IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.495 of 2026
CNR No. ODHC010382472026

(An appeal U/S.173(1) of Motor Vehicles Act, 1988).

The Manager (TP Cell), M/S. New India Assurance Co. Ltd., Cuttack … ***Appellant***

-versus-

Sachidananda Muduli and others … ***Respondents***

For Appellant : ***Mr. B. Dasmohapatra, Advocate***

For Respondents : ***Mr. P.K. Mishra, Advocate (R-1 & 2)***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING : 31.10.2026
DATE OF JUDGMENT: 13.11.2026

G. Satapathy, J.

1. This is an Appeal U/S.173(1) of the Motor Vehicles Act, 1988 (In short, "the Act") by the Appellant-The Manager (TP Cell), M/S. New India Assurance Co. Ltd., Cuttack (In short, "the Insurer") against the impugned judgment dated 11.03.2026 passed by learned 1st Motor Accident Claims Tribunal, Cuttack (In short, "the Tribunal") in MAC Case No.863 of 2019 directing the Insurer to pay a sum of Rs.22,14,448/- together with simple interest @ 6% per annum w.e.f. the date of filing

of claim application on 02.08.2019 till actual realization only to the claimants-R1 & 2 herein.

2. The facts in this case, being largely undisputed, are only reiterated in precise for disposal of the present Appeal which emanates from an accident that took place on 16.12.2018 at about 9 PM at Pratap Nagari Chhak on Cuttack-Bhubaneswar road, when one Debashis Muduli (hereinafter referred to as "the deceased") was standing after attending call of nature by parking his Motorcycle bearing Regd. No. OD-05Q-7747 was allegedly hit by one Truck bearing Regd. No. RJ-19GE-3910 (hereinafter referred to as "the offending vehicle") resulting in death of the deceased. An FIR being filed came to be registered at Cuttack Sadar Police Station, but subsequently the same resulted in submission of charge-sheet in GR Case No.2139 of 2018 of the Court of learned JMFC(R), Cuttack. Accordingly, the LRs of the deceased filed an application U/S.166 of the Act for grant of compensation and the learned Tribunal proceeded by registering the claim vide MAC Case No.863 of 2019 by

issuing notice to the owner and insurer of the offending vehicle.

3. In response to the notice of the claim, the owner of the offending vehicle-cum-R3 herein did not contest the case and he was set *ex parte* vide order dated 06.09.2021 by the learned Tribunal, whereas the Appellant-Insurer contested the claim by filing written statement denying all the allegations leveled against it and *inter-alia* disowning its liability to pay compensation to the claimants.

4. In support of their claim, the claimants-R1 & 2 examined three witnesses and relied upon the documents under Exts.1 to 19 as against no evidence whatsoever by the Appellant-Insurer. On conclusion of inquiry, the learned Tribunal after appreciating the evidence upon hearing the parties passed the impugned judgment directing the Appellant-Insurer to pay the compensation to the claimants-R1 & 2 indicated *supra*. Being aggrieved with the impugned judgment, the Insurer has preferred this Appeal challenging *inter-alia* on

various grounds; such as quantum of compensation and maintainability of the claim.

5. Heard, Mr. Bijoy Dasmohapatra, learned counsel for the appellant and Mr. Pradeep Kumar Mishra, learned counsel for R1 & 2-cum-claimants, but none appears for R3-cum-owner of the offending vehicle despite being duly noticed.

6. After having considered the rival submissions and upon perusal of record, it appears that the Insurer mainly challenges the maintainability of the claim in this appeal on the ground that since the deceased was an employee of M/s. Jyoti Motors Pvt. Ltd. with contribution of some amount towards the Employees' State Insurance Act, 1948 (In short, "the ESI Act"), the claim by the claimants under the Act is not maintainable because the remedy for an employment injury or death lies under the provision of the ESI Act. Addressing the aforesaid plea of the Insurer, this Court considers it necessary to reiterate the relevant provisions of the ESI Act, which are stated as under: -

*"**2(8).** "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;*

***2(14).** "insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act;*

***53. Bar against receiving or recovery of compensation or damages under any other law-** An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.*

***61. Bar of benefits under other enactments**- When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment."*

7. On a harmonious reading of the aforesaid provisions makes it ample clear beyond doubt that the provision of the ESI Act would only apply, if the death or injury of/to a person arises out of and in the course of his employment and such person who is or was an employee

in respect of whom contributions are or were payable under the ESI Act and who, by reason thereof, is entitled to any of the benefits provided under the ESI Act. Besides, the Bar as provided under the ESI Act mandates that the insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under the ESI Act. Further, Section 61 of the ESI Act that when a person is entitled to any of the benefits provided by the ESI Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment, but the present accident in which the deceased died did not take place out of and in the course of employment of the deceased, rather the same took place in the night at 9 PM when the deceased was standing on Cuttack-Bhubaneswar road. Further, the offending vehicle does not belong to the

employee nor can it be said to have any connection with the employer and, therefore, the bar as provided U/S.53 of the ESI Act does not apply to the claimants so as to prevent them from claiming compensation on the death of the deceased under 3rd party liability against the owner of the offending vehicle. Accordingly, the plea of the Appellant merits no consideration and is liable to be rejected. Hence, the challenge to the maintainability of the claim under the provisions of ESI Act as raised by the Appellant is, hereby, rejected.

8. On turning to the next challenge of the Appellant to the quantum of compensation, it is found that not only the learned Tribunal has committed error by adding 50% of the determined income of the deceased towards his future prospect, but also by applying 17 multiplier and the same is well admitted on behalf of the Respondents-claimants, which is evident from the submission advanced by Mr. Pradeep Kumar Mishra, learned counsel for R1 & 2 who has conceded for application of 16 multiplier in place of 17 and addition of 40% instead of 50% as applied by the learned Tribunal

towards future prospect of the deceased. The monthly income of the deceased as determined by the learned Tribunal could not be validly disputed by the Appellant, but on a careful scrutiny of the evidence on record together with the documents as considered by the learned Tribunal, it is not erroneous to take the average monthly income of the deceased Rs.14,016/-, which was in fact obtained by adding the salary of the deceased for the month of September, 2018 to November, 2018 as proved by the claimants under Exts.13 to 15 and this Court does not find any reason to dispute such finding of the learned Tribunal. It is, however, found that the learned Tribunal has committed error in adding 50% of the determined income of the deceased towards his future prospect and applying multiplier 17 in place of 16, but at this stage, after upon a comprehensive and consensus-seeking exercise with the learned counsel appearing for the parties, this Court proposes an amount of Rs.19,50,000/- along with interest @ 6% per annum w.e.f. the date of filing of claim application on 02.08.2019 till its realization to the claimants as compensation, and

seeks for the response of the learned counsel for the parties, to which Mr. Pradeep Kumar Mishra, learned counsel for the claimants-R1 & 2 by filing a memo agrees and accepts the proposal of the Court, but Mr. Bijoy Dasmohapatra, learned counsel for the Appellant-insurer leaves it to the discretion of this Court.

9. In the aforesaid facts and situation and taking guidance from the law laid down by Apex Court in ***Taslim Parvin & Another vrs. (Smt.) Usha Devi & Another; 2018(2) TAC 22 (SC)***, since the claimants-R1 & 2 agree to the proposal of the Court through their counsel and the counsel for the Appellant-insurer without disputing such proposal leaves it to the discretion of the Court, it is considered that the interest of justice would be best served, if the compensation amount is reduced to Rs.19,50,000/- together with interest @ 6% per annum w.e.f. the date of filing of the claim application on 02.08.2019 till its realization which shall be paid by the insurer to the claimants-R1 & 2.

10. In the result, the Appeal stands allowed with modification of compensation to Rs.19,50,000/- together

with simple interest @ 6% per annum w.e.f. the date of filing of the claim application on 02.08.2019 till its realization. Consequently, this Court directs the insurance company to pay the aforesaid modified compensation amount to the claimants-R1 & 2 within eight weeks hence and in case of deposit of the modified compensation amount, the same shall be disbursed to the claimants-R1 & 2 proportionately in terms of the award. The statutory deposit together with the accrued interest thereon be refunded upon receipt of proof of deposit of modified compensation before the learned Tribunal.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 13th day of November, 2026/Subhasmita

Signature Not Verified
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Signed by: SUBHASMITA DAS
Designation: Sr. Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 13-Nov-2026 18:17:21