IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.26 & 27 of 2023

(In the matter of application under Section-173(1) of M.V. Act, 1988).

MACA No.26 of 2023

Manager, Legal (T.P. Claim), Cholomandalam, M/S. General Insurance Co. Ltd. Khordha	…	***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Priyadarshi Das & Another	…	***Respondents***

Mr. A.K. Mohanty, Advocate(R-1)

MACA No.27 of 2023

Priyadarshi Das	…	***Appellant***

Mr. A.K. Mohanty, Advocate

-versus-

Patitapaban Behera & Another	…	***Respondents***

Mr. A.A. Khan, Advocate(R-2)

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING : 24.02.2026
DATE OF JUDGMENT: 27.02.2026

G. Satapathy, J.

1. These two appeals U/S. 173(1) of Motor Vehicles Act, 1988(in short "the Act") ; one by insurance Company (in short the "insurer") in MACA No.26 of 2023 and other by claimant in MACA No.27 of 2023 challenge the quantum of compensation as awarded by the impugned judgment dated 19.09.2022 passed in

M.A.C. No. 85 of 2017 by which the learned 7th Motor Accident Claims Tribunal, Bhubaneswar (hereinafter referred to as "the Tribunal") awarded compensation of Rs.1,12,71,231/- (Rupees One Crore Twelve Lakhs Seventy One Thousand Two Hundred Thirty One) together with Simple Interest of 6% per annum to the claimant for the injuries and loss sustained by him in a motor vehicular accident and directed the insurance company to satisfy the award.

2. Bereft unnecessary details, the appeals arise out of an accident which took place on 24.11.2016 at about 12 Noon when one Priyadarshi Das, a "C" class contractor by profession (claimant) coming from his village Nayagarh by riding his bullet motorcycle was dashed from the front by the truck bearing Regd. No. OD-25-5655(hereinafter referred to as "the offending vehicle") near Khelapada Lord Shiva Temple as a result, the claimant sustained multiple serious injuries including fracture and was immediately shifted to nearby hospital and later treated at different hospitals incurring huge expenditures. Besides, the accident was registered vide Khandapada Sadar PS case No. 65 of 2016, which culminated in charge sheet. On this accident, the claimant approached the learned tribunal in an application U/S. 166 of the Act by impleading the owner and insurer of the offending vehicle which resulted in award of compensation to him by the impugned judgment, however, the quantum of such award is challenged by both the claimant and insurer in these two appeals.

3. Heard, Mr. Adam Ali Khan, learned counsel for the appellant-insurer in MACA No. 26 of 2023 & Respondent No.2 (R2) in MACA No. 27 of 2023 and Mr. Amiya Kumar Mohanty, learned counsel for the appellant-claimant in MACA No. 27 of 2023 & Respondent No.1 (R1) in MACA No. 26 of 2023 and perused the record, but notice against the owner of offending vehicle stood dispended with since liability to satisfy the award has not been challenged in these appeals.

4. After having considered the rival submissions upon perusal of record together with short written notes of submission filed by the insurer, it appears that primarily the quantum of compensation is challenged on two counts; firstly, assessment of extent of disability of the claimant and secondly, the assessment of income of the claimant. In the appeal by the claimant, the quantum of compensation is challenged mainly on the ground of determination of his income. According to the claimant, the learned Tribunal committed error by not taking his income @ Rs.1,46,000/- per month, but the learned Tribunal has admittedly assessed the annual income of the claimant at Rs.13,74,724/- by referring to his Income Tax Return (ITR) for the year 2016-17, which is arrived at annual gross income of the claimant less income tax paid. No doubt, the claimant claims his monthly income to be Rs.1,46,000/-, but he has only filed his ITRs for the year 2016-17, 2017-18, 2018-19 & 2019-20 in addition to the oral evidence of PW2 who is stated to be a Charted Accountant and claims to be the Income Tax Retainer & Auditor of the claimant. No doubt, PW2 has exhibited the balance sheet of the claimant along with profit and loss statement under

Ext.11 with objection by the insurer, however, such objection was consolidated in cross-examination of PW2 when he admitted to have not prepared Ext.11. Additionally, PW2 has proved the ITRs of the claimant under Exts. 10, 13, 14 & 15, but he has admitted in cross-examination that the income of the claimant was in reducing trend. It is found from the cross-examination of PW.2 that the ITR of the claimant for year 2018-19 shows his taxable income of Rs.1,69,110/-, but the ITR of the claimant for the year 2018-19 under Ext.14 reveals the taxable income of the claimant at Rs.16,84,530/- with gross total income of Rs.18,52,128/-, and the tax payable is found to be Rs.3,36,510/-. It is, therefore, very clear that PW2 has no idea about the income of the claimant, but the Tribunal has referred to the ITR of the claimant for the year 2016-17 to assess his income. It is undisputed that the accident took place on 24.11.2016 and the Tribunal, therefore, has rightly taken the ITR of 2016-17 under Ext.10 for the purpose of computing compensation to the claimant. Hence, the plea as advanced by the claimant in his appeal to enhance compensation on the ground of his income to have not been properly assessed merits no consideration and it is accordingly, required to be rejected.

5. Moving to the plea/challenge of the insurer in its appeal which according to it is improper assessment of the disability of the claimant, it appears that the insurer mainly relies upon the rulings of ***Raj Kumar Vrs. Ajay Kumar and another; (2011) 1 SCC 343*** to dispute the assessment of disability made by the learned Tribunal, but it has never challenged the disability certificate issued to the claimant when it was tendered in evidence under Ext.9. Law is also equally well settled in ***Ajay Kumar (supra)*** that where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificate. In the circumstance, when the genuineness of Ext.9 was never challenged by the insurer and in absence of any evidence contrary to genuineness of Ext.9, this Court is of the view that Ext.9 is a genuine document.

Undeniably, loss of future earning of the claimant sustaining injuries in the accident can be assessed by making reference to the disability certificate of such injured, but it is equally true that the same extent of disability arising out of the injuries may affect two different persons in different ways inasmuch as the extent of permanent disability in relation to a part of body or whole body may not be same to the extent of functional disability of the said person. For example, 20% of permanent disability in respect of brain may not be the same percentage of disability in relation to one limb of the body of the same person and it would lead to different extent of functional disability for the same person depending upon the nature of work performed by the injured, but in any case, the partial disability of brain for 20% would result in higher degree of consequence than the same percentage of disability of limb. Additionally, the same percentage of permanent disability can result in different consequence for two different persons. For example, 20% of disability of right upper limb in a case of mason would have higher degree of loss of earning for him than with same percentage of permanent disability for a Clerk and other office employee having table job with habit of writing in right limb. This is the precise reason why the rulings in ***Ajay Kumar (supra)*** are considered relevant for computing just compensation to the claimant. For the purpose of computation of compensation in a case of injury resulting in permanent disability, Paragraphs-12, 13 & 17 of ***Ajay Kumar (supra)*** are considered relevant which are reproduced as under: -

> *"**12.** Therefore, the Tribunal has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:*
>
> > *(i) whether the disablement is permanent or temporary;*
> > *(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,*
> > *(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.*
>
> *If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of*

future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

17*. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the* *corresponding functional permanent disability with reference to the whole body and if so the percentage."*

6. It is also equally true that the loss of earning capacity is something that will have to be assessed since the same permanent disability may result in different percentage of loss of earning capacity in different persons depending upon the nature of profession, occupation, job, age, education & other factors relating to the claimant. Applying the aforesaid principles as referred to above together with the dictum of Apex Court in ***Ajay Kumar (supra)***, it appears from Ext.9 that the case of the claimant is a locomotor disability and has been diagnosed as Post Traumatic Fracture of Right Upper Limb with Lower Limb. Ext.9 further discloses that claimant has 60% permanent disability in relation to his (part of body). Further, PW1 in her examination-in-chief at Paragraph-4 has stated as under: -

*"**4.** That, as a result of which my husband (applicant) fell down on the road along with his motorcycle sustaining **compound fracture injuries in his right leg tibia fibula, right hand humerus compound fracture with abrasion of muscle** and rupture of ligament*

and many others swollen and bleeding injuries throughout his body and head."

In addition, Ext.6 the discharge summary of the claimant reveals the diagnosis as under: -

Compound fracture proximal 1/3rd of right tibia & fibula, compound fracture distal 1/3rd of right humerus+ radial nerve neuro maxia+Htn.

7. The aforesaid evidence clearly discloses that the claimant has suffered compound fracture of right tibia fibula, right humerus, but he is stated to be "C" class contractor, however, there is no evidence adduced by the claimant to show that what work he was doing prior to the accident and how he could not perform such work after the accident due to the disability nor the insurer has led any evidence to show that even after permanent disability, the claimant could still effectively carry on the activities and function which he was earlier carrying on. The evidence so produced by the claimant would definitely go to show that he must have been prevented or restricted from discharging his normal previous activities and function, but on the other hand, he could still carry on his avocation on a lesser scale. Looking at the avocation of the claimant, it cannot be said that he is on permanent job and he would get work regularly because a Contractor has to successfully apply for bid to do work, but it is uncertain that the Contractor would get each and every work he applies for. It is also found from the record that the claimant was earning from his profession which is evident from Exts. 10, 13, 14 & 15(ITRs), which are of course on decreasing trend except ITR for the year 2018-19(Ext. 14) when the income of the claimant had increased. Further, the insurer has not and could not validly challenged the determination of income of the injured-claimant and he only dispute with regard to the assessment of disability of the claimant. In the aforesaid situation, this Court considers it relevant to notice the illustration as taken by the Apex Court in Paragraph-14 of ***Ajay Kumar (supra)*** while computing compensation therein in Paragraph-25 before taking up the exercise in computing the compensation in this case. The relevant

Paragraphs-14 & 25 of ***Ajay Kumar (supra)*** are extracted as under: -

> *"**14.** For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.*
>
> ***25.** The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability*

of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%."

8. Undoubtedly, the claimant-appellant has relied upon the decision in ***S. Ettiappan Vrs. D. Kumar and another; 2026 (1) TAC 84 (SC)*** to assert that compensation should have been allowed to him by calculating his loss of future income @ 100 % disability, but the aforesaid decision on a respectful consideration found distinguishable from the facts of the present case inasmuch the claimant in the relied on case is a loader who used to discharge his duty of loading and unloading vegetables into the vehicles and his leg was amputated due to the accident and thereby, his case is rightly taken at 100% disability for calculating loss of future earning, however, in the present case, the claimant is a C-Class Contractor and neither his leg was amputated nor can he be said to have lost his avocation due to accident nor is there any evidence to say that the claimant cannot perform the work earlier he was doing as evident from the Exts. 13 &14 which shows handsome earning of the claimant even after the accident. In the aforesaid facts and discussion made hereinabove and applying the principle of law to the facts to the case at hand, since the disability of the claimant has not been disputed as permanent disability of 60%, but the same being in relation to his right upper limb with lower limb and considering the same on the basis of injuries sustained by the claimant as referred to by PW1 in her examination-in-chief and balancing them with reference to the avocation of the claimant as "C" class Contractor, this Court considers it proper to assess the functional disability of the claimant at 45% and loss of future earning capacity at 35%. The net annual income of the claimant which was arrived at Rs.13,74,724/- by the learned Tribunal taking his gross annual income at Rs.17,57,921/- less tax paid in

ITR for the year 2016-17 which is also confirmed by this Court in these appeals, but since the claimant-injured is aged about 47 years, an addition of 25% towards future prospect is also considered relevant, inasmuch as the claimant has definite prospect to earn more and had he worked with his full capacity, his earning would definitely have increased. Hence, the annual income of claimant together with future prospect would come around Rs.13,74,724 + Rs.3,43,681 (25% of Rs.13,74,724/-) = Rs.17,18,405/- and, therefore, the loss of future income of the claimant would be assessed Rs.17,18,405/-X 13 X 35%=Rs.78,18,743/-. Further, the medical expenses incurred by the claimant has never been disputed, besides the claimant is also entitled to compensation for pain, suffering and trauma, loss of amenities and loss of expectation of life nominally and accordingly, a sum of Rs.5,00,000/- is granted under such heading as a token. Additionally, the claimant is remained hospitalized for 30 days and he is thereby granted with attendant charges together with special diet

Rs.4,00,000/- in view of the law laid down by the Apex Court in ***Rina Rani Mallick Vrs. Susim Kanti Mohanty and another; 2025 (2) TAC 781 (SC)***. Further, no amount has been granted under the heading of loss of income during the treatment and post treatment. It is not disputed that the claimant remained in hospital for one month, but he thereafter, must have taken time for recovery and, therefore, a lump sum amount of Rs.5,00,000/- is granted for his loss of income during treatment and post treatment period. Accordingly, the compensation is recalculated as under in a tabular form: -

Loss of pain, suffering and trauma, loss of amenities and loss of expectation of life nominally	**Rs.5,00,000/-**
Attendant charges together with diet	**Rs.4,00,000/-**
Loss of income during treatment and post treatment period	**Rs.5,00,000/-**
Loss of future income	**Rs. 78,18,743/-**
Total Compensation	**Rs.92,18,743/-**

The petitioner is also entitled to simple interest @6% per annum. Hence, the claimant is entitled to Rs. 92,18,743/- together with simple interest 6% per annum from the date of filing of the claim petition i.e. from 19.06.2017 till the date of payment.

9. In the result, the appeal by the claimant in MACA No.27 of 2023 stands dismissed, but the appeal by the insurer in MACA No.26 of 2023 stands allowed in part on contest, but in the circumstance, there is no order as to costs. Consequently, the impugned judgment is modified to the extent indicated above and the claimant is entitled to Rs. 92,18,743/- together with interest @ 6% per annum w.e.f. 19.06.2017 till actual realization. The insurer shall deposit the modified compensation amount before the learned Tribunal within eight weeks hence and on such deposit, the same shall be disbursed to the claimant in terms of the award passed by the learned Tribunal. On production of proof of deposit of such modified compensation, the statutory deposit together with interest accrued thereon be refunded to the insurer.

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(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 27th day of February, 2026/kishore