

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.71 of 2016

(From the judgment dated 10th September, 2015 passed by Shri B.N. Mohanty, learned M.A.C.T.-I, Baleswar in M.A.C. Case No.159 of 2012)

Bidyut Prava Agasti

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Appellant

-versus-

Mr. Batakrushna Dash and another

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. B. Singh, Advocate

For Respondents : Mrs. R. Pati, Advocate
For Respondent No.2

Mr. A. Rath, A.S.C.

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. The claimant has come up in appeal against the judgment dated 10th September, 2015 of learned M.A.C.T.-I, Baleswar in M.A.C. Case No.159 of 2012.

2. The grievance of the claimant-Appellant is that she sustained injury in the motor vehicular accident dated 14.03.2012 while coming in a motorcycle as a pillion rider. The offending tractor bearing Registration No.OR-01-U-4993 coming in a rash and negligent manner with a high speed dashed against the motorcycle and as a result of the

accident she sustained multiple fracture injuries. She was under treatment in the West End Hospital, C.D.A., Cuttack from 15.03.2012 to 09.04.2012. Her further case is that due to the accident she suffered permanent disability up-to 60%. But the learned Tribunal has failed to grant appropriate compensation on that count.

3. As seen from the impugned judgment, the learned Tribunal has granted compensation to the tune of Rs.5,30,000/- for the injuries sustained by the claimant in the accident. The learned Tribunal has computed the compensation as follows:

(i)	For pain and suffering	-	Rs.2,00,000/-
(ii)	For medicine & other clinical expenses	-	Rs.2,55,000/-
(iii)	For disability	-	Rs. 50,000/-
(iv)	For attendant charges	-	Rs. 25,000/-

4. The challenge is entirely about grant of compensation for disability. It is contended by the Appellant-claimant that the learned Tribunal has failed to notice the permanent nature of disability of the claimant resulting grant of lesser compensation.

5. Perusal of record reveals that the disability certificate has been produced in evidence as Ext.8 which speaks of 60% disability due to post-traumatic deformity and stiffness of both lower limbs. Thus the question arises is, whether the amount of Rs.50,000/- as granted by the Tribunal for sustenance of disability by the Appellant is adequate and proper ?

6. In this regard the income and earnings of the claimant-Appellant is relevant. As per the claimant, she was 42 years of age on the date of

accident and she serving as demonstrator of Education in Belabhum Mahavidyalaya, Baleswar. She produced her salary certificate and service book under Exts.11 & 12. It is the admitted case of the parties that after the accident and treatment, the Appellant joined back in her service and getting her due salary without any reduction to the same and without any loss of service prospects. In other words, it is not the case of the Appellant that she sustained any future loss of income due to the accident in her service carrier.

7. As settled in the case of *Raj Kumar vs. Ajay Kumar, 2011(1) SCC 343*, the award must be just, which means that compensation should to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The injured is to be compensated not only for the physical injury, but also for the loss which he suffered as a result of such injury. 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.

8. Here in the instant case, the learned Tribunal has granted all such compensations and the specific grievance of the Appellant is against the amount granted for disability. On the date of accident, the status of the Appellant was that she was married and aged about 42 years. When the materials reveal no loss of future earnings due to the injuries in the accident, the only part required to be added here is loss in salary during

the period of treatment. The Appellant has not stated anything about non-receipt of her salary during such period and her evidence to that effect is that she was on leave for those periods and got her salary subsequently for that periods. It is not that she has any locomotor disability due to the injuries in the accident or she would be in such difficulty in discharging her day to day life business. When there is no loss of earning, no infirmity is seen in the direction of the learned Tribunal giving Rs.50,000/- as a lump sum amount for the disability. The question of permanent or temporary existence of disability as submitted by the claimant-Appellant is thus become a less important factor in the given circumstances of the case. As such, I do not see any reason to interfere with the impugned judgment to grant enhanced compensation in favour of the claimant-Appellant.

9. In the result, the appeal is dismissed.

(B.P. Routray)
Judge

B.K. Barik/Secretary