IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.494 of 2024
CNR No. ODHC010334352024

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

The Manager (Legal) M/S. Chola Mandalam, MS. GIC Ltd., BBSR … ***Appellant***

-versus-

Jashamin Hembram and others … ***Respondents***

For Appellant : ***Mr. G.P. Dutta, Advocate***

For Respondents : ***None***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:30.10.2026 (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 Appellant-The Manager, (Legal) M/S. Chola Mandala (In short "the insurer") against the impugned judgment dated 27.01.2024 passed by the learned 4th Motor Accident Claims Tribunal, Jajpur Road (In short, "the Tribunal") in M.A.C. Case No.06 of 2021 directing the insurer to pay a sum of Rs. 19,01,125/- to the claimants-cum-R1 to 4 herein together with simple interest @ 6% per annum w.e.f. 02.03.2021 till its realization as

compensation in an application U/S. 166 of the Act towards the death of their predecessor-in- interest in a Motor Vehicular Accident.

2. The factual matrix in precise is that in an accident which took place on 11.02.2020 near Talagar Chowk in between Jajpur Road and Ragadi, one Kunu Hembram (hereinafter referred to as "the deceased") while going along with one Biju Tudu on a Bicycle was allegedly hit by the Truck bearing Regd. No. OD-04-L-4543 (In short "the offending Truck") resulting in death of the deceased and injuries to Biju Tudu. An FIR being filed on this accident came to be registered as Korei PS Case No. 217 of 2020 with commencement of the investigation thereof resulting in submission of charge sheet against the driver of the offending truck for rash and negligent driving. Upon a claim being preferred by the dependents of the deceased on this accident, the learned tribunal registered the same vide M.A.C. Case No.06 of 2021 and proceeded in the case by issuing notice to the owner and insurer of the offending truck.

2.1. In response to such notice of the claim, the owner of the offending truck did not appear and was set *ex-parte,* whereas the insurer of the offending vehicle appeared and filed its written statement denying its liability and calling upon the claimants to prove their case. In addition, the insurer took the plea manufacturing the case by planting the offending truck, since FIR was registered after 204 days of the accident.

2.2. On the *inter-se* pleadings by the parties, the learned tribunal struck five issues and allowed the parties to lead evidence. In support of their claim, the claimants examined two witnesses vide PW1 & PW2 and exhibited nineteen documents under Exts. 1 to 19 in support of their claim as against the documentary evidence by the insurer under Ext. A & B. On conclusion of inquiry, the learned Tribunal after appreciating and analyzing the rival pleadings together with evidence on record upon hearing the parties dispose of the claim by impugned judgment granting compensation to the claimants indicated *supra.* Being aggrieved with the impugned judgment, the insurer has preferred this appeal.

3. Heard, Mr. G.P. Dutta, learned counsel for the appellant, but none appears for the Respondents not only on today, but also on last date, despite they being duly noticed and thereby, this Court without waiting the Respondents considers it in the interest of justice to dispose of this appeal by perusing the materials available on record.

4. After having considered the rival submissions and upon perusal of record, it appears that the insurer mainly challenges the impugned judgment on two counts; firstly, planting of vehicles and secondly, the quantum of compensation. In adverting to the first challenge of the appellant, it appears that the insurer mainly takes the refuge of delay in lodging of FIR for 204 days to raise suspicion about genuineness of the claim and to assert claim of planting of vehicle by the claimants to get the compensation. It is further contended by Mr. Dutta that although Covid-19 has been taken as a ground by the claimants for delay in lodging of FIR, but merely because there is delay in lodging of FIR, it would not *ipso facto* suggests that the same was manufactured one, more particularly when there is an

explanation of delay contained in the FIR. Besides, in a case of accident, it would not be unusual that the relatives of the persons suffering accident must be busy with the treatment of such person and that would be definitely a ground for delay in lodging of FIR. It is also beyond the realm of imagination of the Court that if the FIR is stated to be manufactured one for being lodged after some delay, why the Investigating Officer would support the informant to place a charge sheet against an innocent person as the offender and in a case like this, there must be some valid reason or ground to disbelieve the incident of accident. In this case, not only the claimants have exhibited the Police papers of the accident case, but also such Police papers unambiguously go to disclose that the deceased sustained injuries in the accident caused by the offending vehicle and the driver of the offending vehicle had been charge sheeted for rash and negligent driving the offending truck. It would not be proper to suspect the process of investigation in the lens of the insurer, especially when the insurer has failed to lead any ocular evidence to dispute the accident.

5. Another ground was also advanced in the course of argument to disbelieve the accident is for non-holding of autopsy over the dead body of the deceased. There appears no dispute about the document under Ext. 10, which is the Discharge Certificate of the deceased from the Hospital, whereas Ext. 17 is the Bed head ticket and Ext. 18 is the death certificate of the deceased. Ext. 17 reveals about the treatment of the deceased till 12.03.2020, whereas Ext. 18 reveals his death to have taken place on the same date on 12.03.2020 and, therefore, it is hardly dis-believable that the deceased did not die due to accident. Further, the other documentary evidence sufficiently discloses that the deceased had sustained head injury due to Road Traffic Accident and the deceased was diagnosed with RTTP contusion with ASDH with fracture of right tibia and fibula. It is, therefore, very clear that the challenge of the insurer for planting vehicle appears to be its imagination only. In addition, once a party wishes any particular finding to be recorded in his favour, he has to plead and prove the same, but when the claimant has already established by sufficient oral and documentary evidence to establish that the

deceased died due to Road Accident, the burden of proof in turn is on the insurer to establish that the deceased did not die in the accident and the vehicle was planted by leading clear and cogent evidence but the insurer has failed to do so and this Court, thereby, is not impressed upon to accept the challenge of the insurer that the deceased did not suffer death due to accident, rather this Court wholly concurs with the finding of the learned trial Court that the deceased sustained injuries in the accident involving the offending Truck and he died due to the injuries sustained by him in such accident.

6. Once it is found that the deceased had suffered death in a motor vehicular accident, the claim is squarely maintainable against the insurer and owner of the offending vehicle, but the quantum of compensation, to which the claimants are entitled is a definitely question to be answered. In this case, the claimants had asserted that the deceased was working as a Mason, but the insurer stoutly denies the profession of the deceased in absence of any clear and cogent evidence. Be that as it may, even in absence of any concrete proof about the profession of the

deceased, this Court considers it proper to rely upon the minimum wages to assess the income of the deceased as unskilled labourer. The learned trial Court has of course taken the minimum wages for the deceased as a skilled labour, but in absence of any reliable evidence of avocation of the deceased, this Court, however, takes the minimum wages for an unskilled labour. Taking the minimum wages for unskilled labour at the relevant time of accident at Rs. 298/- which is rounded up to 300/- per day, the monthly income of the deceased would come around 7,800/- by taking 26 working days and, therefore, the annual income of the deceased would come to Rs. 93,600/-, but it is found from Ext. 19, the Aadhaar Card of the deceased that his date of birth is 10.06.1980 and he died in the accident on 12.03.2020 and thereby, the deceased would be around 39 years 9 months 2 days as on the date of his death and, therefore, an addition of 40% to the income of the deceased is mandated in view of the dictum of the Apex Court in ***National Insurance Company Limited Vrs. Pranay Sethi and others; (2017) 16 SCC 680***, but the learned tribunal has erroneously added 25% to the income of the deceased

towards future prospects. Hence, the annual income of the deceased together with future prospect would come to Rs. 1,31,040/-. Since the deceased was having four dependents, 1/4th is required to be deducted towards his personal and living expenses and, therefore, after deducting the 1/4th from the income of the deceased, the net contribution of the deceased to his family would come around Rs. 98,280/-. Since the deceased was aged about less than 40 years, the appropriate multiplier would be 15. Hence, the net loss of dependency of the claimants would be Rs. 98,280/- X 15 = 14,74,200/-. The claimants are also entitled to Rs. 84,000/- (Rs. 70,000+2 X 10 % of Rs. 70,000) towards general damages, since the deceased died on 12.03.2020 and in the meantime, six years has elapsed. The net compensation, to which the claimants are entitled to Rs. 14,74,200/- + Rs. 84,000/-= Rs. 15,58,200/- rounded up to Rs. 15,60,000/-. In addition, the claimants are entitled to 6% interest w.e.f the date of filing of the claim application i.e. on 02.03.2021 till actual realization.

7. In the result, the appeal stands allowed in part, but in the circumstance, no order as to costs. Consequently,

the impugned judgment of the learned tribunal is modified to the extent indicated above and the insurer-appellant herein is hereby directed to pay the modified compensation amount indicated in the preceding paragraph to the claimant-Respondents 1 to 4 within eight weeks hence. The statutory deposit together with the accrued interest thereon be refunded back upon receipt of proof of deposit of modified compensation by the insurer before the learned Tribunal.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 30th day of October, 2026/Priyajit

Signature Not Verified
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Reason: Authentication
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