



IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.674 of 2024

CNR No. ODHC010507542024

Noorama Khatoon and others

Appellants

Represented by Adv. –
Mr. Pradeep Kumar Mishra

-versus-

Aqueeb Hussain and others

Respondents

Represented by Adv. –
Adam Ali Khan,

Mr. S.K. Sahoo
Mr. J. P. Tripathy,

Mr. M. Ghosh

Mr. Somnath Roy

Mr. S.R. Nayak

CORAM:

HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

J U D G M E N T

Date of Hearing and Judgment: 27.08.2026

A.K. Mohapatra, J. :

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Claimants-Appellants as well as Mr. Somnath Roy, learned counsel appearing for the Respondent No.2-Cholamandalam General Insurance Co. and



Mr. Adam Ali Khan, learned counsel appearing for the Respondent No.4-Bajaj Allianz General Insurance Co. Despite valid service of notice.

3. None appears on behalf of the Respondent Nos. 1 and 3- Owner of the vehicles. Perused the appeal memo as well as the grounds taken therein.

4. By filing of the present appeal under Section 173 of the M.V. Act, 1988, the Claimants-Appellants has approached this Court with a prayer for enhancement of the quantum of compensation that has been awarded by the learned Tribunal vide order dated 04.06.2024 passed in MAC Case No.24 of 2021 by the learned Second Motor Accident Claims Tribunal, Northern Division, Sambalpur. By virtue of the impugned award, the learned Tribunal has awarded a total compensation of Rs.12,23,080/- along with interest @ 6% from the date of filing of the claim application till actual realization.

5. Learned counsel for the Appellants at the outset contended that the learned Tribunal has committed a gross error of law as well as the fact by reducing the awarded amount by 50% on the ground that the accident occurred due to contributory negligence of both the vehicles involved in the accident. While explaining the factual scenario involved in the present application, learned counsel for the Appellant narrated the facts in brief, which is as follows, on 18.03.2021 at about 2.30 A.M., while the deceased was coming from Mumbai to Paradeep by driving a truck bearing registration number MH-03-C-7202 in front of Gouri



Petrol Pump under NH-55 under Jujumura Police Station, another truck bearing registration number OD-19-M-7759 was coming from the opposite direction being driven in rash and negligent manner, and collided with the vehicle of the deceased driver. As a result of which, the deceased initially sustained injuries. Thereafter, he was shifted to Vimsar, Burla where he was declared dead. It is further mentioned that the deceased was the sole earning member of the family members earning Rs.20,000/- per month along with Rs.200/- per day towards his diet.

6. Accordingly, the Claimants approached the Tribunal by filing the claim application claiming a total amount of Rs.35,00,000/- as compensation. The learned Tribunal after taking evidence from both sides, delivered the award dated 04.06.2024 thereby granting a total compensation of Rs.12,23,080/-. While awarding the aforesaid compensation amount, the learned Tribunal has calculated the loss of dependency at Rs.19,73,160/-. Further, the Tribunal has deducted 50% from the aforesaid amount by holding that the accident occurred due to contributory negligence of both the vehicles. Being aggrieved by such finding of the learned Tribunal and reducing the total compensation amount on the ground of contributed negligence, the Appellant-Claimant has approached this Court by filing the present appeal.

7. While challenging the finding of the Tribunal with regard to contributory negligence, learned counsel for the Appellant-



Claimant at the outset contended that immediately after the accident and FIR was lodged and the police investigation had taken place. The final form has been submitted stating therein that due to rash and negligence driving of the offending vehicle, the accident had occurred. So far the accident is concerned, a report of the concerned Motor Vehicle Inspector was also produced before the Tribunal and the same was marked as Ext-A/1. The learned Tribunal while deciding the question of contributory negligence has discarded the statements of the witnesses before the Police in course of investigation as well as the finding of the Investigating Officer in the final form, whereas the report of the MVI which has been marked as Ext.A/1 has been accepted by the learned Tribunal and, accordingly, the learned Tribunal has confined the quantum of compensation by restricting the loss of dependency to 50%. Such method adopted by the learned Tribunal is being seriously disputed by the learned counsel for the Appellant-Claimant.

8. Learned counsel for the Claimants-Appellants contended before this Court that although the learned Tribunal has referred to the report of the MVI at Ext-A/1, however the MVI has not been examined as a witness to support the report. He further submitted that without examination of the maker of the document at Ext-A/1, the same could not have been accepted in evidence. On such basis, learned counsel for the learned counsel for the Appellants-Claimants alleged that the learned Tribunal has committed a gross error of law. The learned counsel for the Appellants-Claimants further submitted that the investigation



and the statements of the eye witnesses recorded clearly indicates that the accident occurred due to the negligence of the offending vehicle. However, the same has been disbelieved by the learned Tribunal. In such view of the matter, learned counsel for the Appellants-Claimants submitted that the Tribunal fell into error in accepting to support such report of the MVI in the absence of the MVI, especially being examined as a witness in the present case to support his report. As such, in view of the provisions contained in an Evidence Act, the report of the MVI at Ext-A/1 is not admissible in evidence and that the learned Tribunal has committed a gross error by relying upon such document.

9. Mr. Ray, learned counsel for the Respondent-Insurance Company on the other hand contended that the Tribunal has not committed any illegality in passing the judgment dated 04.06.2024. While supporting the judgment of the learned Tribunal, Mr. Ray, learned counsel appearing for the Insurance Company submitted that the income has been correctly assessed by the Tribunal. He further submitted that the learned Tribunal is not bound to accept the evidence and the finding of the criminal Court and it has to arrive at his own conclusion on the basis of the materials placed before it. He further contended that since there is an MVI report with regard to the accident, which indicates that the accident occurred due to the contributory negligence of the drivers of both the vehicles, the learned Tribunal has not committed any illegality in relying upon the MVI report at Ext-A/1 and determining the total compensation



amount by accepting loss of dependency at 50%. In view of the aforesaid submission, learned counsel for the Insurance Company submitted that the learned Tribunal has not committed any error of law which would require the interference of this Court with the impugned award, in exercise of its Appellate jurisdiction. Hence, it was stated that the present appeal, being devoid of merit, is liable to be dismissed.

10. Having regard to the rival contentions raised by learned counsels appearing for both sides, on a careful examination of the background facts as well as the grounds taken in the appeal memo, further on a close scrutiny of the impugned judgment dated 04.06.2024, this Court observes that the only issue that requires determination in the present appeal is the approach of the learned Tribunal in deducting 50% from the loss of dependency on the ground of contributory negligence. Thus, the question that calls for determination is to whether the finding of the Tribunal with regard to the contributory negligence of the drivers of the two vehicles is correct in law or not.

11. In the aforesaid context, this Court examined the materials on record and analysed the impugned judgment. On a close scrutiny of the impugned judgment it appears that the learned Tribunal has disbelieved the version of the eye witnesses as well as the final form submitted by the I.O. On the contrary, the Tribunal has referred to the report of the MVI which has been marked as Ext-A/1. It is not disputed by the Parties that the Motor Vehicle Inspector has not been examined in the present



case. Therefore, in the absence of examination in chief and cross-examination of the Motor Vehicle Inspector, the report of such Motor Vehicle Inspector could not have been accepted in evidence and, as such, the learned Tribunal has committed a gross error of law by relying upon such report of the MVI at Ext-A/1.

12. Moreover, considering the statement of the witnesses, recorded in course of investigation of the criminal case that was registered after the accident, and further taking note of the final form submitted by the Investigating Officer, this Court found that the same indicates that the accident took place due to the negligence of the driver of the offending vehicle as he was driving the offending truck in a rash and negligent manner. Such material on record could not have been easily glossed aside or disbelieved, more so, in the absence of any rebuttal evidence. Thus, it appears that the Tribunal has committed an error in deciding the issue of contributed negligence.

13. On a careful analysis of the submissions made by learned counsels appearing for the Parties, further on a close scrutiny of the materials on record, this Court is of the view that the finding of the learned Tribunal that the accident was a direct result of the contributory negligence is erroneous and that the same is unsustainable in law. In view of the aforesaid finding that there is no contributory negligence, this Court is of the view that the Claimants are entitled to the full amount in respect of loss of dependency. Accordingly, this Court is of the view that the



compensation amount requires re-determination. While re-determining the compensation amount, this Court directs that the amount which has been deducted by the learned Tribunal upon a contributory negligence be added back to the compensation amount. On such re-addition, this Court is of the view that the Claimants are entitled to a further compensation amount of Rs.9,86,058/-. Since the Respondent-Insurance Company is liable to pay interest on the aforesaid additional amount of compensation, this Court, with the consent of the learned counsels appearing for both sides, directs the Opposite Party No.2-Insurance Company to pay a further consolidated compensation amount of Rs.11,00,000/-.

14. Let such amount be deposited before the Tribunal within a period of eight weeks from today. Upon such deposit, the learned Tribunal shall disburse the same to the Claimants, in accordance with law.

15. With the aforesaid observation and direction, the MACA stands disposed of.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The, 27th August, 2026/S. K. Sethi, P.A.

Signature Not Verified

Digitally Signed
Signed by: SISIR KUMAR SETHI
Designation: PERSONAL ASSISTANT
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 31-Aug-2026 19:11:54

