

(2023) 06 OHC CK 0050
In the Orissa High Court
Case No : MACA No. 807 Of 2020

Sukanta Samal

APPELLANT

Vs

Eastern Carriers Amarpal Singh Sabharwal And Another

RESPONDENT

Date of Decision : 01-06-2023

Acts Referred:

Citation : (2023) 06 OHC CK 0050

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

Bench : Single Bench

Advocate : Kalpataru Panigrahi, S. Dash, J. Mishra

Final Decision : Disposed Of

Judgement

B.P. Routray, J.

1. The injured – claimant has filed present appeal praying for enhancement of compensation amount granted to him by learned 1st A.D.J. – cum – 1st MACT, Cuttack in M.A.C. Case No.871 of 2018. The tribunal by award dated 13th October, 2020 has determined the compensation amount at Rs.17,33,000/-, payable along with interest @ 6% per annum with effect from the date of filing of the claim application, i.e. 16th November, 2018.

2. The injured–claimant is aged about 38 years on the date of accident and he suffered with amputation of leg. The disability certificate has been proved under Ext.7. He was a driver by profession and the driving licence has been proved under Ext.13. The treating doctor, P.W.6, was examined by the claimant and stated that the disability is 100% with permanent in nature. According to the injured – Appellant, he was getting monthly salary of Rs.10,000/- as a driver employed by the wife of P.W.4 and the salary slip has been produced under Ext.16. But the tribunal has assessed the income of the deceased at Rs.7000/- per month based on prevalent rate of minimum wages prescribed by Government of Odisha for skilled labourer. This is the subject matter of challenge advanced by the injured.

3. It is seen from the evidence of P.W.4 that the Appellant was engaged as the driver of Maruti Suzuki Alto car registered in the name of wife of said P.W.4. He has stated that the injured was paid with Rs.10,000/- as salary per month along with food and free accommodation. It is true that no rebuttal statement could be elicited from said P.W.4 in his cross-examination nor any other material contrary to the same could be brought on record by the insurance company. The statement of the injured regarding his income of Rs.10,000/- per month as a driver has been corroborated by P.W.4 and by production of Ext.16. Therefore no reason is seen on the part of the tribunal to disbelieve such evidences adduced by the injured in support of his income. The tribunal is not found justified in reducing the same to Rs.7000/- per month at the minimum wage rate particularly in absence of any evidence to the contrary. There being no further dispute raised towards age of the injured, the applicable multiplier is found to be '15'. Since the injured suffered with amputation of leg due to the injuries and he was a driver by profession, the assessment of functional disability to the extent of 100% as determined by the tribunal is confirmed by this court. Accordingly loss of future income with addition of future prospect to the extent of 40% is computed to Rs.25,20,000/- against Rs.12,60,000/- determined by the tribunal. It needs to be mentioned here that contention of the injured to receive monthly salary of Rs.10,000/- as a driver is not uncommon in the place at Cuttack where the injured resides and was employed. Further, the tribunal while computing loss of future income has forgotten to add future prospect and it is no more res integra that in the matters of personal injury resulting permanent disability future prospect is liable to be added.

4. Thus the injured is found entitled for further sum of Rs.12,60,000/- along with interest @ 6% per annum.

5. In the result the appeal is disposed of with a direction to the insurer – Respondent No.2 to deposit a further compensation of Rs.12,60,000/- (twelve lakhs sixty thousand) before the tribunal along with interest @ 6% per annum from the date of filing of the claim application, i.e. 16th November 2018, 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..

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