IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.410 of 2015

Kanduri Behera .... ***Appellant***

Mr. D.K. Mohapatra, Advocate

-versus-

M/s.New India Assurance Co. Ltd. and others .... ***Respondents***

Mr. A.K. Nath, Advocate for Respondent No.1

Mr. S.R. Patnaik, Advocate for Respondent No.2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
02.09.2022

Order No.
08.

1. Heard Mr. D.K. Mohapatra, learned counsel for the Appellant-claimant, Mr. A.K. Nath, learned counsel for the Respondent No.1-M/s.New India Assurance Co. Ltd. and Mr. S.R. Patnaik, learned counsel for the Respondent No.2-M/s.National Insurance Co. Ltd.

2. The claimant-injured has preferred the present appeal against the impugned judgment dated 09.02.2015 of the learned 2nd M.A.C.T., Cuttack in Misc. Case No.814 of 1999 wherein compensation to the tune of Rs.1,79,600/- along with 7% interest per annum has been granted to him from the date of filing of the claim application, i.e.17.9.1999 on account of injuries sustained by him in the motor vehicular accident dated 10.06.1999.

3. It is submitted on behalf of the Appellant-claimant that despite his age was 45 years at the time of accident and the permanent disability was to the extent of 50%, the learned Tribunal

erroneously took his age as 60 years and granted future loss of earning capacity to the extent of 40% only.

4. Mr. Nath as well as Mr. Patnaik, learned counsels for respective parties submit that the claimant-Appellant has failed to prove his income from tailoring business and in absence of any proof regarding income, the assessment made by the learned Tribunal regarding future loss of earning capacity is appropriate.

5. It is the consistent case of the Appellant that he sustained 50% disability as per disability certificate under Ext.1 which remains undisputed. Both the insurers did not challenge the quantum of compensation as assessed by the learned Tribunal. Therefore any dispute with regard to computation of income made by the learned Tribunal cannot be disputed by the insurers in absence of appeal from their side. It is seen from the certified copy of Ext.1 that in the opinion of the Medical Board, the claimant sustained permanent disability to the extent of 50% due to post traumatic evacleation of right eye, post fracture deformity of right leg with shortening by one and half inch. But the Tribunal without any basis reduced the functional disability to 40% and calculated the compensation accordingly. It is further seen that based on the age mentioned in the disability certificate, the Tribunal took the age of the injured as 60 years. Such appreciation on the part of the Tribunal is found erroneous. It is for the reason that the disability certificate was issued on 16th January, 2009 whereas the accident took place on 10.06.1999. Therefore, his age mentioned in the disability certificate cannot be accepted as 60 years on the date of accident. Further the profession/avocation of the injured-claimant

as a tailor remains unrebutted before the Tribunal. But the Tribunal has disbelieved his definite income in absence of any documentary proof. When the claimant speaks to be in tailoring business, seeking any documentary proof from him to establish his avocation is not found justified. Moreover, such contention of the claimant from tailoring business being not rebutted by any evidence from the side of the insurer or owner, cannot be denied at all and accordingly, the assessment of the functional disability to the extent of 40% is liable to be modified. Considering all such aspects as discussed above, the loss of future earning capacity is computed as follows:

"(i) Annual income	-	Rs.36,000/-
(ii) Adding 40% towards future prospects	-	Rs.50,400/-
(iii) Multiplier applicable – '13' (Age of the deceased as 49 years)		
(iv) Functional disability – 50%		
(v) Total loss of earning capacity	-	Rs.3,27,600/-"

6. Since the learned Tribunal has granted loss of future earnings to the tune of Rs.1,29,600/-, the differential amount calculated is Rs.1,98,000/- which both the insurers are liable to pay.

7. Counting interest @6% per annum on the differential amount from the date of filing of the claim application, both Respondent Nos.1 & 2 – insurers are directed to pay the consolidated sum of Rs.4,60,000/- in equal proportion.

8. In the result, the appeal is disposed of with a direction to Respondent Nos.1 & 2 to pay a further consolidated sum of Rs.4,60,000/- in equal share, i.e. Rs.2,30,000/- each within a period of two months, where-after the same shall be disbursed in favour of the injured-claimant on such terms and proportion to be fixed by the learned Tribunal.

9. The certified copies of Ext.1 & Ext.4 as filed by the Appellant are kept on record.

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

(B.P. Routray)
Judge

B.K. Barik