IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.855 of 2019

Divisional Manager, M/s. National Insurance Company Ltd. .... ***Appellant***
Mr. M. Sinha, Advocate

-versus-

Santosh Kumar Barik and Another .... ***Respondents***
None is present

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
13.9.2022

Order No.

I.A. No.1590 of 2019 and MACA No.855 of 2019

05. 1. The matter is taken up through hybrid mode.

2. Heard Mr. M. Sinha, learned counsel for the insurer-Appellant. None appears on call for the Respondents though the names of a set of lawyers are indicated in the list.

3. Upon hearing Mr. Sinha and considering the grounds mentioned in the petition the delay in filing the appeal is condoned.

4. The I.A. is disposed of.

5. Present appeal by the insurer is against impugned judgment dated 20th June, 2019 of learned 3rd MACT, Bhubaneswar passed in MAC Case No.204/3448 of 2014, wherein compensation to the tune of Rs.10,66,724/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 18th November, 2014 has been granted on account of injuries sustained by the injured-claimant in the motor vehicular accident dated 14th August, 2014.

6. Mr. Sinha contends that the amount of compensation granted in favour of the claimant is excessive and needs to be reduced.

7. Upon perusal of the impugned judgment it reveals that the tribunal has granted compensation on following heads:-

i)	Total loss of income during treatment	- Rs.6,14,400/-
ii)	Medical expenses	- Rs.1,56,564/-
iii)	Pain, suffering and shock	- Rs.10,000/-
iv)	Amenities and future unhappiness	- Rs.10,000/-
v)	Future medical treatment	- Rs.10,000/-
vi)	Loss of income during treatment	- Rs.10,000/-
vii)	Travelling and Special diet	- Rs.5,000/-
viii)	Attendant charges	- Rs.5,000/-
ix)	Future Prospectus @ 40%	- Rs.2,45,760/-
		Total - Rs.10,66,724/-

8. Mr. Sinha specifically challenges grant of compensation towards future loss of income on the ground that, as per the disability certificate under Ext.11, the nature of disability is temporary and is likely to improve.

9. It is seen from the impugned judgment that the profession of the injured – claimant was accepted as a barbar shop owner and his monthly income is assessed at Rs.8000/-. His disability is 40% physical impairment due to anterior staphyloma of the left eye. Perusal of copy of Ext.11, the disability certificate reveals that such assessment of disability is temporary in nature and likely to improve.

It is further mentioned in the disability certificate that the same shall be valid for three years only, i.e. till 31^{st} August, 2018. Admittedly, the impugned judgment was pronounced on 20^{th} June, 2019 and P.W.1, the wife of the injured – claimant was examined on 4^{th} December, 2018. The continuance of disability after 31^{st} August, 2018 is not satisfied by production of any further disability certificate. It is further seen from the copy of evidence of P.W.1 (Mira Barik, the wife of the claimant) that she has not said anything about continuance of such disability of the claimant beyond 31^{st} August, 2018 or his examination thereafter by the Medical Board. Thus, the amount counted for future loss of income is not found substantiated with material evidence.

10. Though the claimant did not examine himself on the ground of instability of mind. But no such medical document has been produced to that effect nor does the disability certificate under Ext.11 speak about the same.

11. Considering all such factors, the assessment of the tribunal towards future loss of income by counting 40% permanent disability needs to be interfered with. Accordingly, by reducing the effect of permanent disability till 31^{st} August, 2018 as per the permanent disability certificate under Ext.11, the future loss of income is restricted for four years only counted from the date of accident, i.e. 14^{th} August, 2014. Accordingly the same is calculated as Rs.4,480/- x 12 x 4 = Rs.2,15,040/-. The extra amount granted towards the same is thus deducted and the total compensation is calculated as follows:-

i) Medical expenses - Rs.1,56,564/-

ii)	Cost of future medical treatment	- Rs.10,000/-
iii)	Pain and sufferings	- Rs.25,000/-
iv)	Loss of amenities in life	- Rs.25,000/-
v)	Attendant charge and special diet	- Rs.20,000/-
vi)	Actual loss of income (for one month)	- Rs.8000/-
vii)	Future loss of income (40% functional disability)	- Rs.2,15,040/-
	Total	**- Rs.4,59,604/-**

12. In the result, the appeal is disposed of with a direction to the insurer – Appellant to deposit the reduced compensation amount of Rs.4,59,604/- (four lakh fifty-nine thousand six hundred four) along with interest @ 6% per annum from the date of filing of the claim application, i.e. 18th November, 2014 before the tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on such terms and proportion to be decided by the learned Tribunal.

13. The statutory deposit made by the insurer - Appellant 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.

14. The photocopies of deposition of P.W.1 and Ext.11, as produced by Mr. Sinha, are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda