GAHC020005972025 2026:GAU-NL:397

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : MACApp./20/2025

THE ORIENTAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED ORIENTAL HOUSE A-25/27 ASAF ALI ROAD, NEW DELHI-110002 AND REGIONAL DIVISIONAL OFFICES IN SEVERAL PLACES INCLUDING A REGIONAL OFFICE AT GUWAHATI, ASSAM AND DIVISIONAL OFFICE AT DIMAPUR, IN THE STATE OF NAGALAND

VERSUS

SHRI. LALBABU MAHATO AND 2 ORS
S/O SHRI BIASH MAHATO, R/O SUNDAY MARKET, LAHORIJAN, PO/PS KHATKHATI, KARBI ANGLONG, ASSAM. (REPRESENTED BY HIS BROTHER SHRI NARESH MAHARO)

2:SHRI MANIK MAXUMDAR
S/O LT. J MAZUMDAR. R/O ZAKIESETO COLONY
GOLAGHAT ROAD
DIMAPUR
NAGALAND (OWNER OF M/CYCLE
CB SHINE
B/R NO. NL-07 4585)

3:SHRI BHIM MAHATO
S/O RAJESH MAHATO
R/O H.NO. 05
KHERMAHAL
DIMAPUR
NAGALAND (RIDER OF M/CYCLE
CB SHINE
B/R NO. NL-07 4585

Advocate for the Petitioner : KIM PIENYU, LAKNYEI PHOM,KETI IMCHEN

Advocate for the Respondent : P. B. CHHETRY, PFOSEKHO PFOTTE,CHUBANUNGKUM,MEDO VERO

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Petitioner	: Ms. Kim Pienyu
Advocate for the Respondent No.1	: Mr. P.B. Chhetry
Date on which judgment is reserved	: 14.07.2026
Date of pronouncement of judgment	: 17.07.2026
Whether the pronouncement is of the Operative part of the judgment ?	: No
Whether full judgment has been pronounced ?	: Yes

JUDGMENT & ORDER (CAV)

14.07.2026

This is an appeal under section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.06.2025 passed by the learned Motor Accident Claims Tribunal, Dimpaur Nagaland in MACT Case No.36/2023.

2. Heard the learned counsel for the appellant Ms. Kim Pienyu. Also heard Mr. P.B. Chhetry, learned counsel for the respondent No.1/claimant.

3. Notice was served on the respondent Nos. 2 and 3 by way of substituted summon through publication in the local dailies and compliance affidavit with regard to the same has been filed by the appellant. However, none appears for the respondent Nos. 2 and 3.

4. The facts leading to the filing of the instant appeal is that on 25.11.2022 at around 8.30 PM, the claimant/respondent No.1 was travelling as pillion rider on a Motor Cycle bearing registration No.NL-07/R-4585 towards Lahorijan from Saharijan Sukhanjan side (Bokajan). The claimant/respondent No.1 and the Driver/respondent No.3 were coming back after handing over a marriage gift as instructed by the owner of the Motor Cycle/respondent No.2. On reaching Paklangso Tiniali on NH 39 at around 8.30 PM, the Motor Cycle met with an accident while being driven in a rash and negligent manner by the respondent No.3. As a result, the claimant/respondent No.1 who was aged about 33 years at the time of the accident sustained grievous head injury and suffered permanent disability with little chance of recovery.

5. The claimant/respondent No.1 represented by his brother filed the claim petition under section 166 of the Motor Vehicles Act, 1988 before the MACT, Dimapur and the same was registered as MACT Case No.36/2023.

6. After hearing the parties and after recording evidence, the learned Tribunal passed the impugned judgment and award dated 16.06.2025 awarding an amount of Rs.57,56,000/-(Fifty seven lakhs fifty six thousand) and directed the appellant to satisfy the award within a period of 30 days from the date of judgment. Being aggrieved with the impugned judgment and award dated 16.06.2025, the appellant has come before this Court mainly on four grounds.

7. Firstly, it is submitted by the learned counsel for the appellant that the claimant in support of his income had produced a *"To Whom It my Concern"* note purported to have been issued by the respondent No.2 who was his employer as well as the motor cycle owner. However, the same was not written on any official writing pad bearing either Trade License No/Registration No/ Contract license No./Address etc. There was also no appointment order or any attendance sheet or employees list or salary records. Therefore, in the absence of any definite proof of income or any corroborative documentary evidence, the Tribunal could not have taken the monthly income as Rs.18,000/-. It is submitted that the learned Tribunal should have determined the salary on the basis of notional income or minimum wages for an unskilled labor as the claimant was the in-charge of the laborers and his duty was only to arrange the labor and see the progress of the work. The learned tribunal therefore could not have relied on the *"To Whom It my Concern"* note produced and exhibited as the salary certificate.

8. Another ground which the appellant has taken is that the Doctor who had treated the claimant or the Doctors who had issued the disability certificate were not examined by the Tribunal. The learned counsel for the appellant submits that the disability certificate was not proved by giving the opposite parties an opportunity for cross-examination of the Doctor/Doctors who issued such disability certificate. To support her submission in his regard, the learned counsel for the appellant has relied on the case of:-

(i) ***Oriental Insurance Co.Ltd vs Lalliansawmi and O***rs reported in ***2010(2) GLT 176.***

(ii) ***National Insurance Co.Ltd vs Chandreswar Thakur and Ors*** reported in ***2001(1)GLT 393 and***

(iii) ***Raj Kumar vs Ajay Kumar and Another*** reported in ***(2011) 1 SCC 343.***

9. The third ground which the appellant has taken is that the insurance policy issued to the owner of the Motor Cycle/respondent No.2 was a motorized two wheeler package policy meant for private purpose only. Hence, the Motor Cycle could not have been used for commercial purpose as in the instant case. And therefore there was breach of the policy conditions. It is submitted that during the cross-examination, it came to light that the claimant was employed and working under the insured/respondent No.2. As the policy was issued for private purpose only there was no question of premium for paid driver/handyman etc. If the insured/owner authorized a person to drive and use the Motor cycle, then he cannot be considered as third party but he steps into the shoes of the owner of the Motor cycle and therefore, the claimant cannot be considered as a third party in the instant case and therefore not entitled to be awarded any compensation.

10. Lastly, the learned counsel for the appellant submits that the amount awarded by the tribunal under non pecuniary heads is excessive and contrary to the principles laid down in the case of ***Sarla Verma and Others vs Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121.***

11. In view of the above submissions, the learned counsel for the appellant prays that the impugned judgment and award dated 16.06.2025 passed in MACT Case No.36/2023 may be quashed and set aside.

12. Per Contra, Mr. P.B. Chhetry, learned counsel appearing for the claimant/respondent No.1 submits that the employer of the claimant was examined by the Tribunal as DW 1 and he proved the salary certificate dated 10.03.2023. Hence, the salary certificate/'to whom it may concern' note has been duly proved by the evidence of the employer/DW-1. In this regard, the learned counsel has relied on in the case of ***V. Pathmavathi & Ors vs Bharthi Axa General Insurance Co.Ltd & Anr*** reported in ***2026 INSC 131***. The learned counsel by relying on the said judgment submits that the Hon'ble Supreme Court in that case had held that the salary certificate issued by the employer of the victim was marked as exhibit by the claimant and this documentary evidence was further corroborated by the affidavit sworn by the employer. On the face of such cogent and relevant documents, it would be wholly impermissible to assess the income at a lower figure. The Hon'ble Supreme Court had therefore taken the monthly salary as Rs.10,000/- which was the figure shown in the salary certificate and further proved by the victim's employer. In the instant case also, the employer of the claimant/DW-1 was cross-examined by the appellant/Insurer before the Tribunal and in the cross-examination, the DW-1 has reiterated that the claimant was earning a monthly salary of Rs.18,000/- per month. Hence, the tribunal has not committed any error in calculating the monthly income of the claimant as Rs.18,000/-.

13. With regard to the disability certificate, the learned counsel for the respondent No.1 submits that the disability certificate was exhibited before the tribunal as Ext-PW-10. The said disability certificate was issued by the Sub Divisional Medical and Health officer, Office of the Joint

Director of health Services, Karbi Anglong which was duly certified by the District Social Welfare Officer, Karbi Anglong, Diphu. The learned counsel has further submitted that the said disability certificate was issued by the designated authority in the Government and it is pertinent that the appellant did not dispute the disability certificate when it was exhibited before the Tribunal. The learned counsel has stated that the disability certificate shows that the percentage of permanent disability suffered by the claimant is 90% loco motor disability. In fact, the Government of India has also issued a Unique Disability ID to the claimant wherein it is reflected that percentage of disability of the claimant is 90% and the said Unique Disability ID has been produced at the time of hearing. The learned counsel for the claimant/respondent No.1 submits that the claimant is now completely bedridden and he cannot speak or move on his own and requires an attendant at all times. In fact during the trial, the claimant was examined and the Advocate Commissioner had examined the claimant in the presence of the counsel for the appellant as well as the claimant. The Advocate Commissioner in his report dated 13.12.2024 had reported that the claimant could not be examined or cross-examined as he is not in a position to speak. As per his observation, the claimant was in a critical condition and is surviving only with liquid food. The learned counsel for the claimant/respondent No.1 has also relied on the case of ***Raj Kumar vs Ajay Kumar (Supra)*** wherein, the Hon'ble Supreme Court had at paragraph 23 of the judgment held as under:-

> *"The Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current*

patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses."

14. In view of the said observation of the Supreme Court. The learned counsel submits that the disability certificate has been duly issued by the Government authorities and it was not disputed by the insurer/appellant before the Tribunal and therefore, the oral evidence of the Doctor or the issuing authority has been dispensed with by the Tribunal. In any view of the matter, the physical condition of the claimant has been seen by the Advocate Commissioner as well as by the counsel of the appellant and the claimant at the time of the trial and as such, the disability certificate cannot be questioned at this stage.

15. With regard to the insurance policy, the learned counsel for the respondent No.1/claimant submits that the offending Motor Cycle was insured under a package policy and the driver was the respondent No.3. The claimant was only the Pillion rider and therefore, he was a third party and entitled for compensation. The Tribunal has to see whether at the time of the accident, the Motor Cycle was used for commercial purpose. It is seen from the records that the Motor Cycle was being used to deliver a parcel for the respondent No.2/owner and it was definitely not used for commercial purpose by paying fare. The learned counsel submits that in the case of ***New India Assurance Co.Ltd vs Charlie and Ors*** reported in ***2005(2) TAC 297,*** the Hon'ble Supreme Court held that the claimant who was driving as Pillion rider was entitled compensation under the Motor Vehicles Act.

16. The learned counsel for the respondent No.1/claimant has submitted that the claimant was 33 years at the time of the accident and he was earning an amount of Rs.18,000/- per month. However, due to the accident he has now completely lost his earning capacity and is dependent on others for his life. Due to the gravity of the injury suffered by him, the claimant has lost all ability to move and has also lost the ability to speak. The learned counsel submits that the amount granted by the Tribunal under various heads is in fact not adequate for his future survival. The Tribunal should have also awarded an amount under the head of loss of future earning capacity which was not done and prays that this Court may adequately enhance the compensation. In support of his submission, the learned counsel for the claimant relies on the case of ***Nagappa vs Gurudayal Singh & Ors*** reported in ***(2003) 2 SCC 274*** wherein, the Hon'ble Supreme Court had held that depending upon the fact of the case and the evidence on record, enhancement of the claim amount is not restricted to the amount claimed by the claimant only. Also in the case of ***Rajesh vs Rajbir Singh & Ors*** reported in (***2013) 9 SCC 54***, the

Hon'ble Supreme Court held that the Tribunal can even award compensation in excess of what is claimed. The Tribunal has a duty to award just, equitable, fair and reasonable compensation, if necessary ignoring the claim made in the application for compensation.

17. The learned counsel for the claimant therefore submits that this Court may enhance the compensation inasmuch as the Tribunal has not awarded any amount towards loss of earning capacity. He has prayed that the instant appeal may be dismissed as the same is without merit.

18. This Court has given its due consideration to the submissions made by the counsel for the parties and perused the pleadings as well as the Trial Court Records.

19. The leading Supreme Court decision on compensation for loss of future earning capacity in motor accident injury cases is the Raj Kumar Vrs Ajay Kumar Case. In ***Raj Kumar vs Ajay Kumar (Supra)***, the Supreme Court has laid down the methodology for assessing compensation where the claimant suffers permanent disability. In the instant case, the factum of the accident, the age of the claimant or the injuries sustained by the claimant are not disputed by the appellants. The appellants have filed the appeal basically against the calculation of the monthly income and the veracity of the disability certificate.

20. The expression "just compensation" has been explained in the ***Sarla Verma case (supra),*** holding that the compensation awarded by the Tribunal should be fair and equitable on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so by applying the well settled principles relating to award of compensation.

21. This Court has seen that the salary certificate has been exhibited by the claimant as Ex-PW1/4. The employer of the claimant was examined by the Tribunal as DW-1. In his cross-examination he deposed that the claimant is his employee and he was in-charge of the labor and was earning a monthly salary of Rs.18,000/- per month. It is therefore held that the salary certificate dated 10.03.2023 exhibited by the claimant has been duly proved by the DW 1/employer and the Tribunal has rightly held the monthly salary of the claimant as Rs.18,000/-.

22. With regard to the disability certificate, the same has been exhibited during trial by the claimant as Ex-PW-10. The insurer/appellant has disputed the same during the final arguments by stating that the officials issuing the disability certificate have not been examined. They had argued that the Insurance company was not given an opportunity to cross examine the person who had given the opinion in the certificate. In the case of ***Raj Kumar vs Ajay Kumar*** (supra), the Hon'ble Supreme Court has held that when the disability certificate is not contested by the respondent, they may be marked by consent thereby dispensing with the oral evidence. However, in the instant case, the appellant/Insurer had disputed the certificate. The facts and circumstances are therefore not similar.

23. The injuries suffered by the claimant are clearly grievous in nature and the amount of compensation to be awarded will be substantial if the percentage of permanent disability recorded in the disability certificate as 90% is proved and accepted by the Tribunal. In such circumstances, unless the Doctor is examined, the Tribunal cannot assess the cost of future treatment, or loss of earning capacity. If the claimant cannot produce the Doctor, the Tribunal can proactively use its power under Section 165 of the Indian Evidence Act to summon any member of the medical Board or the treating Doctor or otherwise reference can be made to a Govt.medical Board. In a MAC trial seeing the injured during Commission evidence can help in establishing facts like visible condition or mobility but it does not make the Doctor examination unnecessary when permanent disability is disputed. The Tribunal can rely on direct observation only to a limited extent. It still needs competent medical proof for calculating the extent of permanent disability and loss of earning capacity.

24. With regard to the ground taken by the appellant that the policy conditions were violated, this Court upon examination of the insurance policy has noted that it is a package policy and the claimant was a Pillion rider. In the case of ***New India Assurance Co.Ltd vs Charlie and Ors (supra)*** the Hon'ble Supreme Court held that a claimant who was travelling as Pillion rider was entitled compensation under the Motor Vehicles Act. This Court is therefore of the view that the claimant being a Pillion rider is a third party and is entitled to compensation for the injuries received in the accident.

25. In ***Raj Kumar vs Ajay Kumar*** (supra), the Supreme Court held:

> *"19. We may now summarise the principles discussed above:*
>
> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be*

assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss. of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors".

26. As per the principles laid down hereinabove by the Supreme Court, the Tribunal has to first ascertain whether there is permanent disability and its percentage by examining the doctor. Thereafter, determine the extent to which that disability has affected the claimant's earning capacity (functional disability). And then calculate the loss of future earnings by applying the appropriate multiplier.

27. In the light of the above observations, the impugned judgment and award dated 16.06.2025 is modified as under:

The amount awarded under (i) loss of income is interfered with and set aside as it would be a duplication when loss of future earning is calculated and awarded. The awarded amount under non pecuniary heads like (ii) Expense for medical, nursing, special diet etc both present and future; (iv) Damages for mental & Physical shock, pain and suffering etc (v) Damages for inconveniences, hardship, frustration in life and (vi) Damages for loss of expectation of normal life due to accident are not interfered with and are upheld. The amount awarded under (iii) Special aid for attendants is set aside.

28. For calculating the loss of future earning the case is remanded back to the learned Tribunal for examination of the treating Doctor/member of the medical board or reference to a govt medical board. Needless to say, the insurance company/ appellant would be entitled to cross-examine the Doctor/member of medical board. After recording such evidence and after arriving at a finding regarding the extent of permanent disability, the Tribunal shall award just and fair compensation under the heads of:

(a) Loss of future earning

(b) Expenditure for attendant (in the event it is proved that functional disability is 100% the amount for attendant should be a minimum of 2 lakhs) and

(c) loss of income during treatment. The Tribunal shall also take into consideration that the claimant has already received Rs.28,78,000/- (Rupees Twenty eight lakhs seventy eight thousand) out of the awarded amount and the same may be subtracted from the total amount which will be awarded.

29. The parties shall appear before the Tribunal on 18.08.2026.

30. The petition stands disposed of with the abovementioned directions.

31. Registry is directed to send back the Trial Court records forthwith and the statutory deposit of Rs.25,000/- may be refunded to the appellants.

JUDGE

Comparing Assistant

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