

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.69 of 2017

Divisional Manager, New India ***Appellant***
Assurance Company Limited

Mr. G.P. Dutta, Advocate

-versus-

Sambit Mohanty and another ***Respondents***

Mr. R.C. Pradhan, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
08.09.2022

Order No.

10.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company as well as Mr. R.C. Pradhan, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 26.09.2016 of learned 3rd M.A.C.T., Bhubaneswar in M.A.C. Case No.114/44 of 2007 wherein compensation to the tune of Rs.27,20,966/- has been granted along with interest @7% per annum to the claimant from the date of filing of the claim application, i.e.07.02.2007 on account of injury sustained by him in the motor vehicular accident dated 21.11.2006.

3. Mr. G.P. Dutta, learned counsel for the Appellant mainly confines to the quantum of compensation by stating that the amount granted towards treatment expenses is excessive and the same is not supported by substantial evidence.

4. Upon hearing Mr. R.C. Pradhan, learned counsel for the Respondent No.1-claimant, it is seen from the impugned judgment that different heads of compensation has been counted as follows:

Sl. No.	HEAD	CALCULATION
(i)	Expenses in treatment	= Rs.17,84,466/-
(ii)	Compensation for loss of income during period of treatment	= Rs.75,000/-
(iii)	Future loss of income	= Rs.5,76,000/-
(iv)	Attendant charges	= Rs.75,000/-
(v)	Transportation charges	= Rs.5,000/-
(vi)	Special diet	= Rs.5,000/-
(vii)	Compensation for pain, suffering and trauma	= Rs.1,00,000/-
(viii)	Compensation for loss of expectation of life	= Rs.50,000/-
(ix)	Compensation for loss of amenities	= Rs.50,000/-
(x)	Litigation expenses	= Rs.500/-
	Total compensation awarded	= Rs.27,20,966/- (Rupees twenty-seven lakhs twenty thousand nine hundred sixty-six) only

5. Learned Tribunal has though discussed about the injury and treatments, but in the end opining that the claimant has filed cash memos to the tune of Rs.17,84,466/- has counted such amount. It is true that none of such cash memos have been marked in exhibit by the learned Tribunal.

6. Perusal of different discharge certificates issued by Neelachal Hospital, Kalinga Hospital and Capital Hospital, Bhubaneswar under Exts.6 to 13 as produced in course of hearing, reveals that the ultrasound verification did not speak about any kind of kidney injury, whereas the discharge certificate of Neelachal Hospital, Bhubaneswar dated 22.11.2006 and Kalinga Hospital,

Bhubaneswar dated 29.12.2006 reveals that the injured-claimant had known case of adult polycystic kidney disease. It further reveals from the certified copy of the deposition of the injured-claimant that he failed to support such expenses through medical bills or cash memos borne out of such injury only due to the accident. It needs to be mentioned here that as per the injury report, there was fracture in pelvic region due to the accident.

7. Considering all such factors and particularly in absence of original cash memos proved on record and marked as exhibit in the claim proceeding, such high amount of expenses as counted by the Tribunal to the tune of Rs.17,87,466/- appears excessive. In such circumstances, considering the nature of injury and his period of treatment in different hospitals, which is around 25 months on different spells, the same is reduced to Rs.10,00,000/-.

8. Resultantly, the compensation amount is reduced to Rs.19,36,500/- as this Court does not find any reason to interfere with other heads of count. However, the rate of interest is reduced to 6% and the penal interest @8% is waived.

9. Accordingly, the Appellant – Insurance Company is directed to deposit the modified compensation of Rs.19,36,500/- (rupees nineteen lakhs thirty-six thousand five hundred) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e., 07.02.2007 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.

10. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

11. The MACA is disposed of with aforesaid directions.

12. The certified copy of evidence of the injured-claimant and copies of different other exhibits produced in course of hearing are kept on record.

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

(*B.P. Routray*)
Judge