

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.658 of 2020

The Manager, Legal Cell, *Appellant*
M/s.The National Insurance Co. Ltd.
Mr.N.K.Mohanty, Advocate

-versus-

Jitendra Panigrahi and another *Respondents*
Mr.L.M.Nanda, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
7.4.2022

Order No.

3.

1. Heard Mr.Mohanty, learned counsel for the Appellant and Mr.Nanda, learned counsel for the claimant-Respondent No.1.
2. Present appeal by the Insurer is directed against the judgment dated 13th March, 2020 passed by learned 1st M.A.C.T., Jagatsinghpur in Motor Accident Claim Case No.233 of 2016, wherein compensation to the tune of Rs.2,70,700/- has been granted along with interest @ 7% per annum with effect from the date of filing of the claim application on account of injuries sustained by the claimant in the motor vehicular accident dated 25th March, 2014.
3. The case of the claimant is that he was a Manson in avocation and met with the accident on 25th March, 2014 while returning to his residence. Negligence on the part of the driver of the offending vehicle is not disputed by the parties. The only challenge is with respect to quantum of compensation.

4. It is submitted on behalf of the Appellant that while granting compensation, the amount under the head of future loss of income to the tune of Rs.97,000/- has been counted mistakenly without any proof towards disability.

5. Mr.Nanda, learned counsel for claimant-Respondent No.1 submits in reply that, the disability to the extent of 10% counted by the Tribunal is a normal presumption for which no evidence is required to be proved keeping in view the nature of injuries.

6. It reveals that the injuries are fracture of tibia and fibula of the left leg as per the injury report. The Appellant has undergone treatment as an indoor patient from 25th March, 2014 to 6th April, 2014. Admittedly, no document has been produced to satisfy the disability up-to 10% nor any opinion of the doctor has been brought on record in this respect. The Tribunal has held that, the claimant might not be able to do his physical work with same previous strength because of the fractures in his left leg, and on that score granted Rs.97,200/- by applying multiplier 18 and by counting income @Rs.4,500/- per month. This assumption of loss of future income by the Tribunal in absence of any material brought on record is not found justified. Keeping in view the nature of injuries, which are fracture of tibia and fibula of his left leg and the period he underwent treatment as an indoor patient, such an assumption with regard to future loss of income is unsustainable. As such the amount granted towards the same is liable to be deducted from the total amount. Accordingly, the compensation amount is modified to Rs.1,72,800/-, rounded to Rs.1,73,000/-. The other heads of compensation counted by the Tribunal being found justified are not interfered with.

7. In the result, the Insurer-Appellant is directed to deposit Rs.1,73,000/-(One lakh seventy three thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of the claimant on same terms and proportion as directed by the Tribunal.

8. With aforesaid modification in the compensation amount, the appeal is disposed of.

9. The statutory deposit made by the Appellant 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.

10. Urgent certified copy of this order be granted on proper application.

(**B.P. Routray**)
Judge