

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.551 of 2020 & MACA No.647 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.298 of 2015)

MACA No.551 of 2020

Divisional Manager,

M/s.National Insurance Co. Ltd.

.....

Appellant

Versus

Judhistira Biswal 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.647 of 2019

Judhistira Biswal

.....

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

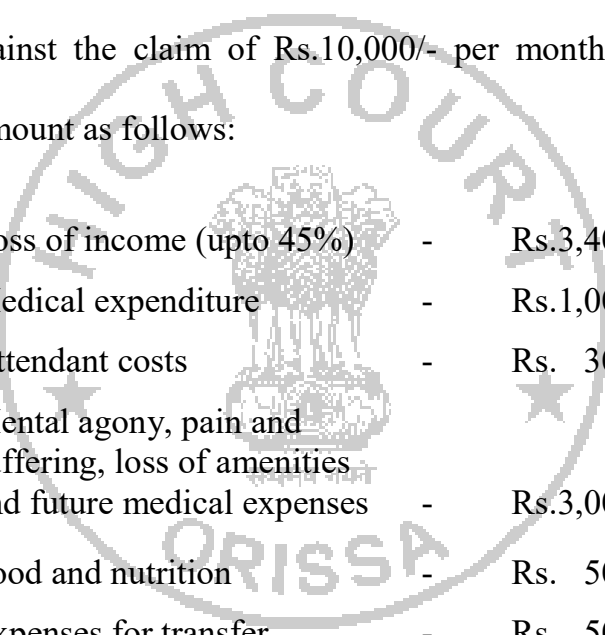
B.P. Routray, J.

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.298 of 2015. MACA No.551 of 2020 has been filed by the Insurance Company challenging the award and MACA No.647 of 2019 has been filed by the injured 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 forearm and other injuries. He was immediately shifted to the hospital by the local people and undergone treatment as an indoor patient in different hospital at Cuttack from 31st August, 2014 to 28th October, 2014. Due to the accident, he underwent treatment as an indoor patient for around one month and fracture injury was operated and nailing was

done. He claimed to have sustained permanent traumatic shortening of lower left limb to the extent of 45% as per the disability certificate under Ext.9. The claimant was aged about 45 years at the time accident.

3. The Tribunal considering all such facts granted compensation to the tune of Rs.8,70,000/- along with interest @7% per annum. For the said purpose, the Tribunal took the income of the claimant at Rs.4,500/- per month against the claim of Rs.10,000/- per month. The Tribunal assessed the amount as follows:



1.	Loss of income (upto 45%)	-	Rs.3,40,200/-
2.	Medical expenditure	-	Rs.1,00,000/-
3.	Attendant costs	-	Rs. 30,000/-
4.	Mental agony, pain and suffering, loss of amenities and future medical expenses	-	Rs.3,00,000/-
5.	Food and nutrition	-	Rs. 50,000/-
6.	Expenses for transfer	-	<u>Rs. 50,000/-</u>
	Total	-	Rs.8,70,200/-

4. It is argued on behalf of the Insurance Company that the Tribunal has committed error by taking the income of the injured claimant at Rs.4,500/- per month instead of counting him as an unskilled daily wage in agricultural sector at Rs.126/- per day prevailing on the date of accident and further counting his disability to the extent of 45%

permanent. It is also submitted that since the disability certificate is of the year 2018, which is four years after the accident, the disability mentioned therein does not establish any connection to the injuries sustained in the accident.

5. Conversely, it is submitted on behalf of the injured claimant that the amount granted towards pain and suffering should be enhanced to Rs.5,00,000/- instead of Rs.3,00,000/- as granted by the Tribunal.

6. Admittedly, no dispute was there with regard to the age of the injured claimant. According to the Insurance Company, his daily wage should have been at Rs.126/- per day instead of Rs.150/-. Such contention of the Insurer is not found acceptable for the reason that the claimant claims to be a Mason in his evidence, which is not rebutted. Therefore, considering his occupation as a Mason, he cannot be included as a labourer in the agricultural sector to count his wage at the rate of Rs.126/- per day. The Tribunal therefore was right in his approach to take Rs.150/- per day as the daily wage of the claimant resulting to Rs.4,500/- per month. As such, no fault is seen in the computation of the Tribunal to determine the loss of income to the tune of Rs.3,40,000/-.

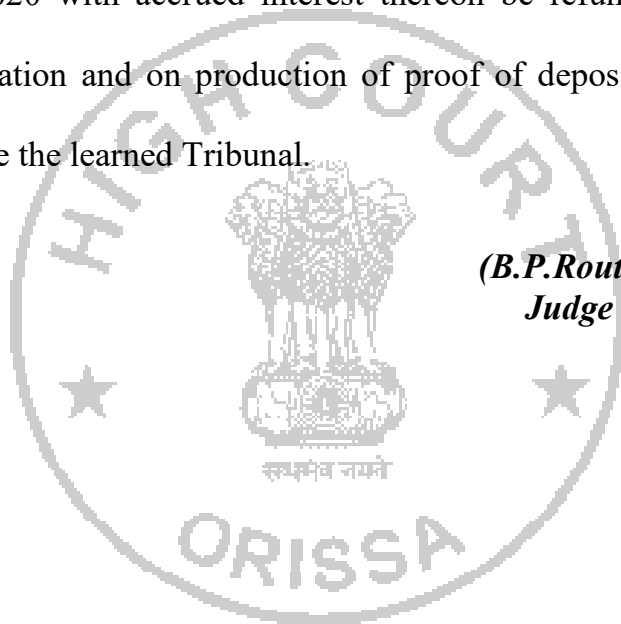
7. So far as the contention of the claimant to enhance the amount granted towards pain and suffering etc to the tune of Rs.5,00,000/- is concerned, the same is not found justified. It is for the reason that the as per the injury report under Ext.8, discharge certificate under Ext.10 and the disability certificate under Ext.9, his period of treatment as an indoor patient is about one month due to the impact of head injury as well as fracture on the left forearm. Thus, taking a overall view of the injuries sustained, the period of treatment undergone and the extent of disability, no impropriety is seen in the amount granted by the Tribunal to the tune of Rs.3,00,000/-. Accordingly, the submission of the injured claimant to enhance the amount does not worth consideration.

8. The further contention of the insurer to disbelieve the disability certificate under Ext.9 has no substance. Admittedly, no evidence has been adduced from the side of the insurer nor any challenge was advanced to the authenticity of the said certificate. Ext.9 appears to be granted by the appropriate medical authority and for the only reason that the certificate was issued after four years of the accident, the same cannot be viewed with any suspicion. When the accident and the injuries are not disputed, no force is found in the contention of the insurer in absence of any cogent material that the stated disability is no way

connected to the accident. As such, the contention of the Insurer is rejected.

9. In the result, both the appeals being devoid of merits, are dismissed.

10. The statutory deposit made by the Insurer-Appellant in MACA No.551 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.