IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.955 of 2019

MACA Nos.955 of 2019 & 358 of 2020

Sarada Prasanna Patnaik ***(In MACA No.955/2019)***

The Deputy Manager, (T.P. Cell),
M/s.New India Assurance Co. Ltd. ***(In MACA No.358/2020)***
.... ***Appellants***

Mr. D.C. Dey, Advocate (in MACA No.955/2019)
Mr. A.A. Khan, Advocate (in MACA No.358/2020)

-versus-

Nityananda Dalai and Another ***(In MACA No.955/2019)***

Sarada Prasanna Patnaik and Anr. ***(In MACA No.358/2020)***
.... ***Respondents***

Mr. A.A. Khan, counsel for Respondent No.2
(in MACA No.955/2019)

Mr. D.C. Dey, counsel for Respondent No.1
(in MACA No.358/2020)

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
21.4.2022

Order No.

I.A. No.591 of 2020 arising out of MACA No.358 of 2020

07. 1. Heard Mr. A.A. Khan, learned counsel for the insurer and Mr. D.C. Dey, learned counsel for claimant.

2. Upon hearing both parties and considering the grounds mentioned in the petition the delay in filing the appeal is condoned.

3. The I.A. is disposed of.

MACA Nos.955 of 2019 and 358 of 2020

08. 4. Both the appeals are against the same impugned judgment dated 18th November, 2019 of learned 3rd MACT, Cuttack passed in MAC No.831 of 2014 wherein compensation to the tune of Rs.12,33,440/- along with interest @ 7% per annum from the date of filing of the claim application, i.e. 2nd December, 2014 has been granted on account of injuries sustained by the claimant in the motor vehicular accident dated 10th June, 2009.

5. MACA No.955 of 2019 has been preferred by the claimant praying for enhancement of the compensation amount whereas MACA No.358 of 2020 has been preferred by the insurer challenging the award.

6. It is contended on behalf of the claimant that though he suffered permanent disability up to 65% under Annexure-9, but learned Tribunal has counted loss of earning capacity at 40% which is erroneous. It is also submitted that the Tribunal has granted lesser amount towards medical expenses and other heads.

7. On the other hand the challenge of the insurer is mainly on the ground that the income of the claimant at Rs.9,550/- per month taken by the Tribunal is not supported with material evidence since no document with regard to educational qualification of the claimant has been produced. Secondly, the offending vehicle has no permit at the time of accident.

8. Upon hearing both parties, as it reveals, the case of the claimant is to the effect that on the date of accident he was serving as Deputy

Manager, KIIT, Bhubaneswar and getting monthly salary of Rs.9,550/-. In support of the same he has filed the copies of salary slips under Exhibits.14 to 16. The claimant as P.W.1 has also stated in his evidence that he has passed Graduation and Hotel Management course. Therefore, there is no need of insisting for production of any documentary evidence and the materials so brought on record are also sufficient for determination of income aspect of the claimant. Keeping in view the clear description of monthly salary under Exhibits-14 to 16, no reason is there to interfere with the finding of learned tribunal in fixing the monthly income of the claimant at Rs.9,550/-.

9. So far as the contention raised on behalf of claimant to calculate the loss of future earning at the rate of 65%, i.e. same as to the percentage of disability mentioned under Exhibit-9, the disability certificate, it needs to be stated here that the percentage of physical disability is not always the same with regard to calculating the loss of earning. The relevant thing to be considered is that, the profession of the disabled person and in the case at hand considering the fact that claimant was serving as Deputy Manager in KIIT, no fault is found with the conclusion of the learned Tribunal in fixing the loss of future earning up to 40%.

10. It is also seen that the Tribunal has granted a sum of Rs.5 lakh towards medical expenses, attendant charge, transportation, nutrition, pain, sufferings, etc. As per the claimant he underwent treatment at different hospitals for different periods which in total appears to be more than 300 days as indoor patient. The claimant has stated to have spent around rupees six lakh for undergoing such treatment, excluding the attendant charges and nutrition.

11. Keeping in view such evidence brought on record and considering the period of treatment as indoor patient as well as nature of injuries and disability, in my considered opinion a further sum of Rs.1,00,000/- is to be paid under the head of medical expenses.

12. The further contention of the insurer that the vehicle was not having valid permit at the time of accident is rejected in view of the clear finding of the learned Tribunal that the same is valid till 5th September, 2009.

13. Thus in the result, MACA No.358 of 2020 filed by the insurer is dismissed and MACA No.955 of 2019 filed by the claimant is allowed to the extent discussed above.

14. The insurer – Appellant in MACA No.358 of 202, and Respondent No.2 in MACA No.955 of 2019 i.e. New India Assurance Co. Ltd. is directed to deposit an enhanced compensation of Rs.13,33,440/- (thirteen lakh thirty-three thousand four hundred forty) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 2nd December, 2014 within a period of two months from today; where-after the same shall be disbursed in favour of the claimant with the condition that 60% of the amount shall be kept in fixed deposit for a period of five years from the date of disbursal of the amount in any nationalized bank with quarterly interest payable.

15. The statutory deposit made by the insurer – Appellant in MACA No.358 of 2020 before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

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

(B.P. Routray)
Judge

M.K.Panda