IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1200 of 2024

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

National Insurance Co. Ltd., Kolkata and another … ***Appellants***

-versus-

Bighnaraj Panda and another … ***Respondents***

For Appellants : ***Mr. S. Satpathy, Advocate***

For Respondents : ***Mr. R.C. Panigrahy, Advocate (for R-1)***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING : 24.02.2026
DATE OF JUDGMENT: 27.02.2026

G. Satapathy, J.

1. The appellants-representing the Insurance Company (in short, the "Insurer") are in an appeal U/S.173 of the Motor Vehicles Act, 1988 (in short, "the Act") to challenge the quantum of compensation as awarded to the Respondent No.1(R1)-cum-claimant by the impugned judgment dated 28.03.2024 passed by the learned 3rd MACT, Bhubaneswar (in short, the "learned Tribunal") in MAC Case No.204 of 2016 directing the appellant No.2, who was OP No.2 in the original MAC Case to pay a sum of Rs.23,14,392/- together with simple interest @ 6% per annum w.e.f the date of filing of claim application till actual realization of the amount to the claimant-petitioner in the aforesaid MAC case.

2. Bereft of unnecessary details, the accident which gives to the present appeal took place on 22.06.2015 when R-1 namely Bighnaraj Panda, an advocate by profession (hereinafter referred to as "the claimant") was coming from Cuttack on NH-5 by riding his Motor Cycle, he was dashed from behind by a Truck bearing Regd. No. OR-21-8813 (hereinafter referred to as "the offending vehicle") near Bank of India, Rasulgarh Branch, Bhubaneswar as a result the claimant sustained serious injuries and treated at different Hospitals in Bhubaneswar; such as Nilachala, KIMS & SUM Hospitals. According to the claimant, the accident was outcome of the rash and negligent driving of the driver of offending vehicle and accordingly, Mancheswar PS Case No.230 of 2015 was registered which resulted in submission of charge-sheet. In the aforesaid background, when the claimant approached the learned Tribunal in application U/S.166 of the Act for compensation by impleading the owner and insurer of the offending vehicle, he was awarded with compensation indicated supra by the impugned judgment under different heads enlisted therein, but the insurer being aggrieved by the quantum of compensation has preferred this appeal.

3. Heard, Mr. Subrat Satpathy, learned counsel for appellants and Mr. Ramachandra Panigrahy, learned counsel for the R-1 in the appeal and perused the record. None appears for R-2 despite valid service of notice.

4. Rival submissions together with the written notes as filed for the appellants makes it apparently clear that the quantum of compensation is questioned on following points, which needs to be answered: -

(i) Award is computed @ 28% permanent disability, but claimant's temporary disability was 28% for a period of five years;

(ii) Neither future prospects nor multiplier method is applicable in this case;

(iii) Medical expenditure of Rs.5,10,613/- is hypothetically awarded without any evidence;

(iv) Imaginary amount has been awarded under the respective headings at SL. Nos.9 & 10 of the table of compensation as appended to the impugned judgment and lastly,

(v) Imposition of penal interest @ 8% per annum is not admissible.

5. Award/determination of just compensation in a case under the Act for injuries or death of a person arising out of use of motor vehicles is a complex and complicated issue, which is required to be considered on hypothetical consideration basing on evidence, mainly with regard to age, avocation/profession & income, more particularly the future income of the deceased/injured, but such computation of compensation for the claimant(s) has been simplified in recent past by the law laid down by the Apex Court in a plethora of decisions. Looking at the grounds of challenge as advanced in this Appeal, since the claimant claims for compensation for injuries and disability, the rulings of Apex Court in ***Raj Kumar Vrs. Ajay Kumar and another; (2011) 1 SCC 343*** are found relevant in this case. It is no more unknown principle as laid down in ***Ajay Kumar (supra)***

that in a routine personal injury case, the compensation is required to awarded only under the heads of (i) expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenditures and (ii) loss of earnings for the injury/injuries sustained by the injured claimant, but in a case of permanent disability, which includes partial or total, a separate method has been prescribed in ***Ajay Kumar (supra)*** for computation of compensation, which would only be academic in the present case since the present one is undisputed case of temporary disability of the claimant for five years as found from the disability certificate of claimant proved under Ext.9 and confirmed by the learned Tribunal in Paragraph-9 of the impugned judgment stating therein that Ext-9 is a case of locomotor disability due to post traumatic partial stiffness of left hip and the claimant is found with 28% temporary disability and the certificate is recommended for five years from 07.05.2019 till 07.05.2024, but the same is never challenged by the claimants. In the aforesaid backdrop, since the claimant’s case is for temporary disability of five years, neither future prospects nor multiplier method is applicable for computing compensation to the claimant.

6. Moving to the next challenge for awarding of Rs.5,10,613/- hypothetically towards medical expenditure of the claimant, it is not disputed that the claimant was admitted as indoor patient in three private hospital for 43 days, but the learned tribunal has awarded a sum of Rs.5,10,613/- towards medical expenditure of the claimant without any evidence by simply observing such documents to have been produced by the claimant, nonetheless the claim must have incurred expenditure for his hospitalization for 43days. In the absence of any concrete evidence for proof of medical expenditure by the claimant and on hypothetical consideration, it would be considered to be just & proper for modifying this amount to Rs.3,01,000/- rounded off to Rs.3Lakhs @ Rs.7000/- per day for 43 days/.

7. Insofar challenge of the appellant to the award made under the heading for hospitalization, special diet, attendant charges; and loss of income during the period of treatment, it appears that the learned tribunal has awarded a consolidated sum of Rs.50,000/- each on two heads; which in the circumstances appears to be inconsonance with the rulings of the Apex Court in ***Ajay Kumar (supra)*** inasmuch as the claimant remained as a indoor patient for 43days in different hospital and he thereby must have incurred expenses on these items as well as he must have suffered loss of income during the aforesaid period of treatment. In the circumstances, this Court does not find any cogent material/evidence to interfere with the award of compensation under such heads.

8. Moving back to the challenge of the appellant with regard to the assessment of disability of the claimant, the principle as settled in ***Ajay Kumar (supra)*** makes it very clear that all the injuries do not result in loss of earning capacity, but disability actually refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being, however, temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exists at the end of the period of treatment and recuperation. It is, therefore, as clear as noon day that in case of temporary disability, it would cease to exist after certain period. In the case at hand, the temporary disability of the claimant is stated to be 28% and it was recommended for five years i.e. from 07.05.2019 to 07.05.2024, but the accident took place on 22.06.2015. Thus, it may be stated that the temporary disability of the claimant might be after the accident till 07.05.2024 and thereby, it can be considered for a period of nine years. It is, however, to be remembered that the same percentage of a disability may result in different percentage of loss of earning capacity in different persons depending upon the nature of profession, occupation or job, age, education or other factors. In this case, although the learned tribunal has held the temporary disability of claimant for five years, but it calculated the compensation for him by adopting the formula of permanent disability and loss of earning at the same percentage of disability which is erroneous inasmuch as the extent of temporary disability shall not be considered as the same percentage of functional disability of the whole of the body nor should it be considered as the same extent disability for loss of earning capacity. In this case, the claimant is a practicing advocate, but the extent of 28% temporary disability in his case may not result the same percentage of loss of earning due to injuries. Further, it is found from the impugned judgment that the claimant's is a case of locomotor disability due to post-traumatic partial stiffness of left hip and he had sustained injuries of LH of size 2 & half inch x 1inch x 1/4inch muscle death on right lower plank of abdomen, one abrasion of size 10inch x 1inch x 1/4inch and both the injuries were opined to be simple in nature. Further, it is found therein that the claimant had suffered fracture of pelvis on bilateral superior. It is, therefore, clear that the extent of disability is not with regard to whole of body, rather it is disability with regard to locomotor. Besides, no evidence has been produced to say or establish that as to how the income of the claimant had suffered loss due to the temporary disability, nevertheless the temporary disability should have affected the loss of earning of the claimant for the temporary period. In the sequence of events and in absence of any specific evidence as to how the claimant suffered loss of earning for the temporary disability, this Court considers the temporary disability of the claimant at 28%, but his functional disability at 20% and accordingly, considers it in the interest of justice to assess the loss of earning capacity of the claimant at 15% for nine years. The claimant has not produced any evidence in support of proof of his income, but the claimant has produced his IT Returns(ITR) for the year 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, however, the learned tribunal by taking into account the ITR for the year 2015-16 has assessed the net income of the claimant at Rs.4,86,652/- by taking into consideration the date of accident to be 22.06.2015. In this situation and in absence of any evidence produced by the claimant towards his income, this Court takes the average of the ITRs after the accident and assess annual income to the claimant at Rs.4,80,000/- per annum to calculate the loss of earning for the claimant for nine years @ 15%. Accordingly, the loss of earning of the claimant is calculated at 4,80,000x15%x9=6,48,000/-.

Hence, the final compensation to the claimant is calculated in a tabular form which is as under: -

Sl No.	HEAD	AWARD
1.	Expenditure towards cost of medicine	Rs.3,00,000/-
2.	Loss of earning due to temporary disability of the claimant @ 15% for nine years	Rs.4,80,000x15%x9= Rs.6,48,000/-
3.	Cost of Hospitalization, attendant Charges special died	Rs.50,000/-
4.	Loss of income during the period Of treatment	Rs.50,000/-
5.	Cost of transportation	Rs.5,000/-
6.	Pain and suffering towards mental Agony	Rs.50,000/-
Total		**Rs.11,03,000/-**

9. The claimant is also entitled to simple interest @ 6% per annum on the final amount of compensation w.e.f. the date of failing of the application i.e. 22.10.2016 till actual realization, but the insurer is not liable to pay any penal interest @ 8%.

10 In the result, the appeal by the insurer stands allowed in part against R-1, but ex-parte against R-2 on context, but no order as to costs. Consequently, the impugned judgment is modified to the extent indicated above and the insurer is directed to pay the modified compensation amount to the claimant together with simple interest @ 6% per annum w.e.f. 22.10.2016 till actual realization within eight weeks hence. In case of deposit of the modified compensation amount, the same shall be disbursed to the claimant 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 27th day of February, 2026/Jayakrushna