



IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.506 of 2024

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

***M/s. Shriram General Insurance Company Ltd.,
Bhubaneswar*** ... ***Appellant***

-versus-

Tapas Maity and others ... ***Respondents***

For Appellant : ***Mr. A.A. Khan, Advocate***

For Respondents : ***Mr. B.B. Singh, Advocate
(for RNos.1 & 2)***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:27.02.2026(ORAL)

G. Satapathy, J.

1. This appeal U/S.173(1) of the Motor Vehicles Act, 1988 (in short, "the Act") by the insurance company(hereinafter referred to as the "Insurer") is directed against the impugned judgment dated 26.07.2023 passed by the learned Motor Accident Claims Tribunal-I, Balasore (hereinafter referred to as the "Tribunal") in MAC Case No.290 of 2020 directing the insurer to pay a sum of Rs.13,89,472/- together with



simple interest (SI) @ 6% per annum w.e.f. 11.12.2020 till realization to the claimants for the death of their son in a motor vehicular accident.

2. Bereft of unnecessary details, the accident which gives rise to the present appeal took place on 21.11.2020 at about 3.45 AM when one Biswajit Maity (hereinafter referred to as "the deceased") a helper by profession while proceeding to Bhubaneswar from Kolkata Airport in a container truck bearing Regd. No.WB-25G-3877 (hereinafter referred to as "the offending vehicle") dashed from behind another truck near Haladipada bypass on NH60 resulting in injury to the deceased leading to his death. It was claimed by the claimants that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and the accident was registered vide Basta PS Case No.267 of 2020, which culminated in submission of charge-sheet. The claimants being the parents of the deceased had approached the learned Tribunal in an application U/S.166 of the Act for compensation for the loss of their sole bread earner-cum-deceased in a motor vehicular accident by impleading the owner and insurer



of the offending vehicle and the proceeding was accordingly registered as MAC Case No.290 of 2020.

2.1. In response to the notice of the claim in MAC Case No.290 of 2020, the owner of the offending vehicle-cum-R-3 did not prefer to appear despite valid service of notice and he was, accordingly, set *ex parte*, whereas the insurer being represented by the Senior Executive had filed written statement denying the claim of the claimants and *inter-alia* avoiding its liability by stating in its WS that the deceased was a gratuitous passenger in the vehicle and the driver of the vehicle was not having valid and effective license.

3. On the basis of rival pleadings, the learned Tribunal struck as many as four issues and allowed the parties to lead evidence. Accordingly, claimants produced oral evidence of two witnesses vide PWs.1 & 2 and proved 10 documents under Exts.1 to 10 as against oral evidence of one witness vide OPW1 and documentary evidence of 4 documents under Exts.A to D by the insurer. After analyzing the evidence on record upon hearing the parties, the learned Tribunal passed



the impugned judgment directing the insurer to satisfy the award and being aggrieved with such award, the insurer is before this Court in this appeal.

4. Heard, Mr. Adam Ali Khan, learned counsel for the appellant-insurer and Mr. Bishnubrata Singh, learned counsel for RNos.1 & 2 in the appeal and perused the record. The notice against the owner-cum-R3 stood dispensed with at the inception and it was, accordingly, considered that if the owner would be liable, then in that event, notice would be issued to R3-cum-owner.

5. After hearing the learned counsel for the parties upon perusal of record, this Court has summarized the following points for determination:-

"(i) whether the deceased was a gratuitous passenger or helper;

(ii) whether the driver of the offending vehicle was holding a valid and effective license as on the date of accident;

(iii) whether the award is excessive or exorbitant."

In answering the first point, it appears that the learned Tribunal vide paragraph-7.1 of the impugned



judgment has answered the same and the relevant observation of the learned Tribunal reads as under:-

"7.1. *P.W.1 in his evidence has categorically stated that the deceased was working as a helper in the offending vehicle and such evidence of P.W.1 fully corroborates his plea made in the claim application. The O.P. No. 2 doubted the genuineness of the claimants' plea only on the ground that in the police papers the I.O. has mentioned the name of one Rahul Singh as a helper of the offending vehicle. It is found from the charge sheet submitted by the I.O. vide Ext. 2 that in the Col No. 16, i.e. in brief facts of the case, he has mentioned about issuance of injury requisition in favour of injured-helper, Rahul Singh. On the basis of such material, an argument was advanced by O.P. No.2 that the deceased was not the helper in the offending vehicle in question and he was travelling as a gratuitous passenger, which is not tenable in view of the cogent, clinching and reliable evidence on record. On careful scrutiny of Ext. 2, I found that the I.O. has mentioned about issuance of injury requisition in favour of Rahul Singh for his medical examination. The claimants' in order to remove the anomaly in the charge sheet, examined the I.O. (PW-2), who conducted the investigation of the case. P.W. 2 in his evidence has specifically testified that the accident in question took place on 21.11.2020 at about 3.45 a.m. The deceased was travelling as a helper in the offending vehicle and died in the said accident when the vehicle dashed against an unknown vehicle due*



to rash and negligent driving by the driver. He has categorically stated that no other person sustained injury or died in the said accident. He has further stated that he held inquest over the dead body of the deceased. He has further stated that on completion of investigation he submitted charge sheet against the accused-driver, Chhotan Das. He also stated that the facts mentioned in Col. No. 16 of Ext. 2 regarding issuance of injury requisition in favour of injured-Rahul Singh is a typographical mistake at the time of preparation of charge sheet. He has also wrongly mentioned about U.D. Case No. 131 of 2020 in the Col. No. 16 of the charge sheet which is relating to another case. On finding of such mistake in the record, he filed an application before the Court of JMFC, Basta for correction of such mistake. He proved such application vide Ext. 10. The O.P. No.2 though subjected the P.W. 2 to rigorous cross-examination but failed to elicit anything from his mouth to show that Rahul Singh was the helper in the offending truck and the deceased was travelling as a gratuitous passenger. The evidence of P.W. 2 that he has wrongly mentioned the name of Rahul Singh in Col. No. 16 of the charge sheet could not be demolished or shaken in any manner. Though O.P. No.2 took a specific plea that the deceased was travelling as a gratuitous passenger and Rahul Singh was the helper in the offending vehicle, yet he didn't adduce any evidence to substantiate such plea nor did it elicit anything from the mouth of P.W.2 to show that one Rahul Singh was the helper of the truck at the time of



accident and the deceased was a gratuitous passenger. In course of hearing, learned counsel for the O.P. No.2 vehemently urged that the claimants have colluded with the owner and the police and foisted this case for the purpose of getting compensation from the insurance company inasmuch as the deceased has been falsely shown as a helper of the truck. In my view such contention of learned counsel for the O.P. No.2 is not based on the evidence on record but based on suspicion and surmises. The oral and documentary evidence on record clearly indicate that the deceased was travelling in the offending vehicle as a helper when the accident in question took place and he died in a road traffic accident due to rash and negligent driving by the driver of the said vehicle."

6. In the course of hearing, learned counsel for the parties in fact supplied the copy of depositions of witnesses examined in this case, but on a careful scrutiny of evidence of PW1, this Court hardly finds the appellant to have elicited anything to discredit the above finding of the learned Tribunal that the deceased was a helper of the offending vehicle. In addition, the claimants have also examined the IO of this case as PW2, who in his Examination-in-Chief has clearly stated that the deceased was travelling as a helper in the



offending vehicle, which in fact could not be demolished by the appellant-insurer in the cross-examination of PW2. In the aforesaid facts and circumstance and more particularly in absence of any evidence to hold contrary that the deceased was not the helper, this Court fully concurs with the observation of the learned Tribunal and, accordingly, confirms the deceased to be the helper of the offending vehicle.

7. Moving back to the next challenge of the appellant, which is for driver of the offending vehicle not holding valid and effective license as on the date of accident, the learned Tribunal in paragraph-9 has answered the same clearly by observing *inter-alia* as under:-

"The OPW-1 during his evidence has stated that on verification of the driving licence of the accused driver as seized by the police, it is found that the driver is authorised to drive non-transport vehicle for the period from 11.08.2011 to 10.08.2031 and transport vehicle from 07.08.2017 to 06.08.2020. The O.P.W.1 produced the extract of driving licence of the accused-driver, Chotan Das, and proved the same as Ext.D. So, from the above evidence it is evident that the driver of the offending vehicle had not possessed a valid driving licence



to drive the offending vehicle, which is a heavy goods carriage transport vehicle. However, the learned counsel for the petitioners submitted that the Government of India, Ministry of Road Transport and Highways vide its notification RT-11036/35/2020-MVL has issued letter to all the Transport Commissioners of all the States and Union Territories that the validity of Fitness, Permit (all types), Driving Licence, Registration or any other concerned document(s) whose extension of validity could not be, or was not likely to granted due to lock-down and which had expired since 01.02.2020 or would expiry by 31-03-2021, the same may be treated to be valid till 31.03.2021 and enforcement authorities were advised to treat such documents valid till 31.03.2021. Since the transport licence of the accused driver expired on 06.08.2020, which is within the lockdown period from 01.02.2020 to 31.03.2021, the same is treated as valid in view of the notification of the Government of India, Ministry of Road Transport and Highways. So, the contention raised by learned counsel for the O.P. No.2 that the accused driver had no valid and effective driving licence to the offending vehicle is of no avail and it is held that all the vehicular papers of the offending vehicle were valid and effective on the date of accident. Therefore, the O.P. No.2 is liable to pay compensation indemnifying the O.P. No.1. Accordingly, the Issue No.(III) & (IV) are answered in favour of the petitioners.”



8. The aforesaid observation of the learned Tribunal could not be validly disputed by the appellant and no evidence or material has been produced to discredit such finding of the learned Tribunal. This Court, accordingly, concurs with the observation of the learned Tribunal in this regard that the driver was having valid and effective license.

9. In coming back to the last issue of assessment of compensation, there appears no real dispute with regard to award of compensation under the heads of loss of consortium, loss of estate and funeral expenses, but the real dispute is with regard to determination/computation of amount under the head of loss of dependency. In this case, the learned Tribunal while assessing the loss of dependency for the claimants has taken the daily wages notification to assess the income of the deceased at Rs.308/- per day at the prevailing time of accident, but the learned Tribunal calculated the gross annual income of the deceased by taking 30 working days instead of 26 working days by excluding the 4 holidays in a month. Hence, the gross annual income of the deceased would have come around



Rs.308/- X 26 X 12 = Rs.96,096/- and adding 40% to it towards future prospects of the deceased, the net amount would come around Rs.96,096/- + Rs.96,096/- X 40% = Rs.1,34,534/-. Since the deceased died as a bachelor and was aged about 28 years, 50% of the aforesaid income is required to be deducted towards his personal leaving expenses and 17 multiplier would be applicable in this case. Accordingly, the loss of dependency for the claimants is calculated as 50% of Rs.1,34,534/- = Rs.67,267/- X 17 = Rs.11,43,539/-. Hence, the modified compensation would come around Rs.11,43,539/- + Rs.84,000/- (Damages) = Rs.12,27,539/-, since the deceased died in the year 2020, but in the meantime, around 5 years have elapsed and, thereby, an increase of 10% on Rs.70,000/- for every three years on the non-conventional head of damages is admissible for the claimants. Thus, the claimants are also entitled to interest @ 6% per annum w.e.f. 11.12.2020.

10. In the result, the appeal stands allowed in part on contest, but in the circumstance no order as to costs and the impugned judgment is modified to the extent indicated above and the insurer is, hereby,



directed to pay compensation of Rs.12,27,539/- together with 6% interest per annum w.e.f. the date of filing of the claim application to the claimants. The modified compensation amount shall be deposited before the learned Tribunal within eight weeks hence and in case of deposit of such amount, the same shall be disbursed to the claimants in terms of the award. The statutory deposit together with accrued interest thereon shall be refunded back to the insurer on production of proof of deposit of modified compensation amount before the learned Tribunal.

(G. Satapathy)
Judge

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