HIGH COURT ORISSA

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.274 of 2018

(In the matter of application under Section 173(1) of the Motor Vehicles Act, 1988).

The Divisional Manager, M/s. National Insurance Co. Ltd., Cuttack … ***Appellant***

-versus-

Krushna Chandra Dixit and others … ***Respondents***

For Appellant	:	***Mr. P.K. Tripathy, Advocate***
Respondent No.1 &2	:	***Dead and deleted***
For Respondent No.3 to 6	:	***Mr. B. Singh, Advocate***
For Respondent No.7	:	***None***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING : 27.02.2026
DATE OF JUDGMENT: 23.03.2026

G. Satapathy, J.

1. The appellant-National Insurance Company Limited (in short, the "insurer") is subjected to this appeal by the impugned judgment dated 21.10.2017 passed by the III Motor Accident Claims Tribunal, Bhadrak (in short, the "Tribunal") in MAC Case No.29 of 2011 directing the insurer to pay Rs.17,00,670/- only to the claimant-respondent Nos.1 to 6 together with simple interest @ 7% per annum w.e.f. 19.04.2011 till its actual realization.

2. Briefly stated, the claimant-respondent Nos.1 to 6 herein being the Legal Representatives (LRs) of one Kedarnath Dixit (hereinafter referred to as, the "deceased") a Storage Agent by profession had approached the learned Tribunal in an application U/S.166 of the Motor Vehicle Act (in short, the "Act") for compensation towards death of the deceased on 23.12.2010 at about 4 PM at Ranital Bazar in a motor vehicular accident, while travelling from Maitapur to Bhadrak as a pillion rider on the motor cycle of Om Prakash Nayak bearing Registration No.OR-22E-0699 (hereinafter referred to as, the "offending motor cycle") being ridden in rash and negligently when the motor cycle hit the road divider. According to the claimant-respondent Nos.1 to 6, the accident was reported and Bhadrak Rural PS Case No.420 of 2010 was registered against Mr. Om Prakash Nayak for rash and negligent riding and causing death of the deceased by negligence. Accordingly, the claim of the claimantspetitioners (R1 to 6) was registered vide MAC Case No.29 of 2011 with the owner and insurer of the offending motor cycle as OPs (R7 & Appellant).

In response to the aforesaid claim, the owner of the motor cycle did not participate and was accordingly set *ex parte* in MAC No. 29 of 2011, whereas, the appellant-insurer appeared and contested the claim by filing its written statement denying all the averments asserted by the claimants and *inter alia* setting forth the plea that the deceased died out of his own negligence for not putting head gear and helmet and, thereby, contributing to the accident.

3. On the rival pleadings of the parties, the learned Tribunal struck three issues and allowed the parties to lead evidence. Accordingly, the claimants examined two witnesses vide PWs.1 & 2 and exhibited 10 documents vide Exts.1 to 10 as against no evidence whatsoever by the insurer. After appreciating the evidence on record upon hearing the parties, the learned Tribunal passed the impugned judgment directing the insurer to satisfy the award by holding the deceased to have contributed to the accident and fastening the liability of 50% on the insurer. Being aggrieved, the insurer has preferred this appeal, but the claimants-R3 to 6 have filed their cross-objection assailing the apportionment of liability on the deceased for 50% for equally contributing the accident.

3.1. During the pendency of the appeal, R1 & R2 died, but all the LRs. of R1 & 2 being on record, the names of R1 & 2 stand deleted from the appeal memo.

4. Heard Mr. Pramoda Kumar Tripathy, learned counsel for the appellant and Mr. Bishnubrata Singh, learned counsel for R3 to R6 in the matter and perused the record, but none appears for R7 despite valid notice of the appeal.

5. After having considered the rival submissions upon perusal of record, primarily it appears to the Court that the insurer challenges the quantum of compensation on three counts; such as (i) incorrect assessment of the income of the deceased by relying upon the Income Tax Return of a solitary year 2010-2011, (ii) Disputing the profession of the deceased and (iii) Excessive award of Rs.1,50,000/- towards damages under non-pecuniary heads and imposition of high interest rate @ 7% per annum on the award, but the quantum of compensation is also challenged by the claimant-R3 to 6 for apportionment of liability 50:50 to both the deceased and the insurer on account of intoxication of the deceased and for not granting any amount towards future prospect of the deceased in computing loss of dependency for the claimants.

6. Before addressing the challenges of the parties, it is found from the record that the claimants by examining the witnesses and exhibiting documents in evidence had established by preponderance of probability that the accident occurred due to rash and negligent riding of the rider of the offending motor cycle namely Om Prakash Nayak, which in fact could not be disputed by the insurer. Further, the insurer has not led any evidence to establish any of his plea, but on the other hand, the copy of FIR, charge-sheet, seizure list, inquest report, zimanama and PM report in Bhadrak Rural PS Case No.420 of 2010 being exhibited in evidence without any objection by the insurer itself has established that the accident occurred due to rash and negligent riding of the rider of the offending motor cycle and the deceased died in such accident.

7. Once the accident is found to have occurred due to rash and negligent riding of the rider of the offending motor cycle, the next question comes for determination is the quantum of compensation to the claimants, who are the legal representatives of the deceased. In this case, the profession and income of the deceased have been seriously disputed by the insurer, but such dispute of the insurer remains on paper without any evidence tendered by it. In support of proof of the avocation of the deceased, the claimants had examined PW2, who in his Examination-in-Chief has stated that the deceased was working as a Storage Agent for Simulia Block and also doing transport business, but not a single question was asked to PW2 to dispute the profession of the deceased as a Storage

Agent and even no suggestion was given to PW2 in this regard. It is, therefore, considered that the challenge to the profession of the deceased remains on paper only, but it could not be validly disputed by the insurer. Further, to establish the income of the deceased, the claimants had proved the Income Tax Return (ITR) of the deceased for the Assessment Year 2010-2011 under Ext.8, which was in fact objected to by the insurer, but only one question was put to PW1 with regard to non-filing the balance sheet of the deceased for the Assessment Year 2010-2011, however, on the other hand, the copy of Income Tax Return issued by the authority for an Assessment Year is a public document, which is admissible in evidence, unless the same is established to have not been issued by the authority. It has been held by the Apex Court in ***Malarvizhi and others Vrs. United India Insurance Company Limited and another; (2020) 4 SCC 228*** that Income Tax Return is a statutory document on which reliance may be placed to determine the annual income of the deceased. It is the contention of the learned counsel for the insurer that the learned Tribunal has committed error in relying upon the ITR, rather it should have been the average of the ITRs for three years, however, such proposition does not appeal to the conscience of the Court and, therefore, the challenge of the insurer to the Income Tax Return of the deceased being unfounded stands rejected.

8. It is also claimed by the insurer that the grant of compensation of Rs.1,50,000/- towards damages under non-pecuniary heads appears to be on higher side, which finds support from the decision in ***National Insurance Company Limited Vrs. Pranay Sethi and others; (2017) 16 SCC 680***, wherein a constitutional Bench of five Judges of the Apex Court in paragraph-59.8 has been pleased to held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and the aforesaid amounts should be enhanced at the rate of 10% in every three years. Applying the said principle, since the accident had taken place on 23.12.2010, the claimants are entitled to Rs.70,000/- + Rs.35,000/- (5 X 10% of Rs.70,000/- for five escalation) = Rs.1,05,000/-.

9. Adverting to the challenge of the claimants which was advanced through a cross-objection, it appears that the claimants strongly challenges the quantum of compensation for apportionment of liability in the ratio of 50:50 to both the deceased and the insurer on the ground of intoxication of the deceased and for not granting any amount towards future prospect of the deceased in computing the loss of dependency. In this context, it is found from the impugned judgment that the learned Tribunal while calculating compensation has ignored the future prospect of the deceased and it has apportioned the liability of the insurer and the deceased in the ratio of 50:50, but the main ground to hold the deceased to have contributed to the accident for his own negligence is for his intoxication, which is evident from the observation of the learned Tribunal in the last part of paragraph-9 of the impugned judgment, which reads as under:-

> *"**9.** Xxx xxx xxx The PM report, Ext.6 reveals that on dissection of stomach of the deceased, 700 ml of fluid admixed with food with **strong alcohol smell was detected**. So, it is apparent that there was contributory negligence on the part of the deceased."*

10. This Court is unable to persuade itself to accept the view of the learned Tribunal not only for the solitary reason of the insurer not taking such plea, but also for many other reasons, such as no suggestion in fact was given to any of the witnesses of the claimants for deceased taking liquor and accident occurring due to consumption of liquor by the deceased. In addition, the insurer has not advanced such plea in its written statement, besides; the insurer has not adduced any evidence to prove that the deceased was under the influence of alcohol at the time of accident and the accident occurred due to consumption of alcohol by the deceased. Additionally, the doctor was not examined by the insurer to establish the plea of intoxication of the deceased.

11. For arguendo, accepting, but not admitting the observation of the learned Tribunal about intoxication of the deceased, it appears that the consumption of alcohol would not debar or disentitle the claimants for compensation, unless it is established that the consumption of alcohol had caused/contributed to the accident, especially when the amount of alcohol or degree of intoxication are real markers/indicators to find out the cause of accident inasmuch as a small amount of liquor, such as one peg of drink may not be sufficient to inebriate a habitual drunkard, but the same may inebriate a tee-totaller, however, no provision of any act is brought to the notice of the Court to suggest that merely because one has consumed alcohol, the claim against his death for compensation by his dependants is not maintainable or he can be considered to have contributed to the accident, more particularly when he was the pillion rider on the motor cycle. Additionally, merely because the deceased had consumed liquor, it does not necessarily mean that he had contributed to the accident. In the aforesaid facts and situation, especially when the evidence does not reveal the accident to have occurred due to the act of the deceased-pillion rider, but the accident occurring due to the rash and negligent action of the rider of the motor cycle from the evidence on record together with the rival pleadings, it can certainly considered that the deceased had not contributed to the accident in any manner. In the fitness of thing; this Court, however, disapproves the observation and finding of the learned Tribunal with regard to deceased contributing to the accident by his own negligence.

12. Once it is found that the deceased had not contributed to the accident, the liability has to be borne out by the owner of the motor cycle, but the insurer being contractually liable to indemnify its owner; it is only the insurer that has to bear the liability to pay the compensation to the claimants. As it is already said that the learned Tribunal has not computed the compensation by taking the future prospect of the deceased, this Court by relying upon the decision in ***Pranay Sethi (supra)*** considers it proper to hold that the income of the deceased has to be reassessed and recalculated by adding the amount towards future prospect. It is not in dispute that the deceased was aged about 37 years, and he being in the category of self-employed or on a fixed salary, an addition of 40% to the established income of the deceased be the basis of computation for the loss of dependency. It is not in dispute that the learned Tribunal has taken into consideration the ITR of the deceased for the Assessment Year 2010-2011 under Ext.8 towards computation of income of the deceased. According to Ext.8, the net annual income less the tax paid would come around Rs.2,84,224/- and after addition of 40% to it towards future prospect of the deceased, the net amount would come around Rs.2,84,224/- + Rs.1,13,689/-(40% of Rs.2,84,224/-) = Rs.3,97,913/-. Since, the deceased was having six dependents, 1/4th of the aforesaid amount is required to be deducted as personal and living expenses of the deceased and after deducting such amount, the net amount would come around Rs.3,97,913/- - Rs.99,478/- (1/4th of

Rs.3,97,913/-) = Rs.2,98,435/- and applying 15 multiplier to it, the net loss of dependency of the claimants would come around Rs.2,98,435/- X 15 = Rs.44,76,525/- and adding to it Rs.1,05,000/- towards damages under non-pecuniary heads, the net compensation amount for the claimants would come to Rs.44,76,525/- + Rs.1,05,000/- = Rs.45,81,525/-. Besides, the claimants are also entitled to simple interest @ 6% per annum on the aforesaid amount.

13. In the result, the appeal stands dismissed, but the cross-objection by R-3 to 6 is allowed on contest against the insurers, ex-parte against R-7. Consequently, the impugned judgment is modified to the extent indicated above and the insurer is directed to pay the modified compensation amount to the claimants together with simple interest @ 6% per annum w.e.f. 19.04.2011 till its actual realization within eight weeks hence. In case of deposit of the modified compensation amount, the same shall be disbursed to the claimants proportionately in terms of the award and the statutory deposit together with the accrued interest thereon be refunded back to the insurer on production of proof of deposit of such modified compensation.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 23rd day of March, 2026/Kishore