



IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.577 of 2023

(In the matter of application under Section 173 of the Motor Vehicles Act, 1988).

Soumya Kishore Mishra ... ***Appellant***

-versus-

Bramhotri Mohanty & Another ... ***Respondents***

For Appellant : ***Ms. S. Sahoo, Advocate***

For Respondents : ***Mr. M.Chand, Advocate (R-1)***
Mr. A. Dash, Advocate (R-2)

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING : 20.02.2026

DATE OF JUDGMENT: 06.03.2026

G. Satapathy, J.

1. In assailing the impugned judgment dated 15.03.2023 passed by the 4th M.A.C.T., Sundargarh (in short, the "Tribunal") in M.A.C. Case No. 48/66 of 2018-22, the appellant, who was the claimant in such proceeding has preferred this appeal U/S.173(1) of the Motor Vehicles Act, 1988 (in short, "the Act") to challenge the quantum of compensation as awarded to him.



2. Bereft of unnecessary details, the present appeal arises out of the proceeding before the learned Tribunal in M.A.C. Case No. 48/66 of 2018-22 for an accident that took place on 14.12.2017 at about 12.30PM, when the claimant, who by profession a Constable then was going on a motorcycle bearing Regd. No. OR-16B-1409 towards his rented house in Jharsuguda near Durlaga Airport, Jharsuguda, one oil tanker bearing Regd. No. OD-14B-8949 (hereinafter referred to as "the offending vehicle") came in a rash and negligent manner and dashed the motorcycle resulting in serious injuries to the claimant, who after the accident was shifted to different hospitals, but due to accident, he became 90% disabled resulting in loss of job for him, however, the accident was registered vide Jharsuguda P.S. Case No. 821 of 2017 resulting in submission of charge sheet.

2.1. On this accident, the claimant approached the learned Tribunal in an application U/S.166 of the Act claiming total compensation of Rs.50,00,000/- under various heads for the loss suffered by him



arising out of the injuries in the accident by averring *inter alia* about accident taking place due to rash and negligent driving of the offending vehicle and him loosing of his job with salary at Rs.25,630/- by impleading the owner and insurer of the offending vehicle. In response to the notice of the claim in M.A.C. Case No. 48/66 of 2018-22, both the owner and insurer of the offending vehicle appeared and filed their written statement denying their liability, but the insurer further denied its liability for paying compensation to the claimant for him being rash and negligent in the accident.

3. On the *inter se* pleadings of the parties, the learned Tribunal framed primarily two issues with regard to rash and negligent driving of the driver of the offending vehicle and the entitlement of the claimant to the compensation and accordingly, allowed the parties to lead evidence, however, the claimant examined himself and another Gangadhar Oram as PWs.1 & 2 and exhibited around 22 documents under Exts.1 to 21 together with one letter under Exts.X as



against the oral evidence of OPW.1 and documentary evidence of Exts A to C by the OPs. After appreciating the evidence on record upon hearing the parties, the learned Tribunal by the impugned judgment directed the insurer-cum-Respondent No.2 (R-2) to pay compensation of Rs.35,71,648/- @ 50% of the liability together with 6% Simple Interest (SI) per annum to the claimant on a proportion of 50-50% contributory negligence, but the claimant being aggrieved with the apportionment of liability at the rate of 50-50% has preferred this appeal for enhancement of compensation.

4. Heard, Ms. Sushrita Sahoo, learned counsel for the appellant, Mr. Anupam Dash, learned counsel for R-2 and Mr. Manas Chand, learned counsel for R-1 in the matter and perused the record.

5. After having considered the rival submissions upon perusal of record, primarily the points emerge for consideration in this appeal are whether the claimant had in fact contributed to the accident and whether the award is just and proper.



Moving to the first issue, it appears that the learned Tribunal has referred to the evidence of the claimant and concluded that the claimant and the driver of the offending vehicle had equally contributed to the accident, but such finding has been seriously challenged by the claimant in this appeal, however, except taking this Court through the averments made in the claim application, no document or anything had been produced by the claimant-appellant before this Court to suggest that the offending vehicle was only rash and negligent. On the other hand, it is found from the cross-examination PW.1 (claimant) that he has admitted to have been riding the motorcycle at the relevant time and he was proceeding from Sundargarh to Jharsuguda on Biju Express High Way and the offending vehicle was coming from Jharsuguda side and it was a head-on-collision with the offending vehicle. The aforesaid evidence of claimant clearly reveals that the accident was a head-on-collision, but the spot map exhibited by the claimant under Ext.8 reveals that the accident took place on the right side



of the road for the claimant. Besides, the claimant has not produced the copy of the final form in this case, however, the oral evidence together with the documentary evidence clearly discloses that the claimant had also contributed for the accident. In this regard, this Court finds some substance in the decision relied by the R-2 in ***Bijoy Kumar Dugar vs. Bidyadhar Dutta & Others; (2006) 3 SCC 242*** wherein the Apex Court at paragraph-12 has been pleased to observe that when the vehicles had a head-on-collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident and the finding on this issue is a finding of fact. It is, therefore, clear in this case that the two vehicles met with an accident on head-on-collision and the injured was coming from opposite side by riding a motorcycle, whereas the offending vehicle was coming in front of him and the accident took place on the right side of the claimant. In the aforesaid circumstance, there is no escape for the claimant for contributory negligence and the learned Tribunal has rightly held



that both the motorcycle and the offending vehicle had equally contributed to the accident and they are, therefore, liable on the proportion of 50-50%.

6. Once it is decided that the liability of both the vehicles is for 50-50%, the next question automatically comes before this Court is whether the award is just. In this case, the learned Tribunal on appreciation of evidence including the disability certificate had accepted the disability of the claimant at 90% by observing *inter alia* in paragraph-7 of the impugned judgment, which reads as under:-

"7. Considering the disability, this Tribunal is of the opinion that the injured can pursue his service in future. XXX XX XX Although severe dispute was raised by OP No. 2 regarding the service particulars, but Exts.12, 18/1, 18/2, 19 & 21 reveals that he (claimant) was removed from the service after met with the accident and again was reinstated and he has been posted at Head Quarter but the petitioner has not yet joined his service. From the disability certificate vide Ext.13 and opinion of this Tribunal as reflected in the evidence at para-19 of the cross-examination clearly reveals that because of his disability, the petitioner has not yet found himself to be capable to join in the service."

The aforesaid finding was never been validly challenged by the insurer either by filing an appeal or



by way of cross objection, but on the other hand, it is elicited by the insurer in the cross-examination of the claimant (PW.1) that soon after the accident as he failed to join, his authority terminated him from service, but later on satisfaction upon his show cause, his authority reinstated him. Further, the learned Tribunal while recording the evidence of the claimant has noted his demeanor as under:-

"the witness, who is the injured in this case is found to have come to the Court with an attendant for his movement. His right hand appears to have suffered paralytic as the witness has put on an arm sling to support his hand. He has also put on a band to support his right wrist."

7. It is further found from the cross-examination of PW.1 by the insurer that he has not filed any document for his dismissal from service. No evidence has been produced by the insurer to claim that the claimant has not been terminated from service for being medically unfit. This Court, however, has called for a report from the authority of the claimant only to find him to be dismissed from service w.e.f. 31.08.2020 for being medically unfit. It is,



therefore, very clear that the claimant has suffered loss of service due to the injury arising out of the accident and his disability has been assessed at 90% by the learned Tribunal, however, the insurer strongly disputes the extent of disability of the claimant, but it is found from the cross-examination of claimant made by the insurer that the claimant after completion of treatment had made application before the Medical Board, Sundargarh for obtaining the disability certificate and he had attended the medical board at Sundargarh and the members of the Medical Board examined him physically so also by going through the relevant documents and had issued the disability certificate-Ext.13 to him. The aforesaid evidence clearly negates the claim of the insurer to dispute Ext.13. It is to be remembered here that all the injuries do not result loss of earning capacity and the percentage of permanent disability with reference to the whole body of a person cannot be assumed to be the percentage of loss of earning capacity. In other words, the percentage of loss of earning capacity is



not the same as the percentage of permanent disability except in few cases where the percentage of loss of earning capacity is same as the percentage of permanent disability, nevertheless, the loss of earning capacity has to be assessed with reference to the evidence in entirety. The disability of the claimant is, however, remains unchallenged and it is found from the evidence on record that the claimant has lost his job for the disability and, therefore, this Court considers it to be a case of permanent disability of 90%, but his functional disability, however, may vary, however, the loss of future earning capacity has to be considered at 100% for loss of the job by the claimant. Accordingly, the learned Tribunal should have computed the compensation for the claimant for loss of future income by taking the disability of 100% for loss of future earnings. Hence, this Court considers it to be quite relevant, but natural to assess the loss of future earning of the claimant at 100% and the amount thereon would be calculated at Rs.25,630/- which is the salary of the claimant as per the evidence



on record and thereby, adding 50% to it towards future prospect of the claimant, the amount would be Rs.25,630/- + 50% of Rs.25,630/- = Rs.38,445/-. Thus net loss of future earnings for the claimant would be Rs.38,445/- x 12 x 16 (multiplier) = Rs.73,81,440/, which is the net amount towards loss of future earnings of the claimant @ 100% disability. In addition, this Court hardly finds any flaw for the amount so awarded to the claimant by the learned Tribunal under the headings of medical expenses, transportation, special diet, attendant charges at Rs.3,00,000/-; pain and suffering at Rs.1,00,000/-; and loss of amenities at Rs.1,00,000/- which were calculated nominally. Accordingly, the compensation is recalculated at Rs.78,81,440/-, but since the claimant was equally responsible for the accident, his liability of 50% has to be deducted from this amount and he is entitled to 50% of such amount which is calculated at Rs.39,40,720/-. The appellant is also entitled to SI @6% per annum from the date of filing of claim application i.e. on 01.10.2018 till actual realization.



8. In the result, the appeal by the claimant stands allowed in part on contest, but in the circumstance, there is no order as to costs and the impugned judgment is modified to the extent indicated above. The insurer-R-2 is, hereby directed to pay a sum of Rs.39,40,720/- together with SI @ 6% per annum w.e.f. 01.10.2018 to the injured claimant within 08 weeks hence. On deposit of such modified compensation amount, the same shall be disbursed to the claimant proportionately in terms of the award.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 6th day of March, 2026/S.Sasmal*