IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.261 of 2021

(From the judgment dated 29th May, 2020 passed by Sri. Pravat Kumar Rajguru (O.S.J.S.), learned 2nd M.A.C.T., Cuttack in Misc. Case No.625 of 2001)

Oriental Insurance Company Limited, Bajrakabati Road, Cuttack through its Divisional Manager .... ***Appellant***

-versus-

Pradip Kumar Das and Others .... ***Respondents***

Advocate(s) appeared in this case:-

For Appellant	:	Mr. P.K. Mahali, Advocate
For Respondents	:	Mr. Ramanath Acharya, Advocate for Respondent Nos.1 & 2

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

1st August, 2022

B.P. Routray, J.

1. Present appeal by the insurer is directed against the judgment dated 29th May, 2020 of learned 2nd M.A.C.T., Cuttack passed in Misc. Case No.625 of 2001 wherein compensation to the tune of Rs.22,64,100/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 26th July, 2001 has been granted on account of injuries sustained by the injured claimant – Respondent No.1 in the motor vehicular accident dated 17th February, 2001.

2. As per the case of the claimants when the injured claimant was going by riding a bicycle, the offending mini truck bearing registration number OR-05-G-9703 dashed against him being driven rash and negligently with high speed and as a result of such accident the claimant sustained injuries on the head and other parts of the body. He was hospitalized in SCB Medical College and Hospital, Cuttack for seven days as an indoor patient in the neurosurgery department. Even after discharge from the hospital, the treatment continued and as a result of the injuries on the head he became mentally imbalanced sustaining permanent physical disability up to the extent of 70%.

3. The facts of accident, involvement of the offending vehicle, negligence on the part of the driver and validity of insurance policy in respect of the offending vehicle as well as the age of the deceased are not disputed.

4. The tribunal, upon adjudication, accepted functional disability of the injured up to 100% and granted compensation to the tune of Rs.22,64,100/- under various heads. Such heads counted for compensation by the tribunal are as follows:

i)	Transportation	:	Rs.30,000/-
ii)	Medicinal expenses during hospitalization	:	Rs.3,00,000/-
iii)	Attendance Cost during hospitalization	:	Rs.8,100/-
iv)	Future attendance cost	:	Rs.7,50,000/-
v)	Loss of earning including future earning	:	Rs.5,76,000/-
vi)	Loss of amenities	:	Rs.3,00,000/-

vii)	Pain and suffering	:	Rs.3,00,000/-
	Total	**:**	**Rs.22,64,100/-**

5. For the purpose of counting compensation multiplier '16' was applied taking the age of the injured between the age group of 35 to 40 years and his monthly income was assessed at Rs.3000/- as a private tutor.

6. The appellant challenges such computation of compensation mainly on the ground of quantifying the functional disability up to 100%, the amount of monthly income as well as future attendance cost. It is also submitted that the driver of the offending vehicle was not having a valid driving licence as the same was not renewed in time.

7. First considering the challenge with regard to validity of driving licence on the part of the driver, it is seen from the record that no evidence has been adduced from the side of the insurer. The copy of the driving licence of the driver has been filed under Ext.3 series which is not challenged through any rebuttal evidence. The tribunal under issue No.III has categorically stated that the DL bearing number 1933/92-93 issued in the name of the accused driver Umesh Chandra Mallick is found valid up to 3rd August, 2001. No such material is also produced in the appeal against said finding of the tribunal. Thus, taking the date of accident as 17th February, 2001, the finding of the tribunal that the driver was having a valid driving licence on the date of accident is confirmed.

8. Now coming to the question of quantum of compensation, the tribunal by relying on the principles decided in the case of ***Raj Kumar***

v. Ajay Kumar, 2011 (1) SCC 343 has determined the quantum of compensation with elaborate discussions on various heads stated above. A careful perusal of the same reveals that the tribunal has assed compensation under the medicinal expenses during hospitalization and future attendance cost exorbitantly. The injured – claimant was under continuous treatment as an indoor patient from 17th February, 2001 to 6th March, 2001 and again from 18th May, 2007 to 26th May, 2007 in the neurosurgery department of SCB Medical College and Hospital, Cuttack. Besides those periods he visited the hospital on several other occasions as outdoor patient. It is seen that the tribunal by guess-work has determined such amount of medicinal expenses, i.e. to the tune of Rs.3,00,000/-. The further evidence adduced from the side of the claimants reveals that the injured was under the treatment of Dr. Gopal Chandra Kar, a neuro psychiatric. Considering such aspects that the injured claimant was under the treatment of a neuro psychiatric, the medicinal cost as assed by the tribunal without material document, is thus liable to be reduced and is reduced to Rs.1,50,000/-.

9. It is further seen that for assessing future attendant cost for the injured – claimant, the tribunal has taken a sum of Rs.2,500/- per month and considering his minimum life longevity up to 60 years, came to the conclusion of total expenses of Rs.7,50,000/- by multiplying Rs.2500/- to 12 and then to 25, i.e. Rs.2500/- X 12 X 25 = Rs.7,50,000/-. In the opinion of the tribunal except mental disability the rest part of the body of the injured – claimant has been functioning properly and he is not able to judge his movement and activity only. By saying that injured will live for around 25 years at least after the date of

accident and he will need an attendant for everyday business, the cost of attendant per month was assessed at Rs.2500/-. It is pertinent to mention here that the income of the injured was assessed by the tribunal at Rs.3000/- per month and no specific evidence has been brought to the effect to reveal that a separate attendant has been engaged for such purpose. It is true that the family members of the injured – claimant are attending him killing their own time.

Considering the place of residence of the claimant which is a rural area and the year of accident as well as the assessment of his monthly income, the future attendant cost is reduced to Rs.2,00,000/-.

10. The rest of the computation under other heads as discussed by the tribunal in the impugned judgment does not suffer any infirmity warranting interference. The challenge of the insurer that the functional disability cannot be 100% has no merit in view of the admittedly mental imbalance of the injured – claimant. He was a private tutor and therefore by loss of mental balance his total income is lost due to mental incapability. Therefore, the tribunal has rightly assessed his functional disability up to 100% considering his profession. It needs to be mentioned here that for computing functional disability, the profession of the injured and the nature of disability are important factors as propounded in the case of ***Raj Kumar*** (supra) and other cases.

11. In the result the total compensation amount is reduced by Rs.7,00,000/- (i.e. Rs.1,50,000/- on the head of medicinal expenses during hospitalization + Rs.5,50,000/- on the head of future attendant

cost) as discussed above and the insurer-Appellant is found liable to pay Rs.15,64,100/- (i.e. total awarded compensation of Rs.22,64,100/- - Rs.7,00,000/- = Rs.15,64,100/-).

12. The Appellant-Insurance Company is directed to deposit the compensation of Rs.15,64,100/- (rupees fifteen lakhs sixty-four thousand one hundred) before the Tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e.26th July, 2001 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the Tribunal.

13. 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.

(B.P. Routray)
Judge

M.K. Panda/Sr. Steno