

**(2026) 08 GAU CK 3909**  
**In the Gauhati High Court**  
**Case No : MACApp./98/2023**

New India Assurance Co. Ltd.

APPELLANT

Vs

Sanjay Kumar Sah & Ors.

RESPONDENT

**Date of Decision :** 04-08-2026

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173, 166, 168, 163, 2 Schedule

**Citation :** (2026) 08 GAU CK 3909

**Hon'ble Judges :** Yarenjungla Longkumer, J

**Bench :** Single Bench

**Advocate :** MR. K K BHATTA, MRS L SHARMA, MR A SHARMA, MR. A K GUPTA (R-1), MR. R S MISHRA (R-1)

**Final Decision :** Disposed Of

## **Judgement**

The instant appeal under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant, New India Assurance Company Limited, assailing the judgment & award dated 16.12.2022, passed by the learned Additional Member No. 2, MACT, Tinsukia in MAC Case No. 82/2015, directing the appellant/insurer to pay a sum of Rs.39,74,381/- (Rupees Thirty Nine Lakhs Seventy Four Thousand Three Hundred Eighty One), with interest @ 8% per annum, from the date of filing of the case till realization.

2. Heard Mr. K K Bhatta, learned counsel for the appellant and Mr. A K Gupta, learned counsel for the respondent No. 1.

3. Service in respect of the other respondents is complete. However, they have chosen not to enter appearance.

4. The main grounds taken by the appellant, herein, in assailing the impugned judgment & award dated 16.12.2022 in MAC Case No. 82/2015 is that –

(i) The claimant has failed to establish the negligence of the bus driver.

It is submitted that foundational requirement of a claim under Section 166 of the

Motor Vehicles Act is proof that the accident occurred due to the rash and negligent driving of the offending vehicle. Though, the strict rules of evidence are not applicable in such proceedings, the claimant must still establish negligence on the touch stone of preponderance of probabilities.

In the instant case, there is no evidence that the bus was being driven at excessive speed or that the driver had lost control over the vehicle. The Tribunal has merely presumed the negligence because of the fact that an accident had occurred.

(ii) The claimant himself was guilty of contributory negligence.

The undisputed evidence on record shows that the claimant had kept his right hand outside the window of the moving bus. When the bus was proceeding on its route, an unidentified truck travelling from the opposite direction, came close enough for the claimant's exposed hand to strike it, resulting in the amputation of his hand. Every passenger is required to exercise reasonable care for his own safety. Had the claimant kept his hand inside the vehicle, the accident would not have occurred, however, the learned Tribunal ignored this crucial fact and fastened the entire liability upon the appellant/Insurer.

Learned counsel for the appellant by relying on the case of **T.O. Antony Vs. Karvarnan, reported in (2008) 3 SCC 748**, has submitted that where the claimant's own negligence contributes to the accident, the doctrine of contributory negligence applies and compensation must be reduced proportionately.

(iii) Involvement of an unknown truck was the immediate cause of injury. The learned counsel for the appellant submits that the evidence indicates that the claimants had struck an unidentified truck moving from the opposite direction. The bus itself did not collide with any vehicle, thereby, there was no head on collision, nor did it overturn or leave the road and no other passenger suffered any injury. The accident occurred mainly from the combination of the claimants own unsafe conduct and the proximity of the unidentified truck. Therefore, the Tribunal could not have fastened the entire liability upon the Insurer of the bus.

(iv) Application of multiplier of 37 is patent error of law.

Learned counsel also submits that the learned Tribunal had committed a manifest error in applying the multiplier of 37 for assessing the future loss of earning capacity.

The claimant's age at the time of the accident was approximately 28 years and according to the authority laid down in the case of **Sarala Varma Vs. Delhi Transport Corporation, reported in (2009) 6 SCC 121**, the multiplier applicable when the claimant is 28 years old, is 17. Therefore, there is no legal basis for adopting a multiplier of 37.

(v) The award is contrary to the principle of just compensation.

Learned counsel submits that Section 168 of the Motor Vehicles Act, requires the Tribunal to award only "just compensation". The expression just compensation specifies compensation that is fair, reasonable and based on certain legal principles.

Relying on the case of **Reshma Kumari Vs. Madan Mohan, reported in (2013) 9 SCC 65**, learned counsel submits that compensation should be fair and reasonable and should neither be a bonanza nor a pittance.

Learned counsel for the appellant, therefore, submits that due to the erroneous multiplier and the failure to appreciate the contributory negligence, the compensation awarded is disproportionately high and it is prayed that this Court may exercise its appellate jurisdiction to interfere with the award and set it aside or suitably modify the judgment & award dated 16.12.2022, passed by the learned Additional Member No. 2, MACT, Tinsukia, in MAC Case No. 82/2015.

Another prayer, which the learned counsel for the appellant has advanced is that the instant case could not have been filed under Section 166 of the M.V. Act as the claimant could not prove the rash and negligent act of the offending bus and instead it should have been preferred under Section 163 of the M.V. Act and thereby, the Tribunal should have awarded the compensation under the 2 Schedule to the Motor Vehicles Act.

Learned counsel has relied on the case of **Oriental Insurance Company Limited Vs. Meena Variyal and Others, reported in (2007) 5 SCC 428** in support of his submission that negligence has to be proved in order to entertain an application under Section 166 of the M.V. Act, 1988.

5. Per contra, learned counsel for the claimant/respondent has referred to the evidence of CW1, CW2 and CW3.

6. By referring to the evidence of the above witnesses, learned counsel has submitted that the negligence of the bus, bearing registration No. AS-01-GC-0266 (Night Super), has been proved. He has submitted that CW1 in his evidence-in-affidavit has exhibited the certified copy of the Ejahar as Ext. 2, the certified copy of FIR as Ext. 3, the certificate issued by M/s. Hatibarua & Brothers as Ext.8, IT Return of the claimant as Ext.10 and the Disability Certificate issued by the Medical Board, Tinsukia as Ext.13.

7. Learned counsel further submits that the CW2 was a co-passenger along with the claimant, who was sitting in the bus when it met with an accident. The CW2 has also proved that the said bus had collided with another vehicle and as a result of which, the claimant had sustained the injuries on his right arm.

8. The learned counsel further submits that the Disability Certificate issued by the Medical Board, Tinsukia has not been disputed by the Insurer and the same has been further proved by the evidence of CW3, who is one of the Board members who had issued the Disability Certificate.

9. CW3 had deposed that the claimant was having 80% disability after physical examination and after verification of all aspects. Upon being cross-examined, the CW3 further stated that the Disability Certificate was issued, basing upon physical examination of bone, joint and muscles. However, he admitted in his cross-examination that there is no mention in the Disability Certificate on what basis the quantum of disability percentage is measured.

10. By referring to the impugned judgment & order, the learned counsel for the claimant/respondent states that even the learned Tribunal in the said judgment has recorded that the CW2 and the CW3 have supported the fact of the accident and that their evidence is found to be reliable and they have supported the claimant's case that the accident took place due to rash and negligent driving of the offending vehicle.

11. Learned counsel for the claimant/respondent, however, has fairly submitted that the Tribunal has wrongly taken the multiplier as 37 and it should be taken as 17. However, as far as the other heads under which the award has been given, the learned counsel prays that the impugned judgment & award dated 16.12.2022 may not be interfered with.

12. This Court has considered the submissions made by the learned counsel for the parties and also perused the judgments relied upon as well as the Trial Court records.

13. The occurrence of the accident and the involvement of the offending vehicle, are not seriously in dispute in the present appeal. The main argument put forward by the learned counsel for the appellant is that the claimant himself was negligent by putting his hand out of the vehicle. The challenge is also on the quantum of compensation awarded in respect of the loss of income, inasmuch as, the multiplier adopted by the Tribunal for assessing the compensation was wrongly.

14. With regard to the argument of contributory negligence, this Court is unable to accept the contention of the learned counsel for the appellant, inasmuch as, the evidence of the CW1 and the CW2 have not indicated anywhere that the claimant was negligent or that he had not acted with due caution. In fact, it is seen from the evidence of the CW2, who is the co-passenger of the claimant that during the journey, the claimant was sitting on the seat next to the right-side window of the bus and he was sitting beside him in the same row. At about 11.50 PM to 12.15 AM, when the bus in which they were sitting was proceeding on the National Highway under Samaguri Police Station, Nagaon District, he saw that the vehicle had collided with another vehicle and as a result of which, the claimant sustained grievous injury on his right side and his right hand was cut off and he became senseless. The claimant has been, therefore, able to prove that the accident was caused due to collision with another vehicle. It cannot be said in such circumstances, that the claimant was negligent or that he had not taken due care. As far as the rash and negligent driving is concerned, the evidence is

also on record that an FIR has been filed before the concerned Police Station, which is exhibited as Ext.3.

15. This Court is, therefore, of the view that an application under Section 166 of the Motor Vehicles Act is maintainable in the instant case.

16. It is seen from the impugned award that the claimant was aged 28 years on the date of the accident. However, while computing the compensation, the learned Tribunal has applied multiplier of 37. Therefore, relying on the case of Sarala Varma (supra), the multiplier applicable to a person, who was 28 years of age on the date of the accident, will be 17 and the adoption of multiplier of 37 cannot be sustained. The claimant being 28 years of age at the relevant time, there was no basis for the learned Tribunal to apply a multiplier of 37. The error has resulted in an excessive computation of compensation and consequently, calls for interference by this Court.

17. It is well settled that in cases of permanent disability arising out of a motor accident compensation the loss of future earning capacity is required to be assessed with reference to the functional disability suffered by the claimant and its impact upon his/her earning capacity. In this case, the Disability Certificate has shown the permanent disability of the claimant as 80%. However, the Tribunal has not come to a finding anywhere in the judgment as to how the loss of earning capacity was calculated and how the percentage of permanent disability of 80% is equal to the percentage of loss of earning capacity. The CW3/ Doctor in his cross-examination has also stated that "there is no mention in the Disability Certificate on what basis the quantum of disability percentage is measured".

18. It is seen from the records that the claimant was not doing any manual work. In fact, he was a commission Agent, who used to get materials from one company and sell it to other persons through which he used to get commission on sale. Therefore, it cannot be said that the loss of his arm could have caused 80% loss of earning capacity in view of his admitted profession as a commission Agent. At best, the percentage of loss of earning capacity could have been taken as 60%. The law regarding the calculation of loss of future earning capacity vis-à-vis percentage of permanent disability has been laid down in the case of **Raj Kumar Vs. Ajay Kumar and Another, reported in (2011) 1 SCC 343.**

19. This Court is accordingly of the view that the impugned judgment & award dated 16.12.2022 needs to be modified in accordance with law and it is hereby modified as under:

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|--------------------------------|---------------------|
|                                |                     |
| Annual income before??accident | Rs.6500X12=78,000/- |

|                                                              |                                        |
|--------------------------------------------------------------|----------------------------------------|
|                                                              |                                        |
|                                                              |                                        |
| Loss of future earning per annum                             | 60% of prior annual income=Rs.46,800/- |
|                                                              |                                        |
| Multiplier                                                   | 17                                     |
|                                                              |                                        |
| Total loss of Future earning capacity awarded                | Rs.46,800X17=Rs.7,95,600/-             |
|                                                              |                                        |
| Future medical expenses & loss of amenities, conveyance, etc | Rs.10,00,000/-                         |
|                                                              |                                        |
|                                                              |                                        |
| Medical Expenses                                             | Rs.1,65,581/-                          |
|                                                              |                                        |
| Pain and suffering                                           | Rs.5,00,000/-                          |
|                                                              |                                        |
| Total award                                                  | Rs. 24,61,181/-                        |
|                                                              |                                        |

**(rupees twenty four lakhs sixty one thousand one hundred and eighty one) only.**

20. With the above modification and observations, this appeal stands disposed of.

21. It is submitted that the appellant has deposited 7 (seven) lakhs before the Registry of this Court in compliance to Order dated 22.03.2023 passed by this Court in I.A (Civil) 765/2023, which has been withdrawn by the claimant/respondent. Therefore, the remaining balance amount will be deposited by the appellant/New India Assurance Company Ltd before the Tribunal within a period of 6 (six) weeks from today along with the interest @ 8 % per annum as directed by the learned Tribunal, from the date of filing the claim petition till realisation.

22. Registry shall also refund the statutory deposit to the appellant.

Registry is directed to send back the Trial Court records. Forthwith.