

(2021) 12 OHC CK 0046

In the Orissa High Court

Case No : MACA Nos. 545 Of 2019, 327 Of 2020

Bhimasen Pradhan

APPELLANT

Vs

Kailash Chandra Barik And Another RESPONDENT

RESPONDENT

Date of Decision : 08-12-2021

Acts Referred:

Motor Vehicle Act, 1988 — Section 174

Citation : (2021) 12 OHC CK 0046

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : P.K. Mishra,V. Narasingh

Final Decision : Disposed Of

Judgement

B. P. Routray, J

I.A. No.902 of 2021 arising out of MACA No.327 of 2020

1. Heard Mr. P.K. Mishra, learned counsel for claimant as well as Mr. V. Narasingh, learned counsel for the Insurance Company.

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

3. I.A. is disposed of.

I.A. No.518 of 2020 arising out of MACA No.327 of 2020

4. This is an application for extension of time to pay the deficit Court fee.

5. Learned counsel for the Insurance Company (Appellant) submits that he has already paid the deficit Court fees.

6. In view of the same, the I.A. is disposed of.

MACA No.545 of 2019 & MACA No.327 of 2020

7. Both the appeals being arise out of the same judgment are heard together and disposed of by this common order.

8. Heard Mr. P.K. Mishra, learned counsel for the claimant and Mr. V. Narasingh, learned counsel for the Insurance Company.

9. In MACA No.545 of 2019, the claimant is the Appellant, who has prayed for enhancement of the compensation amount. MACA No.327 of 2020 has been filed by the Insurance Company questioning grant of compensation amount.

10. Learned 1st MACT, Cuttack in MAC Case No.231 of 2017 has directed for payment of compensation to the tune of Rs.12,91,981/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 10.4.2017 to the claimant, who sustained injuries in the motor vehicular accident dated 9.1.2017.

11. The case of the claimant is that while he was coming in a motorcycle, the offending vehicle coming in rash and negligent manner dashed his motorcycle from behind resulting sustenance of injuries. The claimant soon after the accident was shifted to the hospital where his right leg was amputated above the knee and nailing was done in his left leg. The claimant sustained permanent disability to the extent of 85% amounting to 100% functional disability.

12. In the appeal preferred by the insurer, the amount of compensation has been questioned. It is contended by Mr. V. Narasingh, learned counsel for the insurer that the learned Tribunal has assessed the compensation on the higher side by calculating the medical expenditure and future medical expenditure excessively and as per him, the claimant has only entitled to Rs.1,01,981/- towards the medical expenditure and no amount should be granted for future medical expenditure as the injury has resulted complete amputation of the leg.

13. To examine the contention of the insurer, perusal of the impugned judgment reveals that the learned Tribunal has granted Rs.1,01,981/- towards medical expenditure based on the medicine bills filed by the claimant. It is apparent from the discussion of the learned Tribunal that Rs.1,01,981/- was the cost of medicines purchased by the claimant and not for other expenses. Further amount of Rs.50,000/- each on two counts towards cost of attendant and special diet has been added to the aforesaid amount of medicine bills to make the sub-head on this count to Rs.2,01,981/-.

14. Upon perusal of the same, in my humble opinion, the second count of Rs.50,000/- granted towards special diet should be reduced to Rs.25,000/- keeping in view the period of treatment undergone by the claimant as an indoor patient. Accordingly, the compensation is reduced by Rs.25,000/- under the sub-head. In other words, the amount of compensation towards medical expenditure, attendant cost and special diet is accounted to Rs.1,76,981/-.

15. The other contention to discard out the entire amount granted towards future medial expenditure is not found convincing. It is for the reason that, nothing can

be said with definiteness that no future medical expenditure would be incurred in case of amputation of leg. To illustrate, it may be stated here that the claimant may opt to use a prosthetic leg in future or he may incur expenses for any possible complications arising out of the injury or any other unforeseeable event. So the amount of Rs.1,00,000/- granted towards future medical expenditure is found justified. So far the amount granted towards loss of amenities, mental pain and suffering, the same is found appropriate. Accordingly, the contention raised by the insurer is dealt with.

16. Mr. P.K. Mishra, learned counsel for the claimant while praying for enhancement of the compensation submits that the learned Tribunal has erred in calculating the monthly income of the injured at Rs.5000/- instead of Rs.6,216/-. It is submitted that the avocation of the claimant as a mason has though been disbelieved by the learned Tribunal, still the claimant being an able bodied person should be assessed at the minimum wage of Rs.207.20 per day for an un-skilled labour. Therefore, the monthly income of the claimant should be enhanced to Rs.6,216/- instead of Rs.5,000/- as calculated by the learned Tribunal.

17. There appears substantial force in the submission of the claimant. Without entering into further dispute about the avocation of the claimant, considering him as an unskilled labour, his wage can be fixed at Rs.207.20 as prevailing during the year 2017. As such the monthly income comes to Rs.6,216/- and this Court enhances the same accordingly. Thus the total income comes to Rs.6,216/- x 12 = Rs.74,592/- and the loss of future earning as calculated by applying '14' multiplier thereof, the total amount comes to Rs.10,44,288/-. It needs to be mentioned here that the percentage of the permanent functional disability is 100% loss of future income and the same is not disputed by the insurer. As per the principles enunciated in the case of National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680, 25% future prospects is added to the total loss of income to make it Rs.13,05,360/-, i.e. Rs.10,44,288/- + Rs.2,61,072/-.

18. The aforesaid amount of Rs.13,05,360/- if added with the further amount as discussed earlier, i.e. Rs.1,76,981/- + Rs.1,50,000/- + Rs.1,00,000/-, the total amount comes to Rs.17,32,341/-. Accordingly, the compensation amount is enhanced to this extent.

19. The Insurance Company is directed to deposit the said amount of Rs.17,32,341/- (seventeen lakhs thirtytwo thousand three hundred fortyone) along with 6% interest from the date of filing of the claim application, i.e.10.04.2017 before the learned Tribunal within a period of eight weeks from today; where-after the same shall be disbursed to the claimant. Out of the said amount, 60% be kept in fixed deposit for a period of six years. It goes without saying that the penal interest as directed by the learned Tribunal is waived.

20. On deposit of the award amount before the learned Tribunal and filing of a

receipt evidencing the deposit before this Court with a refund application, the statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

21. Liberty is granted to the Insurance Company to proceed against the owner of the vehicle for recovery under Section 174 of the M.V.Act.

22. An urgent certified copy of this order be granted on proper application.

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