IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.862 of 2010
CNR No. ODHC010038192010

(An appeal Under Section-173 of MV Act, 1988).

Sari Das & Ors. … ***Appellants***

-versus-

The Branch Manager, United India Insurance Co. Ltd. & Another … ***Respondents***

For Appellants : ***Mr. S.K. Pradhan-3, Advocate***

For Respondents : ***Mr. S.K. Mohanty, Advocate (R1)***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:10.11.2026 (ORAL)

G. Satapathy, J.

1. This is an appeal U/S.173(1) of the Motor Vehicles Act, 1988 (In short, "the Act") by the claimants-appellants seeking enhancement of compensation granted to them by the impugned judgment dated 13.08.2010 passed by the learned Second Motor Accident Claims Tribunal(SD), Berhampur (In short, "the Tribunal") in MAC No.356/02 (644/99) directing R-1-cum-United India Insurance Co. Ltd. (in short "the insurer") to

pay Rs.1,83,000/- together with Simple Interest @ 6% per annum w.e.f.13.10.1999 till actual realization to the claimants within two months thence, failing which to pay default interest @ 9% per annum as compensation in an application U/S.166 of the Act for the death of their sole bread earner in a motor vehicular accident.

2. The facts relevant for disposal of this appeal are that in an accident which took place on 28.04.1999 at about 11.00AM, one Kirtan Das (hereinafter referred to as "the deceased") while going by a bicycle near Green-gola Chhaka of Konkorada village, was allegedly dashed from the back side by one bus bearing Regd. No.OSG-7009 (Balkumari Bus) [hereinafter referred to as "the offending vehicle"] resulting in death of deceased at the spot. An FIR being filed on this incident came to be registered with the local police station which resulted in submission of charge-sheet against the driver of the offending vehicle for rash and negligent driving. Upon a claim being filed by the LRs of the deceased, the learned tribunal registered

and proceeded with the same by issuing notices to the owner and insurer of the offending vehicle.

2.1. In response of the notice of the claim, the owner of the offending vehicle did not choose to contest the claim and consequently he was set *ex-parte,* whereas the insurer contested the claim by filing the written statement denying all the allegations and inter-alia disowning its liability to pay the compensation. The learned tribunal, however, allowed the parties to lead evidence and accordingly, the claimants examined two witnesses and relied upon seven documents under Ext.1 to 7 as against the documentary evidence of Ext. A & B by the insurer. On conclusion of inquiry, the learned tribunal after appreciating the evidence upon hearing the parties passed the impugned judgment granting compensation to the claimants indicated *(supra),* but the claimants being dissatisfied with the quantum of compensation has preferred this appeal.

3. Heard Mr. S.K. Pradhan-3, learned counsel for the appellants and Mr. Santosh Kumar Mohanty,

learned counsel for R-1 and perused the record. The notice against R-2 could not be issued due to incomplete filing of requisites by the appellants. Since R-2 was set *ex-parte* in the proceeding before the learned tribunal and the appeal being of the year 2010, the notice against R-2 stands dispensed with in view of the provision under Order XLI Rule 14(4) of the CPC.

4. After having considered the rival submissions and upon perusal of record, since the quantum of compensation is seriously challenged by the appellants-claimants, this Court straight away advert to the finding of the learned tribunal with regard to determination/ computation of the compensation. It is found from the record that the learned tribunal has considered the deceased to be a daily laborer and by applying a minimum wages, his monthly income was taken at Rs.1,500/- per month at the relevant time of his death on 28.04.1999, but Mr. S.K. Pradhan-3, however, seriously challenges such finding by taking this Court to the relevant observation of the learned tribunal discarding

the documentary evidence of Exhibit 5 & 6 which are photocopy of some documents stated to be the salary certificate of the deceased. It is, accordingly, found that the learned tribunal in paragraph 9 of the impugned judgment while not accepting Ext.5 & 6 towards income of the deceased has inter alia observed as under: -

> *"The petitioners have pleaded in the claim application that the deceased was earning Rs.5,000/- per month from coal mining service. To support the same PW.1 has stated in her evidence that the deceased was contributing Rs.5,000/- per month for family maintenance and PW.2 has said that the deceased was getting salary of Rs.5000/- to Rs.6000/- per month. Both PWs.1 & 2 say that the deceased was working as a labourer in a coal field. In her cross PW.1 has admitted that the documents regarding working of the deceased have been destroyed. To further substantiate their case two, xerox slips have been filed by the petitioners regarding salary of the deceased. But those documents have no evidentiary value for the reason that the same can be easily manipulated not being originals and hence discarded from evidence. Again, a photograph of the deceased has been filed by the petitioners to show that he was a quarry worker, but due to lack of sufficient proof, the same cannot be relied on. Therefore, it appears that except the oral testimony adduced by the petitioners, there is no other reliable document placed on record by the petitioners. The very statement of PWs.1 & 2 cannot satisfactorily establish the income of the deceased. Though OP No.2 has not adduced any rebuttal evidence to disprove the income of the deceased, but the petitioners owe their prima-facie duty to*

establish the income of the deceased as Rs.5000/- per month, which they have failed. But it is the consistent case of the petitioners that, the deceased was working as labourer prior to his death. Taking into account the rate of minimum wages prescribed during the year 1999, the monthly income of the deceased can be assessed at Rs.1500/."

5. Had the deceased been employed somewhere and been issued with salary slips, the claimants could have examined the employer or they could have even taken steps to summon the employer for proof of the monthly income of the deceased, but they have not done so. Right now, the appellants have not been able to produce any documents to show that the deceased was gainfully employed with somewhere and was getting salary of Rs.5,000/-. In absence of any proof of income of the deceased and concrete evidence with regard to his avocation and income, the learned tribunal has rightly taken the income of the deceased at Rs.1,500/-, but probably due to oversight, it has omitted to add any amount towards future prospect to the determined income of the deceased while computing the compensation. Since the deceased was aged about 45

years, an addition of 25% to the determined income of the deceased can be considered. Adding 25% of Rs.1,500/- = Rs.375/- to it, the net income of the deceased would come Rs.1,500/- + Rs.375/- = Rs.1,875/- at the relevant time of accident. Computing the compensation by taking the income of the deceased @ Rs.1875/- per month and deducting 1/3rd from it towards personal living expenses, the net loss of dependency of the claimant would come around Rs.1875/- – Rs.625/- (1/3rd of Rs.1875/-) = Rs.1,250/- x 12 x 14 = Rs.2,10,000/-. Adding a consolidated sum of Rs.50,000/- towards general damages, the net compensation to which the appellants claimants are entitled would come to Rs.50,000/- + Rs.2,10,000/-= Rs.2,60,000/-. In addition, the claimants are entitled to simple interest @6% per annum w.e.f the date of filing of the claim application till its actual realization. Further, the finding of the learned tribunal with regard to giving recovery of right to the insurer having not challenged by the owner and the claimants, the same remains confirmed. It is further contended by Mr. Santosh Kumar

Mohanty, learned counsel for R-1 that the award has already been satisfied and, if that be so, the appellants are entitled to differential amount together with interest @ 6% per annum w.e.f the date of filing of the claim application till its actual realization.

6. In the result, the Appeal stands allowed, but there is no order as to costs. Consequently, the impugned judgment stands modified to the extent indicated above and the insurer is directed to pay the differential compensation amount of Rs.2,60,000/- – 1,83,000/- = Rs.77,000/- together with simple interest @ 6% w.e.f. 13.10.1999 till its actual realization within eight weeks hence and in case of deposit of the compensation before the learned tribunal; the same shall be disbursed the same to the claimants-appellants in cash in equal proportion by keeping 20% of it in the name of each of the claimants in fixed deposit in any nationalized bank for five years.

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Date: 11-Nov-2026 16:08:50

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 10th day of November, 2026/Jayakrushna