A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA NO.265 of 2021

CNR No. ODHC010468602021

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

Pratignya Khuntia & Ors. … ***Appellants***

-versus-

Kanhu Mohanty & Another … ***Respondents***

For Appellants : ***Mr. K.C. Nayak, Advocate***

For Respondents : ***None (OP No.1)***
Mr. P.R. Sinha, Advocate on behalf of Mr.M.Sinha (R-2)

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING AND JUDGMENT: 14.08.2026

G. Satapathy, J.

1. This is an appeal U/S.173(1) of the Motor Vehicles Act, 1988 (In short "the Act") by the appellants-claimants assailing the impugned judgment dated 31.03.2021 passed by Second Motor Accident Claims Tribunal, Cuttack (in short "the tribunal") in Misc. Case No.216 of 2016 directing the Respondent No.2-cum-Insurance company(In short "the insurer") to pay a sum of Rs.1,51,573/- together with interest @

7% per annum w.e.f. 05.04.2016 till its realization to the claimants-appellants.

2. Briefly stated, on 25.09.2015 at about 7.00PM one Ajay Kumar Khuntia (hereinafter referred to as "the deceased") met with an accident after being hit by an Auto Rickshaw bearing Regd. No.OR-05-AU-2531 (hereinafter referred to as "offending Auto Rickshaw") resulting him to be shifted to the hospital for treatment. According to the claimants-appellants; due to rash and negligent driving of the driver of the offending Auto Rickshaw, the accident took place and the deceased died while undergoing treatment out of the injuries sustained by him in the accident. The accident was in fact reported to the police ultimately ending with registration in Marshaghai PS Case No.257 of 2015 which culminated in submission of charge-sheet against the accused driver- Benudhara Patra for commission of offences punishable U/S.279/304(A) of IPC. According to the claimants, the deceased was running a Hotel and was contributing to his family out of the earning from the hotel. On the aforesaid averments, the claimants approached the learned the tribunal in an application U/S.166 of the MV Act for compensation of Rs.10,00,000/- by impleading the owner and insurer of the offending vehicle. The aforesaid application was registered as Misc. Case No.216 of 2016.

2.1. In response of the notice of Misc Case No.216 of 2016, the owner of the offending vehicle did not appear and was accordingly set ex-parte, whereas the insurer contested the claim by filing written statement denying all the averments made in the claim application and inter alia disowning its liability on various grounds including the ground of the offending vehicle plying in an area without any route permit. On the aforesaid averments, the insurer has prayed to dismiss the claim.

3. On the rival pleadings of the parties, the learned tribunal framed as many as four issues and allowed the parties to lead evidence. In order to establish their claim, the claimants-appellants examined three witnesses and proved nine documents under Ext.1 to 9 as against no evidence whatsoever by the insurer. After appreciating the evidence upon hearing the learned counsel for the parties, the learned tribunal by the impugned judgment has allowed the claim application for the injuries sustained by the deceased, but not for his death in a motor vehicular accident and accordingly, the learned tribunal granted compensation of Rs.1,51,573/- together with interest indicated supra. Being aggrieved with the findings and quantum of compensation, the appellants are before this Court in this appeal.

4. Heard, Mr. Kapila Charan Nayak, learned counsel for the appellants and Mr. Pratyush Ranjan Sinha, learned counsel appearing on behalf of Mr.M.Sinha, learned counsel for the insurer and perused the record, but none appears for the

Respondent No.1-cum-owner of the offending vehicle despite being duly noticed.

5. After having considered the rival submission upon perusal of record, this Court considers it proper to take the primary objection as raised by the learned counsel for the insurer to the effect that the claim is not maintainable at the threshold, but the insurer has never challenged the same by filing any independent appeal or cross-objection and in absence of any valid challenge by the insurer, the same cannot be considered as a ground to dismiss the claim of the Appellants-claimants for compensation. It is further found from the record that the claimant-Appellants have not only filed the claim application for compensation towards the death of their sole bread earner, but also have led evidence which could not be demolished in cross-examination by the insurer inasmuch as even no suggestion was given to infer that the accident had not taken place, rather the insurer had only challenged to the fact that the vehicle in question was planted. On the other hand, the Appellants have also examined independent witnesses to establish that the accident had taken place and such accident was due to rash and negligent driving of the driver of the offending Auto Rickshaw. From a cumulative consideration of pleading and evidence, there appears no dispute that the accident had taken place and the deceased had suffered injuries in the accident, but the learned tribunal in the impugned judgment has considered that the death of the deceased was not on account of injuries, which is the main challenge by the Appellants-claimants.

6. The learned tribunal albeit has found the offending vehicle to be rash and negligent, but did not find the death of the injured/deceased to be on account of injuries sustained by him in the vehicular accident. According to the learned tribunal, this issue has two components; one is injuries to the deceased in the accident due to rash and negligent driving of the driver of the Auto Rickshaw and the other one is death of the deceased on account of injuries sustained by him in the accident, but the learned tribunal has in fact answered the second component in negative against the Appellants by holding that the injuries sustained by the deceased was on account of accident, which was never challenged by the insurer or the owner of the offending vehicle. In the situation, this Court wants to re-examine the finding of the learned tribunal which is the death of the deceased, since the learned tribunal has held that the claimants have failed to prove that the deceased died because of the injuries sustained by him in the vehicular accident, but the PM Report of the deceased amply discloses that the cause of death of the deceased was for respiratory failure due to Septicemia as a result of prolong treatment and the manner of death was opined by the Doctor to be natural on account of accident in past which finding has never been challenged by the insurer or owner of the offending vehicle in the tribunal, rather the evidence adduced by the claimants-Appellants reveals that the death was on account of injuries sustained by the deceased in the vehicular accident.

7. It is also not in dispute that the driver of the offending vehicle was charge sheeted for offence U/S. 304(A) of IPC and other offences which speaks about causing death by negligence. It is also settled in the law, more particularly in motor vehicular accident cases that once a charge sheet has been filed and the driver has been held negligent for causing death to the deceased, no further evidence is required to prove that the driver was negligently driving the offending vehicle to cause death of the deceased. Even the eye witnesses are not examined, that would not be fatal to prove the death of the deceased due to negligence of the offending vehicle. In view of the aforesaid facts and on a cumulative appreciation of evidence, both oral and documentary and in absence of any evidence contrary to hold that the death was not due to injuries sustained by the deceased in the motor vehicular accident, this Court is of the considered opinion that deceased died due to injuries sustained by him in motor vehicular accident and the tribunal has manifestly erred in law in holding that the deceased did not die due to injuries sustained by him in motor vehicular accident.

8. Once the death of the deceased was held to be due to injuries sustained by him in motor vehicular accident, the next question comes for is the determination of compensation, but the learned tribunal believing the injuries sustained by the deceased in the motor vehicular accident has granted compensation for the injuries sustained by the deceased, but not for the death of the deceased and thereby, an occasion arises for remitting the matter to the tribunal for determination of the compensation payable to the claimants afresh, however, looking to the fact that the accident had occurred in the year 2015 and now we are in 2026, this Court considers it appropriate to determine the compensation by considering the evidence available on record. In determining the compensation to the claimants, it appears that a calculation sheet has been provided by the claimants-Appellants and it is requested therein to take the income of the deceased notionally @ Rs. 200/- per day and thereby, the notional monthly income of the deceased would come around Rs. 5,200/- by excluding the four holidays in a month and thus, the annual income of the deceased would come around by adding 25% future prospects (Rs. 5,200 + 25% of Rs. 5,200/) X 12= Rs. 78,000/- (Rupees Seventy Eight Thousand) and since the deceased was survived by four dependants, after deducting $1/4^{th}$ towards the personal and living expenses of the deceased, the net annual dependency of the Appellants-claimants would come to $3/4^{th}$ of Rs. 78,000/- = Rs. 58,500/-. Since the deceased was found to have died at the age of 52 years as per the Post mortem report, applying the multiplier of 11, the loss of dependency of the Appellants-claimants would come around Rs. 58,500 X 11 = Rs. 6,43, 500/-. Adding to this amount, Rs. 70,000/- with three enhancements @ 10% for each enhancement in every three years, the amount under non-pecuniary head of damages towards funeral expenses, damages and love & affection, the net amount would come to Rs. 6,43,500/- + Rs. 91,000/- = Rs. 7,34,500/-. Since the deceased had spent Rs. 1,11,000/- towards his treatment, which was proved by the claimants-Appellants under Ext. 8, the same needs to be added. Besides, the deceased had remained as an indoor patient for around 14 days in Ashwini Hospital which is proved through Ext. 9 and the deceased, thereafter, remained alive for approximately for 110 days in his house, a lump sum Rs. 35,000/- is awarded under the heading of Medicine and Special diet for the deceased for these periods and, therefore, the net compensation amount would come around Rs. 6,43,500/- + Rs. 91,000/- + Rs. 1,11,000/- + Rs. 35,000/- =Rs. 8,80,500/-.

9. The next question definitely comes for determination is who is liable to pay this amount to the claimants, but the learned Tribunal has directed the insurer to pay the compensation and recover the same from the owner in due process of law, however, such finding is not backed by any legal admissible evidence inasmuch as the insurer has neither adduced any evidence nor it produced any valid documents before the learned tribunal to prove violation of terms and conditions of policy. No doubt, the learned tribunal has arrived at said conclusion by taking into account the Xerox copy of the route permit of the offending vehicle which was not at all admissible in evidence inasmuch as when the best evidence is available, how come the learned tribunal took into consideration the secondary evidence which was not permissible in law. Additionally, Xerox copy of a document is not admissible, unless the grounds for admitting such evidence are satisfied by the party seeking admission of such document in evidence. What is most significant is that the learned tribunal has not considered the Xerox copy of the permit as secondary evidence, but by only looking at the face of such document, it has come to a conclusion of violation of policy conditions for plying of the offending vehicle in an unauthorized place. Besides, the photo copy of a document is also prone to manipulation, but no evidence was tendered by the insurer to suggest that the said document was in fact a genuine one. Further, the insurer has not made out a case for leading secondary evidence. Additionally, the route permit of the offending vehicle must be available with the concerned RTO Office, which the insurer could have brought on record by summoning the concerned document. It, therefore, appears that the learned tribunal has proceeded to decide the issue on wrong assumption of law and by erroneously applying the principle to hold that the insured has violated the terms and condition of the policy for allowing the offending vehicle in an unauthorized place and, thereby, such finding of the learned tribunal being contrary to the law cannot sustain and is liable to be set aside. In such situation and in absence of any evidence, this Court does not consider it proper to hold that that the insured has violated the policy conditions and, therefore, the insurer being contractually liable to indemnify the insured is, accordingly, directed to pay the compensation amount to the claimants. Hence, the appeal deserves to be allowed and the insurer is liable to pay the compensation of Rs. 8,80,500/- to the claimants-Appellants together with interest @ 6% per annum w.e.f the date of filing of the claim application i.e. on 05.04.2016 till its realization to the claimants.

10. Resultantly, the appeal is allowed and the impugned judgment passed by the learned tribunal is modified to the extent indicated above, but in the circumstances, there is no order as to costs. The respondent-insurance company is, hereby, directed to pay Rs. 8,80,500/- together with interest as indicated to the claimants-Appellants within eight weeks hence and in case of deposit of such modified compensation amount before the learned tribunal, the same shall be disbursed to the claimant-appellant Nos. 2 to 4 in equal proportion by keeping 75% of it in fixed deposit in nationalized bank for three years, since Appellant No.1 has died in the meantime and her name is deleted from the appeal memo.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 14th day of August, 2026/Priyajit