

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.546 & 649 of 2019

(From the judgment dated 16th May, 2019 passed by the 3rd Additional District Judge-cum-4th MACT, Cuttack in M.A.C. Case No.503 of 2014/364 of 2017)

MACA No.546 of 2019

Rajanikanta Sabar @ Rajani Sabar **Appellant**

Versus

Managing Director, OSRTC and another **Respondents**

Advocate(s) appeared in this case :-

For Appellant	:	Mr.P.K.Mishra, Advocate
For Respondents	:	Mr.B.K.Sahoo, Advocate for Respondent No.1

AND

MACA No.649 of 2019

O.S.R.T.C. **Appellant**

Versus

Rajanikanta Sabar@Rajani Sabar **Respondent**

Advocate(s) appeared in this case :-

For Appellant	:	Mr. B.K.Sahoo, Advocate
For Respondent	:	Mr.P.K.Mishra, Advocate

**CORAM :
JUSTICE B.P. ROUTRAY**

**JUDGMENT
22nd December, 2022**

B.P. Routray, J.

1. Both the appeals arise out of the same judgment dated 16th May, 2019 passed by the 3rd Additional District Judge-cum-4th MACT, Cuttack in M.A.C. Case No.503 of 2014/364 of 2017, wherein compensation to tune of Rs.10,31,400/- along with interest @6% per annum has been granted from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident dated 9th June, 2014.

2. MACA No.546 of 2019 has been preferred by the injured-claimant praying for enhancement of compensation amount on the ground that loss of functional disability should be assessed at 100% keeping in view the nature of physical disability. Secondly, it is prayed for enhancement of the compensation amount by adding future prospects to the income of the injured. Further, compensation for loss of amenities in life and future medical expenditure has been claimed by the injured-claimant.

3. MACA No.649 of 2019 has been filed by the Odisha State Road Transport Corporation (in short 'OSRTC') challenging the award mainly on the ground that negligence on the part of the driver has been illegally fixed. As per OSRTC, the driver has no negligence for cause of accident since the injured was trying to board the running bus.

4. First dealing with the negligence aspect, it is the consistent plea taken by OSRTC that the injured-claimant tried to board into the running bus and as a result of the same, i.e. for sole negligence of the injured the accident happened. As seen from the record, no evidence has been adduced from the side of the OSRTC to substantiate their contention that the injured was trying to get into the running bus. The offending vehicle is a passenger bus. As per the claim of the injured and his statement given in evidence that while he was getting into the bus, the driver all of a sudden moved it speedily and he fell under the rear wheels. His leg was crossed under the wheels. This evidence of the injured could not be successfully rebutted in the cross-examination. It is seen that the police upon investigation submitted the charge-sheet against the accused driver of the offending bus for commission of offence under Sections 279/337/338 of the I.P.C. Therefore, the evidence of the injured-claimant gets support from the police investigation report. On the other hand, in

absence of any supporting evidence to the stand taken by the OSRTC, their contention to deny the negligence on the part of the driver of the offending bus does not sustain. The same is accordingly rejected and the finding of the Tribunal to fix the entire negligence on the driver of the offending bus is confirmed.

5. Coming to see the quantum of compensation granted by the Tribunal, the same is under following counts :

Medical expenses in 3 hospitals (Medicines & transportation)	:Rs. 50,000.00
Future medial expenses	:Rs. 50,000.00
Cost of attendant	:Rs. 10,000.00
Loss of future earning	:Rs. 8,06,400.00
Cost of special diet	:Rs. 15,000.00
For mental agony, pain, suffering & loss of amenities.	:Rs. 1,00,000.00
TOTAL	:Rs.10,31,400.00

6. It is seen that the Tribunal has granted compensation towards loss of amenities of life. However, no amount towards future attendant cost has been granted.

7. The age of the deceased has been determined as 44 years on the date of accident and his income has been assessed at Rs.6,000/- per

month. No dispute is raised by the parties on such determination arrived at by the Tribunal. The loss of future earning capacity has been computed taking 80% functional disability. As per the disability certificate under Ext.10, the physical disability is up to 80%. The right leg below the thigh of the injured has been amputated. The injured was working as a labourer in a rice mill. As per the principles rendered in the case of **Raj Kumar vs. Ajay Kumar, 2011(1) T.A.C. 785 (SC)**, it is important to ascertain the impact of permanent disability on the actual earning capacity of the injured. In the case of **Pratap Narain Singh Deo v. Shrinivas Sabata and another, (1976) 1 S.C.C. 289**, it is observed as follows:

“5. The expression “total disablement: has been defined in Section 2(1)(e) of the At as follows:

“(1) ‘total disablement’ means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.”

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether; the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

“The injured workman in this case is carpenter by profession.....By loss of the left hand above the

elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only.”

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to Item 3 of Part II of Schedule 1, because it was not the appellant’s case before the Commissioner that amputation of the arm was from S” from tip of acromion to less than 4 below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.”

8. This Court, in the case of ***Golakha Chandra Bej v. Gobinda Hari Passoria and another, 1997 (II) OLR 146***, has observed that the test to determine the total disablement is to find out whether the injured is capable of doing the work which he was doing at the time of accident and further, whether a particular limb or member has become unfit for use is also required to be examined with reference to the nature of the job or employment or work in which he was engaged on the eve of the accident. This view held in the case of Golakha Chandra Bej was endorsed in the Full Bench decision of this Court reported in ***2008 (2) OLR (FB)-820 (Kunei Minz vrs. R.C.Nayak and another)***.

9. In the instant case, the injured was working as a labourer before the accident. If one of his legs has been amputated, certainly he cannot work as a labourer and, therefore in my opinion, keeping in view

his incapacitation to perform his job as a labourer, the functional disability should be counted to the extent of 100%. The finding of the Tribunal to treat his functional disability to the extent of 80% is thus modified to 100%. The age and income being not disputed, the loss of future earning capacity, with addition of future prospects to the extent of 25%, is computed afresh to the tune of Rs.12,60,000/-, i.e. (Rs.7500 x 12 x 14).

10. Further, the injured claimant is entitled for a sum of Rs.50,000/- towards future attendant cost. Keeping all other counts as granted by the Tribunal intact, the total compensation amount of this enhanced to Rs.15,35,000/-.

11. In the result, both the appeals are disposed of with a direction to the OSRTC, i.e. the Appellant in MACA No.649 of 2019 to deposit the entire compensation of Rs.15,35,000/- (Fifteen lakhs thirty five thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of four 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.

12. The statutory deposit made by the Appellant in MACA No.649 of 2019 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.

