

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.713 of 2020

New India Assurance Co. Ltd. ***Appellant***
Mr.S.S.Rao, Advocate

-versus-

Bimal Kumar Sahoo and another ***Respondents***
Mr.Sujit Sen, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
11.01.2022

Order No.

5.

1. This matter is taken up by video conferencing mode.
2. Heard Mr.Rao, learned counsel for the Appellant and Mr.Sen, learned counsel for Respondent No.1.
3. The present appeal by the Insurer is directed against the judgment dated 7th September, 2020 passed by the learned 2nd Addl. District Judge-cum-3rd MACT, Cuttack, in MAC Case No.215 of 2016, wherein compensation to the tune of Rs.2,00,000/- has been granted to the claimant-Respondent No.1 on account of the injuries sustained by him in the motor vehicular accident dated 3rd January, 2016.
4. As per the claimant, on the date of accident, while he was going in a motor cycle, another motor cycle i.e., bearing Registration No.OR-05-Q-3445 coming in a rash and negligent manner with high speed dashed behind the claimant resulting the injuries. The injuries sustained by the claimant are, two bruises associated with bleeding from the right ear. He was immediately

shifted to the Hi-Tech Hospital, Bhubaneswar and then to Sparsh Hospital and thereafter again to Sum Hospital, Bhubaneswar. It is claimed that he has spent Rs.4,00,000/- towards his treatment in different hospitals.

5. It is contended on behalf of the Appellant that keeping in view the nature of injuries and in absence of adequate documentary proof with regard to the extent of expenditure, the learned Tribunal has granted compensation to tune of Rs.2,00,000/- along with interest @7% per annum from the date of filing of claim application i.e., 5th April, 2016.

6. It is also submitted by Mr.Rao, learned counsel for the Appellant that after sixty three days of the accident, the F.I.R. was lodged. The same itself is sufficient to view the claim of the claimant with suspicion.

7. Having heard Mr.Sen, learned counsel for Respondent No.1 and upon perusal of the impugned judgment, it is seen that the nature of injuries relating sustenance of two bruises over the right and left temporal bone associated with bleeding of right ear is not disputed by the Insurer.

8. It is true that the learned Tribunal has observed under Issue No.3 at paragraph-8 of the impugned judgment that the Petitioner has failed to lead any specific, reliable, cogent and credible documentary evidence in respect of his expenditure for arriving at the specific conclusion regarding the expenditure incurred by him. At the same time, it is also found true that the claimant has filed the discharge summery, medial prescriptions, medicine bills

and nursing bills under Exts.8 to 11 along with the injury report under Ext.7.

9. When the nature of injury particularly regarding bleeding from the right ear due to the accident is not rebutted on record by the Insurer, the contention of the learned counsel for the Appellant that the amount of compensation is exorbitant is found unacceptable. However, as seen from the impugned judgment, since the learned Tribunal has granted consolidated sum of Rs.1,70,000/- towards pain and suffering, loss of amenities, medical expenditures and other ancillary expenditures without arriving at the detail computation based on the documents filed on behalf of the claimant, the same is reduced to Rs.1,15,738/- (One lakh fifteen thousand seven hundred thirty eight), which is the total sum of rupees shown in Exts.10 & 11.

10. It is further seen from the impugned judgment that the learned Tribunal without adequate evidence with regard to loss of income by the claimant has presumed for such loss in favour of the claimant-Respondent No.1 to grant him further compensation to the tune of Rs.30,000/-. Since the claimant has not adduced any evidence through documentary proof with regard to his source of income and loss thereof due to the injuries, he is not found entitled to any substantial amount thereof. However, since the Tribunal has awarded Rs.30,000/- on that count, the same is reduced to Rs.15,000/- considering the fact that claimant is undisputedly an able bodied person.

11. In the result, the claimant is entitled for a sum of Rs.1,30,738/- (one lakh thirty thousand seven hundred thirty-

eight) and the Insurer-Appellant is directed to pay the aforesaid amount to him along with interest @6% per annum from the date of filing of the claim application i.e., 5th April, 2016 within a period of eight weeks from today.

12. The statutory deposit made by the Appellant with accrued interest be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

13. The appeal is disposed of.

14. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April,2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January,2022.

(B.P. Routray)
Judge