

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.396 of 2019

Kalpataru Behera and Others ***Appellants***

Mr. P.K. Mishra, Advocate

-versus-

Ganesh Behera and Another ***Respondents***

Mr. A.A. Khan, counsel for Respondent No.2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
16.11.2022

Order No.

05. 1. The matter is taken up through hybrid mode.
2. Heard Mr. P.K. Mishra, learned counsel for the claimant - Appellants and Mr. A.A. Khan, learned counsel for the insurer – Respondent No.2.
3. Present appeal by the claimants is against the impugned judgment dated 24th April, 2019 of the learned 1st MACT, Jagatsinghpur passed in MAC Case No.1494 of 2014, wherein the tribunal has refused to grant any compensation to the claimants by disbelieving their case.
4. The facts of the case reveal that, according to the claimants, the deceased, namely Parbati Behera while going in the offending motor cycle bearing registration number OD 01C 8991 driven by the owner – driver Ganesh Behera, she fell down from the motor cycle due to rash and negligent driving of the driver and died three days thereafter.

5. The tribunal disbelieved the case of the claimants on the ground that the accident took place as another motor cycle dashed against the present offending motor cycle according to the statement of a witness recorded in the inquest report under Ext.5, and that the F.I.R. was lodged after seven days of the accident, i.e. on 4th June, 2014.

6. Mr. Mishra, learned counsel for the Appellant challenges such finding of the tribunal by submitting that mere delay in lodging the F.I.R. and the statement of the witness, who is not an eye witnesses to the accident, recorded in the inquest report cannot nullify the case of the Appellant. According to him, the tribunal committed gross error in disbelieving the case of the Appellant.

7. Mr. Khan in his reply submits that the inquest report under Ext.5 is the document relied on by the claimants and therefore, the they cannot deny the statement recorded in the said document brought on record by themselves.

8. The owner – Respondent No.1 has contested the case before the tribunal and he admitted the accident as well as death of the deceased in the hospital. He further admits involvement of the offending motor cycle in the said accident.

9. The F.I.R. was lodged on 4th June, 2014 and the accident took place on 29th May, 2014. In the contents of the F.I.R. (Ext.1) the delay in lodging the same has been explained by the informant stating that due to pressure of treatment of the deceased and her death, the delay occurred in lodging the F.I.R. The tribunal in the impugned judgment did not discuss such explanation offered in the F.I.R. itself towards the

cause of delay in lodging the F.I.R. It is seen that the tribunal has mainly relied on the statement recorded at column 9 of the inquest report under Ext.5. It is seen that this statement has been recorded by one witness namely, Panchanan Mahalik. He is not the eye witness according to the police investigation report. He is not even cited as a witness in the criminal case. It needs to be mentioned here that the police upon investigation has submitted charge-sheet against the accused driver Ganesh Behera for commission of offence U/s.379/304-A of I.P.C.

10. Law is well settled on the standard of proof required to be adduced in a motor accident compensation case. As held in the case of ***Mangla Ram v. Oriental Insurance Company Ltd. and Others, (2018) 5 SCC 656*** and ***Bimala Devi and Others v. Himachal Road Transport Corporation and Others, (2009) 13 SCC 530***, the case of claimants for motor accident compensation is to be tested on the principles of preponderance of probability. The evidence required to be appreciated is on the touchstone of preponderance of probability and the principles of strict liability is not applicable in compensation case. Keeping in view the evidence of P.W.2, coupled with the submission of charge-sheet and admission of the owner – driver of the offending motor cycle, no iota of doubt remains to disbelieve the case of the claimants and in this regard, neither the statement recorded in the inquest report nor the alleged delay in lodging the F.I.R. would stand as a hindrance. Accordingly, it is held that the claimants have established their case that the deceased died due to the negligence of the driver of the offending motor cycle bearing registration number OD 01C 8991.

11. With regard to quantification of compensation amount as well as liability of the insurer, the tribunal has not discussed anything in the impugned judgment.

12. Mr. Khan does not dispute the validity of the insurance policy of the offending vehicle on the date of accident. On the other hand a copy of the policy has been filed on behalf of the insurer under Ext.B. The insurer also does not allege violation of any policy condition. Therefore, no doubt remains regarding liability of the insurer to indemnify the compensation amount.

13. The deceased is a woman aged about 40 years according to the claim of the Appellants. The copy of the post mortem examination report under Ext.7 reveals that the age of the deceased is 40 years, as such her age is determined at 40 years and the applicable multiplier would be '15'.

14. Next coming to see the income of the deceased, according to the claimants she was earning Rs.9000/- per month from tailoring business. But no such document is produced in support of their claim to the extent of earning Rs.9000/- per month from tailoring business. However, keeping in view the statement of P.W.1 and believing his statement that the deceased was doing tailoring business, her income can be assessed at Rs.6000/- per month keeping in mind the date of accident on 29th May, 2014. Adding future prospects to the extent of 25%, the monthly income comes to Rs.7,500/-, as such the annual income comes to Rs.90,000/-. Deducting 1/4th towards personal expenses, the balance amount remains Rs.67,500/-. Applying multiplier '15', the total loss of dependency comes to Rs.10,12,500/-.

Adding consortium of Rs.1,60,000/- to the husband and three children and Rs.30,000/- towards general damages, it comes to Rs.12,02,500/-.

15. Nothing has been stated by the claimants towards treatment expenses of the deceased though she was treated at SCB Medical College and Hospital, Cuttack for 3 days due to the injuries.

16. Accordingly the total compensation amount is determined at Rs.12,02,500/- which is payable along with interest @ 6% per annum.

17. In the result the appeal is allowed and the insurer – Respondent No.2 is directed to deposit before the tribunal a total compensation of Rs.12,02,500/- (twelve lakh two thousand five hundred) along with interest @ 6% per annum from the date of filing of the claim application, within a period of two months from today, where-after the same shall be disbursed in favour of the claimant – Appellants on such terms and proportion to be decided by the learned tribunal.

18. The copies of depositions and exhibits filed in course of hearing are kept on record.

19. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge