GAHC010006922016

2026:GAU-AS:14022

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

Case No. : MACApp./14/2016

THE ORIENTAL INSURANCE CO. LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956
REPRESENTED BY ITS REGIONAL MANAGER, ULUBARI, GUWAHATI-7,
DIST. KAMRUP, ASSAM.

VERSUS

SRI SHYAMAL KUMAR DEY and 2 ORS
S/O LATE SACHINDRA CH. DEY, R/O BORPATHAR JURIA NAMGHAR PATH,
P.O. and P.S. TINSUKIA, DIST. TINSUKIA, ASSAM.

2:MAHAL SINGH

S/O LATE ARUDI SINGH
R/O BELTOLA CHARIALI
GUWAHATI
DIST. KAMRUP
ASSAM.

3:GURMUKH SINGH

S/O SRI MOHAN SINGH
R/O BELTOLA
GUWAHATI
DIST. KAMRUP
ASSAM

Linked Case : MACApp./33/2016

SRI SHYAMAL KUMAR DEY

S/O LATE SACHINDRA CH. DEY
R/O BORPATHAR JURIA NAMGHAR PATH
TINSUKIA
P.O.
P.S. and DIST. TINSUKIA
ASSAM.

VERSUS

SRI MAHAL SINGH and 2 ORS
S/O LATE ARUDI SINGH
R/O BELTOLA CHARIALI
GUWAHATI
DIST. KAMRUP M
ASSAM DRIVER OF THE VEHICLE

2:GURMUKH SINGH
S/O SRI MOHAN SINGH
R/O BELTOLA
GUWAHATI
DIST. KAMRUP M
ASSAM OWNER OF THE VEHICLE

3:THE ORIENTAL INSURANCE CO. LTD.
REPRESENTED BY DIVISIONAL MANAGER
HAVING ITS DIVISIONAL OFFICE AT TINSUKIA
P.O.
P.S. and DIST. TINSUKIA
ASSAM
PIN-786125 INSURER OF THE MARUTI CAR

BEFORE

HON'BLE Mr. JUSTICE BUDI HABUNG

Advocate for the Appellant : Mr. Mr. S. K. Goswami, ld. Adv.

Advocate for the Respondent : Mr. A. K. Gupta, ld. Adv.

Date on which Judgment is reserved : 17.09.2026

Date of Hearing : 17.09.2026

Date of Judgment and Order : 22.09.2026

Whether the pronouncement is of the Operative part of the Judgment?

:No

Whether the full Judgment has been pronounced ? : Yes

JUDGMENT & ORDER

(CAV)

Heard Mr. S. K. Goswami, learned counsel appearing on behalf of the appellant/Oriental Insurance Company Limited/respondent No.3 in MAC. Appl. No.33/2016. Also heard Mr. A. K. Gupta, learned counsel appearing on behalf of the respondent No.1/claimant/appellant in MAC App. No.33/2016.

2. These two appeals, being connected and arising out of the same judgment, are taken up together for disposal. The MAC App. No. 14/2016 has been preferred by the appellant/Oriental Insurance Company Limited against the judgment and award dated 14.07.2015 passed by the learned Additional `Member, Motor Accident Claims Tribunal, Tinsukia in MACT Case No. 83/2009, whereby the learned Tribunal directed the appellant/Insurance Company to pay a sum of Rs. 4,54,600/- (Rupees four lakhs fifty-four thousand six hundred) to respondent No. 1/claimant, together with interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

3. The brief fact of the case, as stated by the appellant, is that respondent No. 1/claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988. The claimant stated that on 22.10.2007 at about 8.30 PM, while he was near Tinkonia, Kali Mandir, Tinsukia, a vehicle bearing registration No. NL-02-D-3633, coming from behind at a high speed and being driven rashly and negligently, hit him. As a result, he fell down and his right hand came under the wheel of the vehicle, thereby causing grievous injury. It was further alleged that, while attempting to flee from the place of occurrence, the driver of the offending vehicle hit another vehicle, an Alto Maruti Car

bearing registration No. AS-23-D-8881, causing damage to the right door of the vehicle.

4. The claimant was initially shifted to City Hospital, Tinsukia for treatment and thereafter he was referred to Archana Trauma Centre, Dibrugarh, where he remained under treatment from 22.10.2007 to 22.11.2007. He thereafter underwent treatment at Patna at Mokhopadhaya Orthopaedic Clinic and Research Centre on three occasions. He was subsequently referred to Christian Medical College & Hospital, Ludhiana for plastic surgery. According to the claimant, he incurred substantial expenditure towards treatment and other incidental expenses. He also claimed that he suffered permanent disability.

5. In connection with the accident, Tinsukia P.S. Case No. 640/2007 was registered under Sections 279/338 of the IPC. The case was subsequently charge-sheeted against the driver, Mahal Singh, showing him as absconding.

6. The learned Tribunal framed five issues. On consideration of the evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the offending vehicle. The Tribunal awarded compensation under different heads as follows:

Loss of income Rs.3000/- x 19	Rs. 57,000/-
Medical Vouchers	Rs. 87,600/-
Future medical expenses	Rs. 50,000/-
Pain & Sufferings	Rs.1,00,000/-
Loss of Prospect of Marriage	Rs. 40,000/-
Loss of Future prospect	Rs.1,00,000/-
Misc. Expenses (Transportation Food lodging etc.)	Rs. 20,000/-
	Rs.4,54,600/-

7. The learned Tribunal further held that since the offending vehicle was insured with the appellant insurance company, the insurance company was liable to pay the aforesaid compensation. Accordingly, the insurance company was directed to pay the compensation to the claimant with interest @ 6% per annum from the date of filing of the claim petition till realization.

8. The learned counsel for the appellant primarily challenges the award on two grounds. Firstly, the learned counsel for the appellant submitted that the learned Tribunal was not justified in awarding Rs. 1,00,000/- (Rupees one lakh only) under the head of 'loss of future prospects'. It is submitted that there is no basis and/or provision for such an award under the head of 'loss of future prospects', particularly when the claimant failed to establish his occupation, income, and the impact of the alleged disability upon his earning capacity.

9. Secondly, the learned counsel for the appellant submits that the driver of the offending vehicle did not possess a valid driving licence on the date of the accident. According to the appellant, the driving licence of the driver, Mahal Singh, was valid only up to **12.09.2007**, whereas the accident occurred on **22.10.2007**. It is, therefore, submitted that there was a breach of the conditions of the insurance policy. Under the circumstances, the learned counsel for the appellant submits that, at the very least, the appellant ought to have been granted the right to recover the amount paid to the claimant from the owner/insured.

10. The learned counsel further submits that although the claimant relied upon a disability certificate showing 50% locomotor disability, neither the doctor who assessed the disability nor the concerned officer of the District Social Welfare Office was examined as a witness. The learned Tribunal itself had recorded this deficiency in the impugned judgment. It is, therefore, submitted that the disability certificate could not have been treated as sufficient proof of the extent of disability of the claimant.

Furthermore, it is submitted that there was no evidence regarding the claimant's functional disability or loss of earning capacity due to such alleged disability.

11. Learned counsel appearing for respondent No. 1/claimant, who has also preferred MAC APP No. 33/2016 seeking enhancement of compensation, submits that the claimant suffered serious injuries in the said vehicular accident, resulting in permanent disability. He further submits that the compensation awarded by the learned Tribunal is inadequate. It is submitted that the claimant suffered 50% locomotor disability and lost his employment on account of the said accident. It is, therefore, contended that the compensation under the head of future prospects ought to be enhanced.

12. I have heard and considered the rival submissions advanced by the learned counsel for the parties and perused the judgment and award passed by the learned Tribunal, as well as the material available on record.

13. There is no serious dispute before this Court regarding the occurrence of the accident and the involvement of the offending vehicle. The learned Tribunal considered the FIR, seizure list, medico-legal report, charge-sheet, and Form-54 (Accident Information Report) and came to the conclusion that the vehicle bearing registration No. NL-02-D-3633 was involved in the accident and that the accident occurred due to the rash and negligent driving of its driver.

14. The question that arises for consideration is whether the compensation awarded under the head of "loss of future prospects" can be sustained in the manner in which it has been awarded.

15. The learned Tribunal recorded a specific finding in paragraph 20 of its judgment that the claimant had failed to adduce evidence regarding the type of work he used to do. Therefore, the learned Tribunal recorded that it could not ascertain to what extent the injury had affected his future loss of income.

16. This finding of the learned Tribunal is significant. The claimant had pleaded that he was employed under one Sajjal Choudhury, J.R. Complex, Tinsukia, and was earning Rs. 4,000/- per month. However, the learned Tribunal found that no document had been produced in support of his claim of employment or the income as claimed. Under such circumstances, his income was assessed notionally at Rs. 3,000/- per month for the purpose of determining loss of income during the period of treatment.

17. The learned Tribunal further recorded that although the claimant relied upon the disability certificate issued by the District Social Welfare Officer, showing 50% locomotor disability, neither the doctor who examined him nor the concerned officer of the Social Welfare Office was examined to prove the said certificate. The Tribunal, however, noticed from the medical documents that the claimant had suffered a injury with impairment of the right thumb.

18. The law relating to compensation for permanent disability requires a distinction between physical disability and functional disability, that is, the effect of physical disability on the claimant's capacity to earn. In this regard, the learned counsel for the appellant, in support of his submissions, relied upon the decision in ***Raj Kumar v. Ajay Kumar & Anr.***, reported in (2011) 1 SCC 343, wherein the Hon'ble Supreme Court explained that the percentage of permanent physical disability is not necessarily the same as the percentage of loss of earning capacity.

19. The functional/performance impact of the disability, having regard to the nature of the occupation and the activities which the claimant is capable of performing, has to be assessed. The Tribunal, based on the evidence and documents available on record, is required to determine the extent to which the permanent disability affects the claimant's earning capacity.

20. The Courts have, time and again, emphasized that the assessment of compensation must be based upon the actual effect of the disability on earning

capacity and not mechanically upon the percentage of physical disability mentioned in the certificate. In the present case, the learned Tribunal itself found that the claimant had not established his occupation and the extent to which the injury affected his future earning capacity. There is, therefore, an inconsistency between the finding recorded by the Tribunal and the subsequent award of Rs. 1,00,000/- (Rupees one lakh only) under the specific head of "loss of future prospects".

21. This, however, does not mean that a claimant suffering from permanent disability is, under the law, disentitled to compensation towards future prospects. The learned counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in ***Mohd. Sabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation***, reported in 2022 LiveLaw (SC) 1017, wherein the Hon'ble Supreme Court held that in a case of permanent disablement caused by a motor accident, the claimant is entitled not only to compensation for future loss of income but also to consideration of future prospects. Paragraphs 17 and 18, being relevant, are reproduced hereinbelow:

> "*17. The High Court has not applied the quantum of future prospects in the compensation granted. In its reasoning, the High court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence, it cannot be said that there is a loss of future earnings.*
>
> *18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that 'just compensation' must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place."*

22. Thus, future prospects can be awarded in a case of permanent disability. However, the question is whether, on the basis of the evidence available in the present

case, the learned Tribunal had sufficient material to determine the claimant's functional disability and, consequently, the loss of earning capacity so as to justify the amount awarded under the said head.

23. In the considered opinion of this Court, the answer must be in the negative. As seen above, the learned Tribunal itself found that the claimant had not proved his occupation. He had not adduced any evidence to establish the effect of the injury upon his earning capacity. The disability certificate relied upon by him was also not proved through the concerned medical authority. However, at the same time, the medical records do indicate a serious injury sustained by the claimant involving impairment of his right thumb. The material on record, therefore, discloses the existence of a substantial injury. However, it does not provide a sufficient basis for determining the percentage of functional disability or loss of earning capacity. It is definitely not a 50% disability of a total person as trying to project by the claimant's counsel.

24. In the aforesaid circumstances, merely deleting the amount of Rs. 1,00,000/- (Rupees one lakh only) would also not meet the requirement of determining "just compensation". The appropriate course is to have the relevant issue determined on the basis of proper evidence.

25. Coming to the next question regarding the validity of the driving licence, the learned Tribunal rejected the plea of the insurance company mainly on the ground that no rebuttal evidence had been produced to establish that the driver did not possess a valid driving licence. The Tribunal noticed that a suggestion regarding possession of a valid licence had been put to the claimant and that the said suggestion was denied by the claimant. However, in cross he again stated that he has not submitted any driving license renewal form, which means, the driving license of the driver which expired on 12.09.2007 was not renewed.

26. However, the contention of the insurance company before this Court is that the driving licence of the driver, Mahal Singh, was valid only up to 12.09.2007, whereas the accident occurred on 22.10.2007. This contention of the insurance company is based on the format application made by the claimant and Form-54 (Accident Information Report). If this factual assertion is supported by the records of the competent licensing authority and it is established that the licence had not been validly renewed in time so as to cover the date of the accident, the issue of breach of the insurance policy condition would arise.

27. This Court is of the view that the question cannot be determined merely on the basis of an assertion made by either party. The relevant records of licensing authority, the insurance policy conditions, and the evidence adduced by the insurance company have to be considered. The principle of "pay and recover" has been laid down in **National Insurance Co. Ltd vs Swaran Singh & Ors**, reported in (2004) 3 SCC 297. The Hon'ble Supreme Court held that where the insurer establishes a breach relating to the driver not possessing a valid and effective driving licence, the insurer may, in an appropriate case, be directed to satisfy the award vis-à-vis the third-party claimant and thereafter recover the amount from the owner/insured**.**

28. In the present case, however, the Tribunal has not entered into a definite finding based upon the records of the licensing authority as to whether the driver of the offending vehicle possessed a valid and effective driving licence at the time of the accident on 22.10.2007. The issue, therefore, requires proper consideration.

29. In view of the aforesaid discussion, this Court is of the opinion that the compensation as granted by the learned Tribunal vide judgment and award dated 14.07.2015 requires fresh determination, particularly with regard to the claimant's functional disability and loss of future earning capacity. The issue relating to the validity of the driving licence and the consequential liability of the insurance company also requires reconsideration.

30. Accordingly, the judgment and award dated 14.07.2015 passed by the learned Additional Member, Motor Accident Claims Tribunal, Tinsukia, in MACT Case No. 83/2009 is set aside.

31. The matter is remanded to the learned Tribunal for fresh determination of the compensation and the consequential liability of the parties. The learned Tribunal shall afford reasonable opportunities to both sides to adduce additional evidence, if so advised, on the following aspects:

I. The age and occupation of the claimant at the time of the accident;

II. His actual income immediately prior to the accident or the appropriate notional income, if the actual income is not proved;

III. The nature and extent of the permanent physical disability suffered by the claimant;

IV. The functional disability and its impact upon his earning capacity, having regard to his occupation, and the appropriate method for determining loss of future earning capacity, including loss of future income and future prospects, in accordance with law;

V. The validity of the driving licence of the driver of the offending vehicle on the date of the accident; and

VI. The consequential liabilities of the insurance company, including the question of pay and recovery, if otherwise warranted.

32. The learned Tribunal, while considering the matter, shall also bear in mind that the claimant has suffered a serious injury involving impairment of the right thumb, as reflected in the medical records. Therefore, the learned Tribunal shall assess compensation under the appropriate heads on the basis of the evidence available

before it.

33. It is clarified that this Court has not expressed any final opinion on the issues to be considered by the learned Tribunal.

34. Further, considering that the incident occurred in the year 2007 and the claim petition itself was instituted long ago, the learned Tribunal shall make every endeavour to dispose of the matter expeditiously, preferably within 6 (six) months from the date of receipt of the record and the certified copy of this judgment.

35. The appeal is accordingly allowed by way of remand in the above terms.

36. The statutory deposit, if any, made by the appellant shall abide by the final determination by the learned Tribunal.

37. With the above, both the appeals stand disposed of.

38. Send back the record forthwith.

JUDGE

Comparing Assistant