

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1320 of 2017

The Divisional Manager, ICICI ***Appellant***
Lombard General Insurance Co. Ltd.

Mr. G.P. Dutta, Advocate

-versus-

Chandramani Jena and another ***Respondents***
Mr. T.K. Mishra, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
16.11.2022

Order No.

07.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company and Mr. T.K. Mishra, learned counsel for Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment dated 27.04.2017 of learned 3rd M.A.C.T., Rourkela in M.A.C. Case No.244 of 2014, wherein compensation to the tune of Rs.21,15,500/- has been granted along with interest @6% per annum to the claimant from the date of filing of the claim application, i.e. 04.08.2014 on account of injury sustained by him in the motor vehicular accident dated 15.07.2013.

3. Mr. Dutta, learned counsel for the Appellant-Insurance Company challenges the award by submitting that the amount of compensation granted is excessively high and secondly, it is not

correct to say that the injured due to the accident has sustained any loss of income.

It is seen from the impugned judgment that the compensation amount has been counted as per the following heads.

Sl. No.	Description	Amount awarded
(a)	Loss of earning capacity	Rs. 9,04,950/-
(b)	Loss of earning during the treatment period	Rs. 1,00,000/-
(c)	Transportation charge	Rs. 30,000/-
(d)	Extra nourishment	Rs.1,00,000/-
(e)	Medical and treatment charges	Rs.1,80,478/-
(f)	Future medical expenses	Rs. 1,00,000/-
(g)	Attendant charges	Rs. 2,00,000/-
(h)	Loss of amenities	Rs.1,00,000/-
(i)	Loss of longevity life	Rs. 2,00,000/-
(j)	Loss of marital status	Rs. 1,00,000/-
(k)	Pain and sufferings	Rs. 1,00,000/-
Total		Rs. 21,15,428/-
Rounded upto		Rs. 21,15,500/-

4. Mr. Mishra, learned counsel for the claimant-Respondent No.1 in reply submits that computation of compensation made by the Tribunal is fully justified keeping in view the law settled in different decisions of the Supreme Court. In support of his submission, Mr. Mishra relies on the decisions in the cases of *Sunita and others vs. Rajasthan State Road Transport Corporation and another*, AIR 2019 SC 994, *R.D. Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd. and others*, AIR 1995 SC 755, *United India Insurance Co. Ltd. vs. K.M. Poonam and others*, 2011 AIR SCW 2802, *National Insurance Co. Ltd. vs. Swaran Singh and others*, AIR 2004 SC 1531, *Jakir Hussein vs. Sabir*, 2015 AIR SCW 1496, *New India Assurance Co. Ltd. vs. Dr. Sukanta Kumar Behera*, 2015 AIR SCW 3795, *Tejinder Singh Gujral vs. Inderjit Singh*, 2007 (1) SCC (Crl.) 389, *Smt.*

Sarala Verma and others vs. Delhi Transport Corporation and another, AIR 2009 SC 3104.

5. Due to the accident, the claimant sustained multiple injuries with fracture of his left leg and fracture with dislocation of ring finger joint of left hand. Due to the injuries, the claimant underwent treatment at Ispat General Hospital, Rourkela and then at Ashwini Hospital, Cuttack. It is further claimed that eight numbers of small plates were fixed at different bones of his person.

6. The injured-claimant was a practicing Advocate and residing at Rourkela. He was aged about 57 years on the date of accident. In support of his income, he produced the ITR for the Assessment Year 2012-13 under Ext.4.

7. Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company seriously disputes such income of the injured shown in the IT Return for the Assessment Year 2012-13 under Ext.4. As per him, said ITR was filed on 6.1.2014, i.e. subsequent to the accident.

8. The date of accident is 15.7.2013. Except the IT Return under Ext.4, no other document was produced on record in support of income of the injured. This Ext.4 is undisputedly filed after the date of accident. Therefore, what is mentioned regarding income, in the IT Return of a single year, would not satisfy the requirement. However, considering the profession of the injured as an Advocate, the amount mentioned in Ext.4 is not found so

unreasonable that is liable for reduction. The same is accordingly confirmed.

9. According to the claimant, the permanent disability sustained by him, as per Ext.3, is “*Malunited Segmental Fracture of Femur with Shortening and Post Traumatic Stiffness of left Knee*”. This is a locomotor disability in relation to the left leg. But the learned Tribunal without considering functional disability in reference to the physical disability has directly counted 50% loss of income. This approach of the Tribunal is not found in accordance with the settled principles propounded in the case of ***Raj Kumar vs. Ajay Kumar and another, (2011) 1 SCC 343***. On re-appreciation of the same, this Court is of the opinion that in reference to the physical disability as mentioned under Ext.3 and the profession of the injured-claimant as a lawyer, it should not exceed 30%. It is for the reason that some impairment in locomotion would not affect his income to the extent of 50%. In the profession of a lawyer, mind work is very important. Accordingly, the loss of future income is determined at Rs.5,42,970/-, i.e. Rs.2,01,100/- x 30% x 9, and adding future prospects to the extent of 10% thereto, the total loss of future income is determined at Rs.5,97,267/-.

10. As per the statement of P.W.1 (the injured), he underwent treatment as an indoor patient for a total period of 17 days. So considering the period of treatment and nature of injury, the actual loss of earning during the period of injury is determined at Rs.1,00,000/-.

11. Towards treatment cost including transportation charges, special diet, attendant charges etc, an amount of Rs.1,00,000/- would suffice the purpose.

12. A further sum of Rs.1,00,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities in life would satisfy the requirement.

13. Thus the total compensation amount is determined at Rs.8,22,267/-.

14. In the result, the appeal is disposed of with a direction to the Appellant–Insurance Company to deposit the modified compensation amount of Rs.8,22,267/- (rupees eight lakhs twenty-two thousand two hundred sixty-seven) before the Tribunal along with interest @6% per annum from the date of filing of the claim application, i.e. 04.08.2014 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.

15. 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.

16. It goes without saying that the right of recovery granted in favour of the insurer is left disturbed by this Court.

17. The copies of exhibits and evidence as produced by Mr. Dutta, learned counsel for the Appellant in course of hearing are kept on record.

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

(B.P. Routray)
Judge

