IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA NO.59 of 2006
CNR No. ODHC010016062006

(An appeal Under Section-173(1) of M.V. Act, 1988).

The Oriental Insurance Co. Ltd., Bolangir … ***Appellant***

-versus-

Santosh alias Ramesh Panigrahi & Others … ***Respondents***

For Appellant : ***Mrs. R. Pati, Advocate***

For Respondents : ***None***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT: 05.11.2026 (ORAL)

G. Satapathy, J.

MACA NO.59 OF 2006 AND MISC.CASE NO.167 OF 2006

1. This judgment shall not only dispose of the Appeal on merit, but also MC No.167 of 2006 filed by the learned counsel for the appellant (insurer) U/S.5 of the Limitation Act, 1963 for condonation of delay of 20 days in preferring the appeal to challenge the impugned judgment dated 15.09.2005 passed by the learned 3rd Motor Accident Claims Tribunal, Sonepur in MACT Case No.28 of 2004 directing the Oriental Insurance Company (In short "the insurer") to pay a sum of Rs.1,94,000/- together with interest @ 6% per annum w.e.f 02.07.2004

till its actual realization to the claimants-cum-R1 to R4 herein towards compensation for the death of their sole bread earner namely Sriballav Panigrahi(In short "the deceased") who died in a motor vehicular accident in an application U/S. 166 of the Motor Vehicles Act, 1988 (In short "the Act").

2. Facts in precise are that in an accident which took place on 01.01.2004 at about 9 PM near Baliabandh, one commander jeep bearing Regd. No. OR-12-6992 carrying the deceased as passenger coming from Kantamal to Cuttack was allegedly hit/collided with another commander jeep bearing Regd. No. OR-04-D-1379(hereinafter referred to as "the offending vehicle") as a result the deceased sustained injuries and referred to SCBMCH, Cuttack, but he ultimately died due to the injuries sustained by him in the accident. An FIR being filed on this accident came to be registered as Dhenkanal Sadar PS Case No. 1 of 2004 with commencement of investigation which resulted in submission of charge sheet against driver of both the vehicles for rash and negligent driving. Upon a claim being filed by the

dependents of the deceased, the same was registered by the learned Tribunal in MACT No. 28 of 2004, wherein notices were issued to the owner and insurer of the offending vehicle, but the owner of the offending vehicle although albeit filed his written statement, however, did not laid any evidence, whereas the insurer filed its written statement denying its liability to pay the compensation to the claimants and *inter-alia* averring that the other vehicles being rash and negligent, the owner thereof is liable to pay the compensation.

3. On the *interse* pleadings of the parties, necessary issues were framed and the learned tribunal proceeded with the claim by allowing the parties to lead evidence. Accordingly, the claimants examined two witnesses and relied upon seven documents under Ext. 1 to 7 in support of their claim as against the sole documentary evidence of certified copy of the MVI Report under Ext. A by the insurer. On conclusion of the inquiry, the learned tribunal after appreciating the evidence upon hearing the parties passed the impugned judgment directing the insurer to pay the compensation amount

indicated supra to the claimants. Being aggrieved with the impugned judgment, the insurer has preferred this appeal, but the main challenge of the insurer is for composite negligence of both the vehicles and it is not alone liable to pay the compensation.

4. Heard, Mrs. Rimjhimbala Pati, learned counsel for the Appellant-Petitioner, but none appears for Respondents, however, the notice issued to R1 to R4 returned with postal endorsement "refused", whereas notice issued against R5 returned with delivery and thereby, the service of notice issued against Respondents is held to be sufficient.

5. Admittedly, there is a delay of 20 days in filing the appeal, but it is claimed by the insurer that the delay is neither intentional nor deliberate, rather it is prevented by "sufficient cause" for not approaching the Court within the stipulated time. It is no more *res integra* that when delay is of shorter duration, the Court should approach the case liberally, but the same is not applicable when the delay is of longer duration and the same is the product of negligence and utter apathy of the person responsible for

delay. The ground under which the insurer seeks for condonation of delay in this case appears to be convincing and does not suggest to be a case of absolute apathy. Besides, the grounds taken for condonation of delay in this Appeal is late processing of the file in the office of the insurer. The delay in this case is definitely of shorter duration and, therefore, the expression "sufficient cause" must receive liberal construction. Further, what constitutes "sufficient cause" cannot be laid down precisely by any hard and fast rule, but the ground for which delay has occurred in this case must be considered pragmatically. The law of limitation is of course based upon public policy that there should be an end to the litigation and even if the delay is condoned in this case, this appeal would be disposed of by this judgment. Besides, when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. In the backdrop of aforesaid settled principles of law, when the case of the Appellant-Insurer is considered liberally for a delay of small duration, it cannot be said that the

appellant-insurer was negligent or slack, rather the insurer can be considered to have been prevented by "sufficient cause" in not preferring this Appeal in time. Hence, adopting a liberal, pragmatic and justice-oriented approach, the delay of 20 days in filing this Appeal by the insurer is hereby, condoned. Accordingly, Misc. Case No.167 of 2006 is disposed of.

6. After having bestowed an anxious and careful consideration to the challenge of the insurer, it appears that the only challenge of the insurer is to pay his liability for 50%, but law in this regard is very clear which has been already laid down in ***Khenyei Vrs. New India Assurance Co. Ltd. & Ors.; (2015) 9 SCC 273*** wherein at paragraph no.22 the Apex Court has recorded its conclusion which reads as under: -

> *"22.1. In the case of composite negligence,* ***plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors*** *and* ***to recover the entire compensation as liability of joint tortfeasors is joint and several****.*
>
> *22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible.* ***He can recover at his option whole damages from any of them****.*

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient; it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

7. In view of the aforesaid facts and situation and taking into account the law laid down by the Apex Court in ***Khenyei (supra),*** the claimants have the option to proceed against the present Insurance Company for grant of compensation, but at the same time, the claimants are also free to take any decision to proceed against any of the Insurance Companies/ both of them in terms of the judgment laid down by the Apex Court in ***Khenyei***

(supra). Hence, the challenge of the insurer appears to be unmerited and is accordingly, stood rejected.

8. On coming to the quantum of compensation, it appears that the learned tribunal has rightly taken into account the income and other factors of the deceased in computing the compensation. Even otherwise, the quantum as determined by the learned has never been challenged by the claimants and this Court, therefore, does not consider it proper to disturb the finding on the quantum of compensation which has been arrived at by the learned tribunal in accordance with law. In the sequence of events, this Court does not find any error apparent on the record to differ with the finding of the learned tribunal so as to warrant interference by this Court in this appeal.

9. In the result, the appeal stands dismissed, but there is no order as to costs. Consequently, the impugned judgment passed by the learned tribunal is hereby confirmed and the insurer is hereby directed to pay the compensation amount together with accrued interest thereon in terms of the impugned judgment within eight

weeks hence. It is, however, brought to the notice of the Court that the insurer has already deposited the entire amount of compensation together with the accrued interest thereon before the learned tribunal in terms of the order passed by this Court on 24.01.2024 and if that be so, the insurer is hereby permitted to appropriate this amount towards payment of compensation to the claimants. The statutory deposit together with the accrued interest thereon be refunded soon after receipt of proof of payment of compensation to the learned tribunal.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 5th November, 2026/Priyajit

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