GAHC010035702021

2026:GAU-AS:14776

**IN THE GAUHATI HIGH COURT**
**HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**MACApp./68/2021**

**1.** National Insurance Co. Ltd.
Having its Registered and Head Office At 3 Middleton Street,
Kolkata 700071 and one of The Regional Offices at M.S.S. Path Bhangagarh, Guwahati-781005

**.....Appellant**

***-Versus-***

**1.** Md. Tazal Ahmed @ Tajel Ahmed @ Tajul @ Kajal
S/O Late Faizul Haque @ Fayzul Haque, Permanent R/O Village
Loharpara (Bahadurpur),
PO and PS Nilam Bazar,
District Karimganj, Assam, Pin-788722
Temporary/Present R/O Village and PO Saidpur, PS Silchar, District Cachar,
Assam, Pin-788001

**2.** Surita Chakraborty
W/O Late Manindra Chakraborty
R/O Village Dhirpara
Po Karnamadhu
Ps Karimganj

Dist. Karimganj
Assam, Pin-788710
Owner of Vehicle No. AS-01/Dd7772
(Night Super Bus Loknath Travels)

**.....Respondents**

| | | |
|---|---|---|
| For Appellant | : | Mr. A. J. Saikia, Advocate |
| For Respondent(s) | : | Mr. M. Talukdar, Advocate (R-1)<br>Mr. S. Das, Advocate (R-2) |
| Date of Hearing | : | **30.07.2026** |
| Date of Judgment | : | **05.10.2026** |

**BEFORE**
**HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

**JUDGMENT AND ORDER**

**1.** Heard Mr. A. J. Saikia, the learned counsel for the appellant. Also heard Mr. M. Talukdar, the learned counsel for respondent No. 1/claimant, as well as Mr. S. Das, the learned counsel for respondent No. 2/owner of the offending vehicle.

**2.** This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant, namely, M/s National Insurance Company Limited, impugning the judgment and award dated 21.12.2019 passed by the Motor Accident Claims Tribunal, Cachar, Silchar, Assam in MAC Case No. 1304/2019, whereby the present appellant was directed to pay a compensation amount of Rs. 23,59,083/- along with an interest @ 7% per annum from the date of filing of the claim petition till realization to the respondent No. 1/claimant.

**3.** The facts relevant for consideration of the instant appeal, in brief, are that on 25.11.2014, at about 1:30 AM, the claimant/respondent No. 1, who was traveling in a Night Super bus bearing registration No. AS-01 DD-7722, met with an accident when the said Night Super bus, being driven in a rash and negligent manner, reached Thangskai village at National Highway No. 44, JB Road near Adhunik Cement. As a result of the said accident, the claimant sustained grievous injuries on his person. After the accident, the claimant was immediately shifted to Shillong Civil Hospital, wherein he was admitted as an indoor patient from 25.11.2014 to 28.11.2014. Thereafter, he was shifted to Karimganj Civil Hospital. In the said hospital also, he stayed as an indoor patient on 28.11.2014. From the Karimganj Civil Hospital, he was shifted to Silchar Medical College and Hospital and was admitted as an indoor patient on 29.11.2014. In the Silchar Medical College and Hospital, the claimant underwent major operation for amputation of his right leg below knee on 31.12.2014, and ultimately, he was discharged from the hospital on 10.01.2015.

**4.** Later on, the claimant approached the Motor Accident Claims Tribunal, Cachar by filing an application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the injuries sustained by him in the aforesaid motor vehicular accident. The said case was registered as MAC Case No. 1304/2015. The present appellant contested the claim of the claimant by filing written statement, wherein it denied the liability to pay any compensation to the claimant.

**5.** On the basis of the pleadings of the parties, the Motor Accident Claims Tribunal framed following issues:

i. *Whether Md. Tazal Ahmed @ Tazel Ahmed @ Tazul @ Kajal, the claimant, sustained injuries and permanent disability as a result of motor vehicular accident that occurred on 25.11.2014 at about 1:30 AM at Thangskai, JB Road near Adhunik Cement under the jurisdiction of Khliehriat Police Station?*

ii. *Whether the accident occurred due to rash and negligent driving of the driver of the offending vehicle bearing registration No. AS-01 DD-7722?*

iii. *Whether the claimant is entitled to compensation? If so, what is the just and reasonable compensation and to what other relief/reliefs the claimant is entitled?*

iv. *By whom amongst the OPs the same is payable*?

**6.** In support of his claim, the claimant side examined two witnesses and exhibited certain documents. The witnesses were cross-examined by the learned counsel for the insurance company. However, the appellant/insurance company did not adduce any defense witness to counter the claim of the claimant.

**7.** Ultimately, by the judgment and award which has been impugned in this appeal, the Motor Accident Claims Tribunal allowed the claim of the claimant and directed the appellant to pay compensation to the claimant in the manner as already been described in the foregoing paragraphs of this judgment.

***8.*** Mr. A. J. Saikia, the learned counsel for the appellant has submitted that the Motor Accident Claims Tribunal has erred in awarding the compensation to the claimant on a higher side without taking into consideration the materials available on record. He submits that the extent of functional disability assessed by the Tribunal, i.e., 70%, is on the higher side, as the same ought to have been considered on a much lower side considering the materials available on record. He submits that the testimony of PW-2, namely, Dr. Shamim Ahmed, clearly indicates that he did not treat the injured/claimant and was not aware about the injuries sustained and treatment undergone by the claimant. He submits that the Tribunal also failed to take into consideration that PW-2 had deposed before the court merely on the basis of documents available on record without medically examining the claimant himself. He submits that under such circumstances, the Tribunal ought to have assessed the percentage of functional disability sustained by the claimant on the basis of Schedule-I of the Employees Compensation Act, 1923, i.e., 50% loss of earning capacity. In support of his submission, the learned counsel for the appellant has cited a ruling of the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.***, reported in ***(2011) 1 SCC 343.***

**9.** The learned counsel for the appellant submits that the Tribunal also erred in assessing the monthly income of the claimant at Rs. 9,000/-, as no reliable materials were produced by the claimant before the Tribunal in support of his contention regarding his income. He submits that the Tribunal ought to have taken into

consideration the wages payable to an unskilled labor to assess the income of the claimant in absence of any reliable material in that regard. He further submits that the Tribunal also erred in adding 40% of his income towards future prospects. He submits that no amount should have been awarded as interest on loss of future prospects under the facts and circumstances of this case. He accordingly prays for setting aside the impugned judgment and award by modifying it and paying a lower compensation to the claimant than what has been awarded to him by the impugned judgment and award.

**10.** On the other hand, Mr. M. Talukdar, the learned counsel for the claimant/respondent No. 1 has submitted that the Tribunal has rightly awarded the compensation to the claimant, though it is on the lower side with regard to certain aspects. He submits that since the Tribunal, while assessing the loss of earning capacity/functional disability of the claimant, has taken into account the evidence on record, including the medical evidence, there were sufficient materials on record for the Tribunal to assess the percentage of functional disability, and has rightly assessed the same to the extent of 70% considering the vocation which he was doing before the accident.

**11.** He submits that the falling back upon Schedule-I of the Employees' Compensation Act, 1923 for assessing the extent of functional disability would have arisen had there been no evidence on record for enabling the Tribunal to assess such loss of earning capacity. However, in the instant case, there were sufficient materials on

record, hence, he submits that the Tribunal has rightly assessed the functional disability to the extent of 70% of his earning capacity before the accident. In support of his submission, the learned counsel for the claimant has cited following rulings:-

i. ***Mohd. Masood v. New India Assurance Co. Ltd. & Anr.***, reported in ***2025 Legal Eagle (SC) 1045***.

ii. ***The Oriental Insurance Company Limited vs. Md. Saddam Hussain Barbhuiya & Ors.*** (Judgment dated 15.06.2026 passed in ***MAC Appeal No. 48/2024***).

**12.** The learned counsel for the claimant has further submitted that the Tribunal has rightly assessed the monthly income of the claimant at Rs. 9,000/- as he was a businessman dealing with vegetables and, as such, was doing business in an unorganized sector and was not expected to produce documents to prove his income. In support of his submission, the learned counsel for the claimant has cited a ruling of the Apex Court in the case of ***Syed Sadiq & Ors. Vs. Divisional Manager, United India Insurance Co. Ltd.***, reported in ***(2014) 1 TAC 369 (SC)*** as well as in the case of M. ***Paramesh vs. VRL Logistics Ltd. & Anr.***, reported in ***2026 Legal Eagle (SC) 707***.

**13.** He further submits that the claimant, being a self-employed person, is also entitled to compensation on account of loss of future prospects to the extent of 40%, considering his age. He submits that the question regarding entitlement of interest on future prospects has been laid to rest by the Apex Court in the case of ***The Oriental Insurance Company Limited vs. Neeru alias Niharika & Ors.***

(Judgment dated 14.07.2025 in ***Special Leave Petition (C) No. 11340 of 2020***). As such, he submits that the claimant is entitled to interest on the compensation awarded by the Tribunal, including on the loss of future prospects. However, he submits that the interest granted by the Tribunal at the rate of 7% is on the lower side and it ought to have been 9% instead.

**14.** He submits that though no cross-objection has been filed by the claimant in this case, the settled proposition of law is that, even in the absence of a cross-appeal, the claimant is entitled to get just compensation; as such, he submits that the question of not filing a cross-objection should not cause any hindrance in awarding just compensation to the claimant. In support of his submission, he has cited a ruling of a coordinate Bench of this Court in the case of ***Oriental Insurance Co. Ltd. Vs. Pekhan Bala Das & Ors.***, reported in ***2014 (2) GLT 855***, as well as the case of ***Jitendra Khimshanker Trivedi & Ors. Vs. Kasam Daud Kumbhar & Ors.***, reported in ***(2015) 1 TAC 673 (SC***).

**15.** He further submits that the Tribunal also erred in not awarding any amount for future treatment of the claimant, as his right leg was amputated, hence the requirement of an artificial/prosthetic limb is there for the claimant. He submits that said prosthetic limb may also be required to be changed from time to time, considering the young age of the claimant; as such, an expense of at least Rupees Ten Lakh would be required for the same, and the same may be awarded to the claimant. In support of his submission, he has cited

a ruling of this Court in the case of ***The Oriental Insurance Co. Ltd. Vs. Md. Saddam Hussain Barbhuiya & Ors.*** (supra).

**16.** He accordingly submits that the appeal filed by the appellant Insurance Company may be dismissed and, at the same time, the compensation awarded to the claimant may be enhanced.

**17.** I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

**18.** The point for determination in this case is that whether the Tribunal has correctly assessed the functional disability of the claimant and has correctly computed the compensation awarded to the claimant on account of loss of earning due to the injury sustained by him in the accident involved in this case.

**19.** On perusal of the records, it appears that the claimant claimed himself to be a businessman dealing in vegetables and also claimed to have the monthly income of Rs. 15,000/-. In support of the said contention, he also exhibited the income certificate issued to him by the Circle Officer as Exhibit-11. It appears that the Motor Accident Claims Tribunal did not rely on Exhibit-11 as the claimant failed to produce anyone from the office of the Circle Officer who issued Exhibit-11 as a witness in support of the issuance of Exhibit-11. It also appears that the Tribunal, taking into consideration that the claimant being a vegetable businessman may be considered to be working in an unorganized sector of economy and hence it may not

be just to rely on Exhibit-11 as proof of income of the claimant, made guesswork to assess the monthly income of the claimant at Rs. 9,000/-.

**20.** This Court is of considered opinion that while doing guesswork also, there has to be some basis. The Tribunal ought to have taken the notional income of the claimant on the basis of some accepted norms like that of government notification specifying rates of minimum wages during that period, or any guideline of this Court or the Apex Court in that regard.

**21.** It appears that the learned counsel for the claimant has cited a ruling of the Apex Court in the case of ***Syed Sadiq & Ors. Vs. Divisional Manager, United India Insurance Co.*** (supra) in support of his contention regarding the income of the claimant. On perusal of the said judgment, it appears that in the said case also, the claimant was a vegetable vendor and the accident in that case occurred in the year 2008, and the Apex Court took the income of the claimant of that case at Rs. 6,500/- per month. Applying the same analogy, considering the fact that the accident in the instant case had occurred in the year 2014, the assessment of income of the claimant at Rs. 9,000/- per month by the Tribunal does not appear to be unreasonable, justifying any interference by this Court.

**22.** As regards the question of assessment of loss of future earning capacity by the claimant on account of injuries sustained by him in the aforesaid accident, this Court is of considered opinion that the Tribunal has rightly assessed the loss of future earning capacity of

the claimant to the extent of 70% of his established income. The evidence on record shows that due to amputation of the right leg below-knee level, the claimant suffered from physical disability to the extent of 70%. There is no dispute regarding the fact that the said disability is of permanent nature. There cannot be any dispute that the claimant, who was a businessman dealing in vegetables, cannot perform his earlier work in the same manner as he was doing before the accident due to the amputation of his right leg below knee as a result of the injury sustained by him in the accident.

**23.** Considering the nature of injury sustained by the claimant, the Tribunal found it reasonable to hold that the percentage of loss of earning may also be equivalent to the percentage of permanent physical disability of the claimant. The said logic applied by the Tribunal in assessing the functional disability does not appear to be unreasonable to this Court. As such, this Court does not find any ground to interfere with such assessment of the Tribunal.

**24.** As regards the imposition of interest on future prospects is concerned, though there are decisions of this Court that such interest cannot be awarded considering the fact that future prospects is a benefit which would have accrued to the claimant after the date of accident on some future date, however, in view of the judgment of the Apex Court in the case of ***The Oriental Insurance Company Limited Vs. Neeru alias Niharika & Ors.*** (supra), this question has been laid to rest and it has been settled that interest has to be awarded on the whole amount of compensation

awarded, including the future prospects. As such, this Court does not find any merit in the appeal filed by the Insurance Company. The said appeal is therefore liable to be dismissed.

**25.** As regards inadequacy of the compensation granted to the claimant, as submitted by the learned counsel for the claimant, is concerned, this Court is of considered opinion that though this Court has power to enhance compensation awarded to the claimant even in absence of a cross-appeal or cross-objection by the claimant so that a just compensation is awarded to the claimant, however, in the instant case, it appears from the record that the claimant in his application under Section 166 of the MV Act had claimed compensation amount of Rs. 24 Lakhs only, whereas the Tribunal by the impugned judgment has awarded Rs. 23,59,083/-, which is almost equivalent to what was claimed by the claimant. As such, this Court is of considered opinion that the compensation awarded to the claimant by the Tribunal cannot be regarded as unjust so as to justify any enhancement by this Court, even in the absence of a cross-appeal or cross-objection. Hence, the contention of the learned counsel for the claimant for enhancing the compensation even in absence of cross-objection/cross-appeal by the claimant is not accepted by this Court under the facts and circumstances of this case.

**26.** In view of the discussions made and reasons stated in the foregoing paragraphs of this judgment, this appeal is hereby dismissed.

**27.** The Registry is directed to send back the records of MAC Case No. 1304/2015 to the Motor Accident Claims Tribunal, Cachar, Silchar, along with a copy of this judgment immediately.

**JUDGE**

Comparing Assistant

Amita Sharma
2026.10.05 17:12:50
+05'30'