

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1293 of 2018

MACA Nos.1293 & 885 of 2018

***The Branch Manager, Oriental
Insurance Company Ltd***

(in MACA No.1293/2018)

Rabindra Kumar Mohanty

(in MACA No.885/2018)

Appellants

Mr. G.P. Dutta, Advocate (in MACA No.1293/2018)

Mr. K. Panigrahi, Advocate (in MACA No.885/2018)

-versus-

Rabindra Kumar Mohanty & Anr. (In MACA No.1293/2018)

M. Srinivas and Another (In MACA No.885/2018)

Respondents

Mr. K. Panigrahi, counsel for Respondent No.1
(in MACA No.1293/2018)

Mr. G.P. dutta, counsel for Respondent No.2
(in MACA No.885/2018)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

11.8.2022

Order No.

- 06.
1. The matters are taken up through hybrid mode.
 2. Both the appeals being arise out of the same judgment, are heard together and disposed of by this common order.
 3. Heard Mr. G.P. Dutta, learned counsel for the insurer and Mr. K. Panigrahi, learned counsels for injured - claimant.

4. MACA No.1293 of 2018 has been filed by the insurer challenging the award, whereas MACA No.885 of 2018 has been filed by the injured-claimant praying for enhancement of the compensation amount.

5. Learned 1st MACT, Koraput in the impugned judgment dated 30th April, 2018 passed in MAC Case No.140 of 2014 has directed for payment of compensation to the tune of Rs.3,20,000/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 21st November, 2014 on account of injuries sustained by the claimant – injured in the motor vehicular accident dated 8th March, 2014.

6. The case of the injured is that while he was going by driving a car, the offending truck bearing registration number ORK-6285 coming from opposite direction dashed against it. The learned tribunal while adjudicating the claim application fixed the entire negligence on the driver of the offending truck and determined the amount of compensation to be paid by the insurer of the offending truck.

7. Mr. Dutta, learned counsel for the insurer submits that when police has admittedly submitted charge-sheet against both the drivers, i.e. the injured and O.P.W.1, the driver of the offending truck, the finding of the tribunal fixing entire negligence on the part of the driver of the offending truck alone is irrational and thus needs to be interfered with. As per him, the injured – claimant has contributed 50% negligence towards the accident.

8. Upon perusal of the impugned judgment it reveals from the discussions made under Issue No.I that in the opinion of the tribunal,

the evidence whatsoever led on behalf of the insurer through O.P.W.1 is not found convincing. But the tribunal did not assign any further reason to disbelieve the evidence of O.P.W.1 who is the driver of the offending truck.

9. The certified copies of depositions of P.W.1 (the injured-claimant), P.W.2 (the occupant of the car) and O.P.W.1 (the driver of the truck) are produced in course of hearing by Mr. Dutta. Perusal of their evidence reveals that P.W.1 in his cross-examination by the insurer has stated that, the accident occurred when the offending truck proceeded from the opposite direction by overtaking another vehicle and the right side of the car as well as right side of offending truck was dashed. P.W.2 corroborates the evidence of P.W.1 by saying that negligence is entirely on the part of the driver of the truck. It reveals from examination-in-chief of O.P.W.1 that the driver of the car suddenly came to the right side of the road and dashed against the truck as boulders were gathered on the left side of the road to cover potholes. Both P.W.1 and O.P.W.1 admitted that the road was under construction at the spot of accident. But this fact of overtaking another vehicle by the offending truck at the time of accident as elicited during cross-examination of P.W.1 is not demolished in the evidence of O.P.W.1 nor by any other material. It is true that filing of charge-sheet against the driver of the car (injured –claimant) would not itself suffice the proof of his negligence in the claim application. Therefore, on analysis of evidence adduced from both sides, the contention raised on behalf of the insurer that both the drivers were equally negligent, is not found supported. In view of the discussions made above, I do not see any flaw in the approach of the tribunal in fixing the entire

negligence on the part of the driver of the truck. As such, no merit is seen in the contention of the insurer to interfere with the aspect of negligence determined by the tribunal.

10. Next coming to the challenge of the claimant with regard to enhancement of the compensation amount, it is seen from the impugned judgment that no loss of income has been granted by the tribunal. The tribunal has granted Rs.2,35,000/- towards medical treatment, Rs.10,000/- towards attendance cost and Rs.50,000/- towards pain and sufferings. Admittedly, the injured has sustained compound fracture of elbow along with other injuries. The profession of the injured-claimant as a driver is never disputed. Thus, considering the nature of injuries, in particular the compound fracture of elbow, an enhanced compensation of Rs.4,00,000/- along with interest @ 6% per annum is proposed to the parties in course of hearing. This is agreed by Mr. Panigrahi, learned counsel for the injured-claimant and Mr. Dutta, learned counsel for the insurer leaves it to the discretion of the Court. As such the amount is fixed to the said extent.

11. In the result, both the appeals are disposed of with a direction to the insurer, i.e. Oriental Insurance Co. Ltd. to deposit an enhanced compensation amount of Rs.4,00,000/- (four lakh) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 21st November, 2014 within a period of two months from today; where-after the same shall be disbursed in favour of the injured-claimant on such terms and proportion to be decided by the learned Tribunal.

12. The statutory deposit made by the insurer - Appellant in MACA No.1293 of 2018 before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

13. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

