

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.659 of 2019

National Insurance Company Limited ***Appellant***
Mr. J.R. Deo, Advocate on behalf of Mr. G. Mishra, Senior
Advocate

-versus-

Simanchal Sahu and another ***Respondents***
Mr. A. Mishra, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
25.08.2022

Order No.

11.

1. Heard Mr. J.R. Deo on behalf of Mr. G. Mishra, learned Senior Advocate for the Appellant-Insurance Company as well as Mr. A. Mishra, learned counsel for Respondent – claimant.

2. Present appeal by the insurer is directed against the judgment dated 28.03.2019 of learned 2nd M.A.C.T. (Southern Division), Berhampur, Ganjam in M.A.C. Case No.237/2017 (226/2014-GDC) wherein compensation to the tune of Rs.28,85,000/- has been granted along with interest @7% per annum to the claimant from the date of filing of the claim application, i.e.26.09.2014 on account of injury sustained in the motor vehicular accident dated 10.06.2011.

3. The main grounds of challenges advanced on behalf of the Appellant are that the compensation granted is on higher side and the learned Tribunal has erroneously directed not to deduct TDS on the interest amount.

4. Mr. J.R. Deo, learned counsel for the Appellant-Insurance Company submits that the amount granted by the Tribunal for loss of amenities of life and attendance charges have been computed exorbitantly.

5. After hearing Mr. A. Mishra, learned counsel for claimant-Respondent No.1 and perusal of the impugned judgment, it reveals that at paragraph 29, the learned Tribunal has granted compensation of Rs.5 lakhs towards pain and suffering and another five lakhs towards loss of comfort, amenities of life, marital status and happiness, etc. Further Rs.16,80,000/- towards future attendance charges, Rs.1,50,000/- towards cost of future treatments, Rs.50,000/- towards special diet and Rs.5,000/- towards cost of the proceeding has been granted totaling thereby to Rs.28,85,000/-.

6. Upon thorough examination of the discussions made by the learned Tribunal in respect of grant of compensation under such heads, no such flaw is noticed except grant of compensation towards cost of future attendance charges. It is needless to mention that the discussions made by the learned Tribunal in respect of other heads are found in affirmative with the principles decided in the case of ***Raj Kumnar vs. Ajay Kumar, 2011 (1) SCC 343.***

7. With regard to cost of attendance charges, it is seen that the learned Tribunal has counted two attendants for care of the injured-claimant at the cost of Rs.5,000/- each per month for the

rest of his life till he attains 70 years. For this purpose, the multiplier applied is '14' by taking the age of the injured 56 years and his normal life expectancy up-to 70 years. In other words, the learned Tribunal has applied the number of differential years as multiplier ignoring the multiplier table decided in the case of ***Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***. It is well settled principle that for the purpose of determining the expenses, the multiplier factor as mentioned in ***Sarla Verma's*** case (supra) has to be applied and not the differential years of age. If the age of the injured is taken at 56 years, as held by the learned Tribunal in the impugned judgment which remains undisputed, the applicable multiplier would be '9' in terms of the table mentioned in the case of ***Sarla Verma*** (supra). Thus without disturbing the cost of attendance charges as determined by the Tribunal which is taken at Rs.10,000/- per month, the future cost of attendance charges would come to Rs.10,80,000/- against the amount of Rs.16,80,000/- as determined by the learned Tribunal. Accordingly, the compensation amount is found reducible by Rs.6 lakhs.

8. Thus the modified amount of compensation is determined at Rs.22,85,000/-, payable along with 6% interest per annum.

9. In the result, the appeal is disposed of with a direction to the Appellant—Insurance Company to deposit the modified compensation amount of Rs.22,85,000/- (rupees twenty-two lakhs eighty-five thousand) along with interest @6% per annum from the date of filing of the claim application i.e.26.09.2014 within a

period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

10. With regard to the direction of the learned Tribunal not to deduct TDS from the interest amount, this Court in the case of *The Divisional Manager, New India Assurance Company Limited vs. Brushadhwaja Gouda and another*, (disposed of on 13.07.2022 in MACA No.1 of 2019) has held that TDS amount is deductible at the time of deposit of the award. Applying same principles, the direction of the Tribunal in that respect is set aside and the insurer is free to deduct the required amount of TDS from the interest amount at the time of deposit before the learned Tribunal.

11. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with a refund application before this Court, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

12. The MACA is disposed of with aforesaid directions.

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

(B.P. Routray)
Judge