

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.552 of 2020 & MACA No.646 of 2019

(From the judgment dated 29th April, 2019 passed by the learned 2nd Additional District Judge-cum- 3rd MACT, Cuttack in M.A.C. Case No.297 of 2015)

MACA No.552 of 2020

Divisional Manager,

M/s.National Insurance Co. Ltd.

.....

Appellant

Versus

Dasarathi Khandei and another

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant

:

Mr. P.K.Mohanty, Advocate

For Respondents

:

Mr.K.Das, Advocate
for Respondent No.1

MACA No.646 of 2019

Dasarathi Khandei

.....

Appellant

Versus

Purna Chandra Mohanta and another

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant

:

Mr. K.Das, Advocate

For Respondents

:

Mr.P.K.Mohanty, Advocate
for Respondent No.2

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

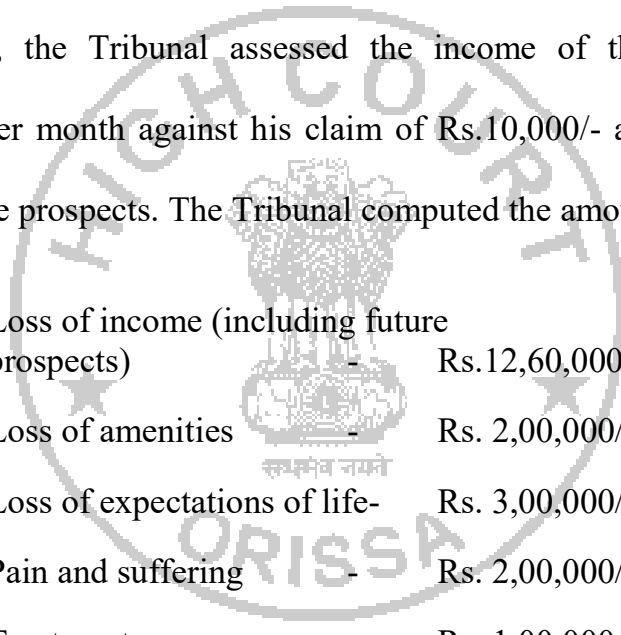
B.P. Routray, J.

1. Both the appeals are directed against the common judgment dated 29th April, 2019 passed by learned 2nd Additional District Judge-cum- 3rd MACT, Cuttack in M.A.C. Case No.297 of 2015. MACA No.552 of 2020 has been filed by the Insurance Company challenging the award and MACA No.646 of 2019 has been filed by the claimant praying for enhancement of the compensation amount.

2. The accident took place on 30th August, 2014 at 5.00 PM when the claimant and another were attending the call of nature on the road side space. The offending vehicle bearing Registration No.OD-09-8790 (Tata Magic) being driven in a rash and negligent manner with high speed suddenly swerved to its right and ran over the claimant. Due to the accident, the claimant sustained severe head injury, compound fractures of left leg and other injures. He was immediately shifted to the hospital by the local people and undergone treatment as an indoor patient in different hospitals at Cuttack from 31st August, 2014 to 27th October, 2014. He is bed-ridden since the date of accident and remained

paralyzed. He is unable to perform his daily chores. As per the disability certificate under Ext.5, the claimant suffered with 100% disability due to Traumatic Quadriplegia with 100% loss of earning capacity. He was aged about 44 years at the time accident.

3. The Tribunal considering all such facts granted compensation to the tune of Rs.25,00,000/- along with interest @7% per annum. For the said purpose, the Tribunal assessed the income of the claimant at Rs.6,000/- per month against his claim of Rs.10,000/- and added 25% towards future prospects. The Tribunal computed the amount as follows:



i.	Loss of income (including future prospects)	-	Rs.12,60,000/-
ii.	Loss of amenities	-	Rs. 2,00,000/-
iii.	Loss of expectations of life-		Rs. 3,00,000/-
iv.	Pain and suffering	-	Rs. 2,00,000/-
v.	Treatment expenses	-	Rs. 1,00,000/-
vi.	Conveyance charges	-	Rs. 50,000/-
vii.	Special diet during treatment-		Rs. 50,000/-
viii.	Attendant charges	-	Rs. 40,000/-
ix.	Future medical expenses	-	<u>Rs. 3,00,000/-</u>
	Total	-	Rs.25,00,000/-

4. It is submitted on behalf of the Insurance Company that the Tribunal has committed the error, first, by taking the income of the claimant at Rs.6,000/- per month instead of counting him as an unskilled daily wager @126/- per day prevailing on the date of accident. Secondly, the disability certificate filed under Ext.5, which was granted in the year 2019 to suggest disability up-to 100%, is unacceptable for want of due proof. Since no doctor or the author of Ext.5 has been examined, the certificate which was granted after five years of the accident does not connect the disability with the accident in question.

On the other hand, it is submitted on behalf of the claimant that he suffered 100% disability due to the accident and the Tribunal while computing his income has reduced his income to Rs.6,000/- per month without any reason and further, the amount of Rs.5,00,000/- should have been granted towards pain and suffering instead of Rs.2,00,000/- only. It is submitted that the claimant since become a complete dependant for his future survival, a further amount of Rs.10,00,000/- should be granted to him towards future attendant charges.

5. Admittedly, the age of the claimant on the date of accident is not disputed. As per the evidence of P.W.1, the wife of the claimant, he was

earning Rs.10,000/- per month by selling agro based products like cereal, pulses, germs and seasonal products in local market. Of course, no documentary proof has been adduced in support of business of the claimant. However, this does not entitle him to be considered as a daily wage labourer as contended by the counsel for the Insurer. In the remote village area of Karanjia in the district of Mayurbhanj, it cannot be expected that a person doing small business of agricultural produces like cereal, pulses, grams and other seasonal products would procure a certificate for the same or retain any documentary proof in respect of his business. The Insurer though has contested the claim but did not adduce any evidence in rebuttal. It is not always logical to accept a person as unskilled labourer in absence of documentary proof of his income. P.W.1, the wife of the claimant has categorically stated about the nature of earning of her husband, which is left un-rebutted. Thus, no illegality is seen in the approach of the Tribunal to accept the income of the claim at Rs.6,000/- per month keeping in view such evidence adduced by the wife. Therefore the contention of the Insurer to alter his income as a daily wage labourer is not found acceptable.

6. The next contention raised on behalf of the Insurer to disbelieve the disability certificate does not hold good to the reasons. Admittedly, the certificate under Ext.5 is dated 19th September, 2018 and no challenge is advanced with regard to the authenticity of the said certificate. Merely for the reason that it has been issued four years after the accident does not mean that it is no way connected to the accident. If the injury report, discharge certificate and disability certificate under Exts.4, 5 & 6 respectively are read collectively, no further doubt remains on the extent of disability and its connection to the accident. Therefore, such argument advanced on behalf of the Insurer has no merit for consideration.

7. Next coming to the submissions put forth on behalf of the claimant that the amount towards pain and suffering requires enhancement up-to Rs.5,00,000/- and a further sum of Rs.10,00,000/- towards future attendant cost to be granted in favour of the claimant, the same is found inconceivable. It is for the reason that the claimant underwent treatment as an indoor patient for around two months and besides the head injury he sustained compound fracture of left leg only. The principles decided in the case of *Raj Kumar vs. Ajay Kumar, 2011(1) T.A.C. 785 (SC)*,

which has also been taken care of by the Tribunal, propound that for calculating the compensation in case of injury, the loss which the injured suffered as a result of such injury should also be counted along-with the physical injury and the compensation should to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The Supreme Court has further held that the heads under which the compensation is awarded in personal injury cases are pecuniary damages (special damages) and non-pecuniary damages (general damages). Pecuniary damages include loss of earning and expenses actually incurred for the treatment etc. Non-pecuniary damages include loss of amenities and loss of expectations of life. The Tribunal is seen to have granted compensation on such established principles and as such, the contentions of the claimant are seen without any merit.

Secondly, it is seen from the evidence of P.W.1, the wife of the claimant that she has not stated about employment of any attendant for the claimant and no evidence has been adduced to that aspect. Therefore such claim for future attendant cost is not entertained in absence of any specific evidence to that effect.

8. In the result, both the appeals, being devoid of merit, are dismissed.

9. The statutory deposit made by the Insurer-Appellant in MACA No.552 of 2020 with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

(B.P.Routray)
Judge



C.R.Biswal/Secy.