IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA NO.545 of 2026
CNR No.ODHC010241612026

(In the matter of application under Section-173(1) of M.V. Act, 1988).

Divisional Manager, United India Insurance Co. Ltd, Bhubaneswar … ***Appellant***

-versus-

Chema Behera and others … ***Respondents***

For Appellant	:	***Mr. P.K. Mahali, Advocate***
For Respondents	:	***Mr. B. Mohanty, Advocate (R-1 to 6)*** ***None (R-7)***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING AND JUDGMENT: 28.09.2026

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 Divisional Manager, United India Insurance Co. Ltd, Bhubaneswar (in short, "the insurer") challenging the impugned judgment dated 28.11.2025 passed by learned 4th Motor Accident Claims Tribunal, Puri (in short, "the Tribunal") in MAC Case No.58 of 2018 directing the insurer to pay a sum of Rs.27,43,200/- to the R1 to 6 (claimants) together with simple interest @ 7.5% per annum w.e.f. the date of filing of the claim application i.e. on 23.03.2018 till actual payment.

2. The facts in precise are that in the accident which took place on 30.08.2016 at about 2PM in the afternoon, one Prasanta Behera (hereinafter referred to as "the deceased") being allegedly hit by a pickup Van bearing Regd. No. OD 13 C 2499 (hereinafter referred to as "the offending vehicle") near Rebenanuagaon Veterinary Hospital. In the accident, two other persons also sustained injuries, however, upon an FIR being lodged, Brahmagiri PS Case No. 171 of 2016 was registered and a charge sheet was placed against the driver of the offending vehicle for offences U/Ss.279/337/338/304(A) of IPC for mainly causing the accident due to rash and negligent driving. On this accident, the parents, major & minor children of the deceased filed an application before the tribunal claiming compensation of Rs. 25,20,000/- towards loss of their sole bread earner. In such application for compensation, the claimants asserted that the deceased was earning Rs. 400/- per day as a driver and his total monthly income was Rs. 15,000/- and the vehicle was having all required documents, such as route permit, fitness certificate and the driver was also having a valid permit to drive the vehicle.

2.1. In response to the claim application as filed by the claimants, notice was issued to the owner and insurer of the offending vehicle, but the owner of the offending vehicle did not appear and he was set *ex parte* by the learned tribunal vide its order dated 23.07.2024, whereas the insurer appeared and filed its written statement challenging the maintainability of the claim application by *inter-alia* asserting that the driver of the offending vehicle was neither rash and negligent in driving the offending vehicle nor was he possessing any valid driving license and thereby, the insurer is not liable to pay compensation to the claimants.

3. On the *inter-se* pleadings by the parties, the learned tribunal formulated issues and allowed the parties to lead evidence. Accordingly, the claimants examined the daughter of the deceased and one Rabindra Kumar Behera as PW1 & 2 and relied upon the police papers under Exts. 1 to 8 as against no evidence whatsoever by the insurer. The learned tribunal after closure of evidence upon hearing the parties passed the impugned judgment directing the insurer to pay the compensation indicated supra to the claimants.

4. Heard, Mr. Prasanta Kumar Mahali, learned counsel for the appellant-insurer and Mr. Biswajit Mohanty, learned counsel for R2 to 6 and perused the record, but none appears for the Respondent No.7 despite being duly noticed. It is, however, reminded that since R1 died during the pendency of this appeal and all the legal heirs of R1 being on record, his name stands already deleted.

5. After having considered the rival submission upon perusal of record, it is found that the insurer has challenged the impugned judgment mainly on quantum of compensation and maintainability of the claim by the claimants, since another claim application in MAC Case No. 355 of 2016 was filed by them along with wife of the deceased, however, the learned tribunal under issue Nos. I and V has specifically come to a finding that since MAC No. 355 of 2016 as filed, was dropped and disposed of on the strength of a memo filed by the claimants therein. Further, it is found from paragraph-6 of the impugned judgment that PW1 (daughter of the deceased) has deposed that the earlier case was filed by her mother when she was alive and thereby, in the circumstances, the present claim by the parents of the deceased together with the minor and major children of the deceased is squarely maintainable and the said fact could not be validly disputed by the insurer. When the claim application in MAC No. 355 of 2016 by the claimants therein has already been dropped and disposed of, this Court is not impressed upon the contention/plea of the appellant-insurer to conclude the present claim application to be not maintainable. Hence, the aforesaid plea of the insurer with regard to non-maintainability of the claim by the claimants merits no consideration and is accordingly rejected.

6. On coming back to the evidence on record, it appears that not only the claimants have examined the witnesses, but also the witnesses examined for the claimants have vividly described about the accident and there is no dispute about filing of charge sheet by the Police against the driver for driving the offending vehicle in rash and negligent manner causing accident in which the deceased died. The copy of the charge sheet has been exhibited under Ext. 2 which discloses the death of the deceased to have taken place in the accident allegedly caused by rash and negligent driving of the driver of the offending vehicle. Once it is found that the death has occurred due to rash and negligent driving of the driver of the offending vehicle, the claim is squarely maintainable and the owner of the offending vehicle is liable to pay the compensation, but the evidence on record clearly reveals about the offending vehicle being duly insured with the insurer, the liability of paying compensation to the claimants would be on the insurer who is contractually liable to indemnify the owner of the offending vehicle in paying the compensation to the claimants.

7. No doubt, the learned tribunal has computed the loss of dependency at Rs. 24,19,200/- by taking into account the income of the deceased at Rs. 400/- per day, however, no concrete evidence has been tendered by the claimants to suggest that the deceased was earning Rs. 400/- per day. In paragraph-8 of the impugned judgment, the learned tribunal has observed that the paragraph-9 of the examination-in-chief of PW1 filed in shape of affidavit discloses that the deceased was earning daily by driving Auto Trolley and transport of building materials on the Auto Trolley and getting not less than Rs. 500/- to Rs. 600/- on daily wage basis and was contributing more than Rs. 400/-

to the family. It is claimed that the deceased was a driver by profession, but he died on 30.08.2016 and there is nothing on record to suggest that the deceased was earning any particular amount, however, considering the avocation of the deceased as a driver and in absence of any concrete evidence with regard to his employment and income, this Court, however, considers it proper to have some guess work keeping in view the minimum wages for a skilled labour while computing the compensation to the claimants, since the driver comes under skilled labour.

8. It is to be emphasized, the learned counsel for the appellant has supplied a calculation sheet to this Court in which driver is stated to be considered as a skilled labour and the minimum wage for a skilled labour at the relevant time of accident was taken at Rs. 247.20/- per day. The learned counsel for the appellant has requested this Court to calculate the compensation by taking the deceased as a skilled labour, but taking into consideration the wage of a skilled labour and speculating the income of the deceased as a driver at the relevant time of accident, this Court considers it proper to take the income of the deceased at Rs. 300/- per day and thereby, calculates the annual income of the deceased at Rs.300/-X30X12= Rs. 1,08,000/- and deducting 1/4th from this amount towards the personal and living expenses of the deceased, the net amount would be Rs. 81,000/-. Since the deceased died at the age of 34 years, applying 16 multipliers, the amount would come to Rs. 81,000/- X 16 =Rs. 12,96,000/-. Adding 40% to this amount towards future prospects, the net loss of dependency for the claimants would come around Rs. 18,14,400/-. In addition, the claimants are also entitled to a sum of Rs. 70,000/- towards general damages under non-pecuniary head for loss of estate, funeral expenses and consortium with enhancement @ 10% in every three years and, thereby, the said amount after enhancement would come to Rs. 91,000/-. Accordingly, the claimants-R2 to 6 are entitled to compensation of Rs. 18,14,400/- + Rs.

91,000/-= 19,05,400/- together with the interest @ 6% per annum w.e.f the date of filing of the claim application.

9. In the result, the appeal is allowed in part and the impugned judgment of the learned tribunal is modified to the extent indicated above with direction to the insurer to pay the modified compensation amount within eight weeks hence. On the deposit of the modified compensation amount before the tribunal, the same shall be disbursed to the claimants-respondents in following manner:-

(i) 15% of the modified compensation amount shall be kept in a fixed deposit each in the names of R3 & R4 in Nationalized Bank for five years (total 30%);

(ii) 15% of the modified compensation amount shall be kept in a fixed deposit each in the names of R5 & R6 in Nationalized Bank till they attain majority (total 30%);

(iii) 10% of the modified compensation amount shall be kept in a fixed deposit in the name of R2 in Nationalized Bank and

(iv) The remaining 30% of the modified compensation amount shall be paid to the R2 to R6 proportionately in cash. Further, the Respondents 3 to 6 are allowed to withdraw quarterly interest from the fixed deposits for their requirements.

The statutory deposit, if any, be refunded back to the appellant-insurance company together with accrued interest thereon.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 28th day of September, 2026/Priyajit