

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.272 of 2021

The Oriental Insurance Company Limited ***Appellant***

Mr. M.C. Nayak, Advocate

-versus-

Miss Satabdee Biswal and another ***Respondents***

Mr. B.K. Mohanty, Advocate for Respondent No.1

Mr. M.K. Mohapatra, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
13.10.2022

Order No.
07.

1. Heard Mr. M.C. Nayak, learned counsel for the Appellant-Insurance Company, Mr. B.K. Mohanty, learned counsel for the Respondent No.1-claimant and Mr. M.K. Mohapatra, learned counsel for the Respondent No.2-owner.

2. Present appeal by the insurer is directed against judgment dated 29.04.2021 of learned 4th M.A.C.T., Cuttack in M.A.C. Case No.418 of 2011 wherein compensation to the tune of Rs.11,50,000/- has been granted along with simple interest @6% per annum to the claimant from the date of filing of the claim application, i.e. 01.07.2011 on account of injury sustained by her in the motor vehicular accident dated 28.10.2009.

3. It is submitted by Mr. M.C. Nayak, learned counsel for the Appellant-insurer that the amount granted towards medical expenses, future medical expenses and loss of amenities as well

as prospect of marriage are to be reduced being excessive. It is further submitted that in absence of any documentary proof, the medical expenses assessed to the tune of Rs.2,50,000/- is erroneous so also the future treatment expenses. It is further submitted by Mr. Nayak that an amount of Rs.5,00,000/- granted for loss of amenities of life and prospects of marriage is not supported by any material evidence.

4. Mr. B.K. Mohanty, learned counsel for the Respondent No.1-claimant on the other hand submits that the injured being a young woman has undergone treatment as an indoor patient on three phases and the evidence of the doctor is clear about her future treatment. He relies on the evidence of P.W.2 in support of the sum granted towards loss of prospects of marriage. He further submits that the claimant-injured by filing cross objection has prayed to enhance the amount of compensation in respect of future medical expenses and loss of marriage prospects.

5. The learned Tribunal has granted compensation on the following heads:-

Sl. No.	Heads	Amount
(i)	Expenses relating to medical treatment.	Rs.2,50,000/-
(ii)	Compensation on account of future treatment.	Rs.1,00,000/-
(iii)	Conveyance & special diet.	Rs.50,000/-
(iv)	Attendant charges.	Rs.50,000/-
(v)	Pain and sufferings.	Rs.2,00,000/-
(vi)	Loss of amenities and loss of prospects of marriage.	Rs.5,00,000/-
	Total Compensation	Rs.11,50,000/-

6. It is seen that the claimant is a young woman aged about 22 years on the date of accident. Due to the accident, she sustained grievous injuries such as compound fracture of both bones of her right leg and fracture of right medial malleolus along with avulsion of skin over middle 3rd and lower 3rd junction to the dorsum of the foot and other multiple injuries. Three witnesses have been examined on behalf of the claimant viz. she as P.W.1, her father as P.W.3 and the treating Doctor, namely, Dr. P.S. Jaya Prasad as P.W.2. Said P.W.2 in his evidence has said in detail about the treatment given to the injured. The discharge summaries filed under Exts.2, 4 and 5 disclose about the treatment of the injured on three phases in Kamineni Hospital, Hyderabad. Further the evidence of P.W.2 speaks that due to the injury, a scar mark is left over the right leg of the claimant associated with sensation over the flap area and restriction of movement of ankle and toe. No evidence has been adduced from the side of the insurer and on perusal of the cross-examination of all these witnesses examined on behalf of the claimant, particularly the doctor, nothing is seen either to disbelieve their statements or the expenses incurred for the treatment. Therefore, considering the gravity of the injuries, the period of treatment and the nature of disfigurement left on the right leg of the injured, the amount of compensation granted for medical expenses, related future expenses and loss of amenities as well as prospects of marriage cannot be termed as excessive or exorbitant. So no merit is seen in the contention of the insurer to reduce such amount.

7. So far as the prayer of the injured-claimant for enhancement of the compensation amount is concerned, it is also without justifiable material. Based on the evidence of P.W.2, the Tribunal has assessed the amounts on each head reasonably. No further material or document is produced from the side of the claimant to warrant any interference in the same. Accordingly, the compensation amount as directed by the Tribunal is confirmed and the prayer of the injured-claimant for enhancement of the same is rejected.

8. It is next contended by Mr. Nayak that the driver of the offending vehicle was not having a valid license on the date of accident. As stated earlier, no evidence was adduced from the side of the insurer. Mr. Mohapatra, learned counsel for Respondent No.2-owner on the other hand submits that, it was also not the pleading of the insurer before the learned Tribunal and the charge-sheet submitted by the police is clear to the effect that the driver of the offending vehicle, namely, I. Krishna was having a valid license. Mr. Mohapatra further confirms that there is no question of invalid driving license on the date of accident.

9. It reveals from the impugned judgment and the LCR that, no rebuttal evidence has been adduced on behalf of the insurer either disputing the DL or permit. It was never the case of the insurer that the offending vehicle was not having any permit or its driver had no valid license. Therefore, all such contentions raised here in the appeal are not entertainable and rejected.

10. In the result, the appeal is dismissed and the Appellant – Insurance Company is directed to deposit the entire compensation of Rs.11,50,000/- (rupees eleven lakhs fifty thousand) before the Tribunal along with simple interest @6% per annum from the date of filing of the claim application, i.e. 01.07.2011 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on same terms and proportion as directed by the Tribunal. However, the penal interest as directed by the learned Tribunal is waived.

11. On deposit of the award amount before the learned Tribunal and upon filing of 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.

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

(**B.P. Routray**)
Judge