

(2021) 11 OHC CK 0164
In the Orissa High Court
Case No : MACA No.993 Of 2009

Santanu Kumar Tripathy

APPELLANT

Vs

Bipin Chandra Pradhan And Another

RESPONDENT

Date of Decision : 25-11-2021

Acts Referred:

Citation : (2021) 11 OHC CK 0164

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

Bench : Single Bench

Advocate : P.C. Pattnaik, R. Pati

Final Decision : Allowed

Judgement

B. P. Routray, J

1. Heard Mr. P.C. Pattnaik, learned counsel for the claimant - Appellant and Miss Pati, learned counsel appearing for insurer - Respondent No.2.
2. The challenge in the present appeal is against the judgment dated 3rd July, 2009 passed in MAC Case No.57 of 2005 of the learned MACT, Phulbani.
3. The claimant - Appellant sustained injury due to the motor vehicular accident on 9th September, 2004 by the offending vehicle bearing registration No. OR 02 AC 0213. The learned Tribunal directed for compensation of Rs.20,000/- along with 6% interest from the date of filing of the claim application.
4. It is submitted on behalf of the Appellant that he sustained fracture injury in his knee and another head injury due to the accident, but the learned Tribunal while calculating the compensation amount did not count any expenses for the head injury sustained by the Appellant. Taking into consideration the fracture injury only and the period of treatment from 9th September, 2004 to 20th September, 2004 in MKCG Medical College and Hospital, Berhampur the aforesaid amount of compensation has been granted. Thus, the Appellant submits for grant of higher amount towards compensation.

5. Perusal of the impugned judgment reveals that the claimant could not produce any substantial document to convince about sustenance of any head injury in the accident. For the reason that no such head injury was mentioned in the injury report nor in the treatment paper of MKCG Hospital, learned Tribunal has rightly disbelieved the contention of the Appellant in respect of his head injury.

6. Concerning the fractured knee injury, it is not disputed that the Appellant undergone treatment in MKCG Hospital for a period of 12 days and thereafter rested for a long period. So considering the sufferings due to fractured leg injury and the expenses incurred thereof as well as the incidental charges, the amount of compensation is enhanced to Rs.30,000/-

7. It is next contended by the Appellant that instead of directions issued to the insurer to pay the compensation, the Tribunal has erroneously directed the owner to pay the compensation and discharged the insurer from the liability on the ground that in the driving license of the driver of the offending vehicle no endorsement was there authorizing him to drive a commercial / transport vehicle. In this regard placing reliance on the decision rendered in the case of Mukund Dewangan v. Oriental Insurance Company Ltd., 2017 AIR (SC) 3668, it is submitted that the driving license does not require any such separate endorsement to drive the transport vehicle and if the driver is holding license to drive a light motor vehicle he can also drive the transport vehicle of such class without any endorsement to that effect.

8. In the present case considering the facts that the driver was having valid driving license for driving light motor vehicle and admittedly the vehicle had valid insurance on the date of accident, the insurer cannot escape from its liability on behalf of the owner. Accordingly, the insurer - Respondent No.2 is held liable to incur the compensation on behalf of the owner.

9. In view of the discussions made above, Respondent No.2, i.e. New India Insurance Co. Ltd. is directed to pay a compensation of Rs.30,000/- along with 6% interest from the date of filing of the claim application to the claimant - Appellant within a period of eight weeks from today.

10. With the aforesaid observations the appeal is allowed.

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

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