IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.919 of 2023
CNR No. ODHC010781172023

(An Appeals U/S.173(1) of Motor Vehicles Act, 1988).

Ajay Kumar Sinha and another … ***Appellants***

Mr. P.C. Pattanaik, Advocate

-versus-

Jayadeb Nanda and another … ***Respondents***

Mr. M. Sinha, Advocate (R-2)

MACA No.748 of 2023
CNR No. ODHC010598292023

New India Assurance Co. Ltd., Jajpur … ***Appellant***

Mr. M. Sinha, Advocate

-versus-

Ajay Kumar Sinha and others … ***Respondents***

Mr. P.C. Pattanaik, Advocate (R-1 & 2)

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:10.11.2026 (ORAL)

G. Satapathy, J.

1. These two Appeals U/S.173(1) of the Motor Vehicles Act, 1988 (In short, "the Act") are directed against the same impugned judgment dated 08.05.2023 passed by learned First Motor Accident Claims Tribunal, Jajpur (In short, "the Tribunal") in MAC Case No.206 of 2017.

1.1. By the impugned judgment, the learned Tribunal directed the New India Assurance Co. Ltd. (In short, "the Insurer") to pay a sum of Rs.7,90,400/- together with simple interest @ 6% per annum w.e.f. the date of filing of claim application on 22.12.2017 till actual realization to the claimants, with default interest @ 9% per annum, if the compensation is not paid within three months of passing of the impugned judgment.

2. The facts in this case, being largely undisputed are not reiterated in *extenso,* but it is reiterated in precise for disposal of these two Appeals which trace its origin to an accident that occurred on 22.10.2014 at about 4 PM, when the Motorcycle bearing Regd. No. OD-04-D-1702 (hereinafter referred to as "the offending Motor cycle") in which one Sajan Kumar Sinha (hereinafter referred to as "the deceased") was proceeding as a pillion rider, dashed against a road side parked Fire Brigade Van bearing Regd. No. OD-05-C-4485 resulting in death of the deceased. An FIR being filed on this accident came to

be registered at local Police Station paving the way for commencement of investigation, which resulted in submission of Final Form.

2.1. Upon a claim being filed on this accident by the LRs of the deceased, the learned Tribunal proceeded in the matter by issuing notice to the owner and insurer of the offending Motor cycle, but the owner of the offending Motor cycle being impleaded as party to the claim has filed written statement admitting the ownership of the Motorcycle and the accident with further plea that since his Motorcycle was insured with the insurer, it is the insurer to satisfy the award by paying the compensation amount to the claimants. On the other hand, the insurer has filed its written statement denying all the allegations leveled against it and *inter-alia* disowning its liability to pay compensation to the claimants on technical grounds.

3. On the *interse* pleadings of the parties, the Tribunal has framed necessary issues and allowed the parties to lead evidence, but the claimants have adduced evidence by examining two witnesses and

producing seven documents under Exts.1 to 7 in support of their claim as against two documentary evidence of copy of FIR and copy of Final Form of the Police Case by the insurer to refute the claim of the claimants. On conclusion of inquiry, the learned Tribunal after appreciating the evidence on record upon hearing the parties has passed the impugned judgment granting compensation to the claimants indicated *supra*. Being aggrieved with the quantum of compensation, the claimants have preferred Appeal in MACA No.919 of 2023, whereas the insurer has preferred Appeal in MACA No.748 of 2023 to challenge not only the quantum, but also the liability to pay compensation to the claimants.

4. Heard, Mr. Padma Charan Pattanaik, learned counsel for the claimants and Mr. Mahitosh Sinha, learned counsel for the insurer in both the Appeals, but none appears for the owner of the offending Motor cycle despite being duly noticed.

5. After having considered the rival submissions and upon perusal of record, no doubt the insurer has challenged the liability of paying compensation to the claimants by contending *inter-alia* that since there was head-on collision between the offending Motor cycle and the Fire Brigade Van in question, the liability of paying compensation should be apportioned in the ratio 50:50 on both the Motor cycle and the Fire Brigade Van, but law in this regard has been made very clear 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 Motor cycles 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."*

6. It is, however, found from the record that the claimants have not only adduced oral evidence, but also documentary evidence to suggest that the death of the deceased was due to rash and negligent riding of the Motorcycle by its rider and once it is established that the deceased died due to negligence of the offending Motor cycle, the owner of such Motor cycle is liable to pay the compensation to the claimants, but the

insurance policy of the offending Motor cycle having admittedly found to be with the insurer, it is the insurer who is contractually liable to indemnify the insured and, thereby, the learned Tribunal has not committed any illegality in saddling the liability of paying compensation on the insurer-cum-New India Assurance Co. Ltd. Accordingly, this Court does not find any convincing and cogent ground to disturb the findings of the learned Tribunal with regard to the deceased dying due to rash and negligent act of the rider of the Motorcycle and the liability of paying compensation to the claimants to be on the insurer.

7. On turning to the quantum of compensation, this Court does not find any error in the finding of the learned Tribunal inasmuch as, since the deceased was admittedly found by the learned Tribunal to be a daily wage earner in absence of any evidence, his notional income was rightly taken at Rs.150/- per day as a unskilled wage earner, but it is claimed by the claimants that the deceased was a mason and, thereby, he being a skilled labourer, his monthly income ought

to have been taken by the learned Tribunal @ Rs.15,000/- per month, but no concrete and reliable evidence was adduced by the claimants qua the profession and income of the deceased and, thereby, the finding of the learned Tribunal with regard to the income of the deceased at Rs.150/- per day as taken by the Tribunal could not be validly disputed or assailed. On a careful scrutiny of the computation of compensation as done by the learned Tribunal, it appears that only there appears some error with regard to extending the benefit under non-pecuniary head. At this stage, upon a comprehensive and consensus-seeking exercise with the learned counsel appearing for the parties, this Court proposes an amount of Rs.7,50,000/- along with interest @ 6% per annum w.e.f. the date of filing of claim application on 22.12.2017 till its realization as compensation to the claimants and seeks the response of the learned counsel for the parties, to which Mr. Padma Charan Pattanaik, learned counsel for the claimants by filing a memo agrees and accepts the proposal of the Court,

but Mr. Mahitosh Sinha, learned counsel for the insurer leaves it to the discretion of this Court.

8. In the aforesaid facts and situation and taking guidance from the law laid down by Apex Court in ***Taslim Parvin & Another vrs. (Smt.) Usha Devi & Another; 2018(2) TAC 22 (SC)***, since the claimants agree to the proposal of the Court through their counsel and the counsel for the insurer without disputing such proposal leaves it to the discretion of the Court, it is considered that the interest of justice would be best served, if the compensation amount is reduced to Rs.7,50,000/- together with interest @ 6% per annum w.e.f. the date of filing of the claim application on 22.12.2017 till its realization which shall be paid by the insurer to the claimants.

9. In the result, the Appeal filed by the claimants in MACA No.919 of 2023 stands dismissed, but the Appeal filed by the insurer in MACA No.748 of 2023 stands accordingly allowed with modification of compensation amount. Consequently, the insurer-cum-New India Assurance Co Ltd is directed to pay the

aforesaid modified compensation amount of Rs.7,50,000/- together with simple interest @ 6% per annum w.e.f. the date of filing of the claim application on 22.12.2017 till its realization to the claimants within eight weeks hence. In case of deposit of aforesaid modified compensation amount before the learned Tribunal, the same shall be disbursed to the claimants proportionately in terms of the award. The statutory deposit together with the accrued interest thereon be refunded upon receipt of proof of deposit of modified compensation before the learned Tribunal.

(G. Satapathy)
Judge

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

Signature Not Verified
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Designation: Sr. Stenographer
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Location: High Court of Orissa, Cuttack
Date: 12-Nov-2026 14:53:03