhan, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
15.11.2022

Order No.

1.

1. The matter is taken up through Hybrid mode.

2. Heard Mr.Pradhan, learned counsel for the Insurer and Mr.Rath, learned counsel for the claimant.

3. Both the appeals arise out of the same judgment dated 29th January, 2022 passed by the learned 2nd Addl. District Judge-

cum-3rd MACT, Cuttack, in M.A.C. Case No.154 of 2017, wherein compensation to tune of Rs.6,33,400/- along with interest @6% 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 26th April, 2016.

4. MACA No.284 of 2022 has been preferred by the Insurer challenging the award and MACA No.202 of 2022 has been filed by the claimant praying for enhancement of the compensation amount.

5. Both the parties are challenging the award on the question of quantum and in addition to the same, it is contended by the Insurer that the driver of the offending was not having valid D.L. to drive a transport vehicle on the date of accident.

6. The contention raised by Mr.Pradhan on behalf of the Insurer with regard to the validity of D.L. is without any merit in view of clear finding of the Tribunal that the driver was having a valid and effective D.L. to drive a non-transport vehicle and admittedly the offending vehicle is an auto-rickshaw.

7. Upon hearing both parties, it is seen that the Injured was permanently disabled with amputation of right forearm below the elbow as per the disability certificate under Ext.11. This disability of the injured – claimant is not disputed by the Insurer. The Tribunal in absence of any documentary proof has disbelieved the contention of the claimant regarding tailoring business and taken his notional income at Rs.3,000/- per month.

8. The approach of the Tribunal is not found correct in absence of any rebuttal evidence. It is true that a man maintaining his livelihood by tailoring business cannot be expected to have any document with him to prove his avocation. The injured was aged about 26 years on the date of accident. Even if he is accepted as an unskilled labourer on the date of accident, his income in terms of the Govt. SRO No.323/2015 would be Rs.207/- per day, which comes to Rs.6,210/- per month. Thus, assessment of the Tribunal of the income at Rs.3000/- per month on notional basis is found erroneous. Accordingly, such finding of the Tribunal is set aside and the income of the deceased is fixed at Rs.6,500/- per month. Adding future prospects to the extent of 40%, it comes to Rs.8,694/- per month. The loss of income is thus calculated at Rs.1,04,328/- per annum.

9. The permanent disability is 60% as per Ext.11 and the Tribunal has assessed functional disability to the extent of 50% only. Considering that the injured was a tailor and his right forearm has been amputated below the elbow, loss of functional disability is assessed to the extent of 80%, keeping in view the principles adopted for cases under Employees Compensation Act.

10. Considering all such factors and the age of the deceased on the date of accident, the loss of future income is computed at Rs.14,18,860/-. Keeping in view the period of treatment and the nature of injuries, the treatment expenses to the tune of Rs.1,00,000/- including special diet, attendance charges etc. is granted. A further sum of Rs.1,00,000/- is granted towards pain

and suffering, loss of future amenities and expectation of life and loss of beauty etc. Thus the total compensation amount is derived at Rs.16,18,860/- payable along with interest @6% per annum.

11. In the result, both the appeals are disposed of with a direction to the Insurer i.e., Oriental Insurance Co. Ltd. to deposit the modified compensation amount of Rs.16,18,860/- (Sixteen lakhs eighteen thousand eight hundred sixty) 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 to be fixed by the Tribunal. However, the penal interest @12% as directed by the Tribunal is waived.

12. The statutory deposit made by the Insurer in MACA No.284 of 2022 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

C.R.Biswal