IN THE COURT OF THE DISTRICT JUDGE-CUM-
1ST MACT, ANGUL.

District-Angul.

Present :-

Sri Pranab Kumar Patra, LL.M.,
District Judge-Cum-1st MACT,
Angul.
J.O.Code No.OD00189

Dated 25th day of August, 2023

M.A.C. No.15 of 2020

1) Ratnamani Behera, aged about 55 years, W/o.Late Ramesh Behera.
2) Tapaswini Behera, aged about 18 years, D/o.Late Ramesh Behera

Both are of village-Sanahinsara, PO-Bimalabedea, PS-Jarapada, Dist-Angul.

…**Claimant-petitioners.**

-Versus-

1. Mr.Pradeep Pradhan, S/o.Birakishore Pradhan, vill/PO-Pokatunga, PS-Bantala, Dist-Angul.
2. Divisional Manager,
Oriental Insurance Co.Ltd.
At-Raja Jagadevsingh Road near Angul PO/PS/Dist-Angul.

(Policy no.345900/31/2020/10254
Valid from 06.12.2019 to 05.12.2020 of its own branch.)

… **Opposite parties.**

For the petitioner … Sri R.P.Patnaik,
Adv. & Associates.

For the Opp.Party No.1 … Ex-parte

For the Opp.Party No.2 …Sri T.R.Mishra,Adv.
& Associates.

Date of Argument:- 17.08.2023
Date of Judgment:- 25.08.2023

JUDGMENT.

1. The bereaved widow mother and younger sister being the legal representatives of one Sudam Behera (hereinafter referred as the "deceased") have filed the claim application thereby seeking compensation of Rs.12,00,000/-(Rupees twelve lakhs) for his untimely death on account of a vehicular accident.

2. In brass tacks, the case of the petitioners is that on 01.01.2020 at about 8.00 P.M while the deceased was returning to his village Sanahinsar from Purunakote on a motor cycle on the PWD road at Hidisingh, one Bolero vehicle bearing registration no.OD-02-K-9429 (hereinafter referred as the “offending vehicle”) came at a high speed being driven by its driver in a rash and negligent manner and dashed with the motor cycle rode by the deceased from its backside resulting in grievous

injuries to the deceased. Immediately after the accident, though the deceased was shifted to DHH, Angul for his treatment, he was declared as dead by the doctor. The accident occurred due to the rash and negligent driving of the offending vehicle by the accused-driver and the deceased had no contribution towards the same. At the time of his death due to the accident, the deceased was aged 22 years only who was working as a photo copier mechanic and operator in Kacheri Xerox in Angul Court complex and was earning Rs.15,000/- per month. He being the sole bread earning member of his family, the claimants suffered financially as well as mentally due to his untimely death on account of the vehicular accident. On this plea, the claimants have advanced claim of compensation of Rs.12,00,000/-.

3. On being noticed, O.P.No.1, the registered owner of the offending vehicle did not appear and thus was set ex-parte.

4. The O.P.No.2, Oriental Insurance Co. Ltd., the insurer of the offending vehicle in filing it's written statement has repudiated the assertions made by the claimants inter alia on the ground of non-joinder of necessary parties. The documents submitted by the claimants as regards the accident, death, occupation and income of the deceased are all false and fabricated. It is

pleaded that due to his own negligence, the deceased met with an accident and the alleged offending vehicle was no way involved in any accident with the deceased resulting in his death. As such, the vehicular documents of the alleged offending vehicle as well as the D.L of the accused driver were wanting and the same being violation of the condition of policy, the O.P.No.2 cannot be saddled with the payment of any compensation, if awarded. In view of the non-filing of any document by the petitioners regarding the accident, the O.P.No.2 disputes the very accident in question. The deceased had no income. As such, the claimants were not dependent on the income, if any of the deceased and are not entitled for any compensation towards loss of dependency. Ergo, the O.P.No.2 Insurance Company submitted for dismissal of the claim application.

5. On the rival pleadings of the parties, the following issues have been churned out for adjudication:-

Issues

i) Whether the MAC case is maintainable?

ii) Whether the deceased Sudam Behera died on account of an accident taking place on 01.01.2020 at about 8.00 P.M. on the PWD road at Hidisingh under Purunakote P.S, district-Angul due to the rash and negligent driving of the offending vehicle bearing regd.no.OD-02-K-9429 (Bolero) by its driver?

iii) Whether the petitioners are entitled to get compensation? if so, from whom and to what extent?

6. In order to substantiate their plea, the claimant-petitioners have adduced the evidence of the petitioner no.1, the mother of the deceased as P.W.1. Besides, the petitioners have also relied upon Exts.1 to 7 to bolster their case.

To thwart the endeavour of the petitioners, the O.P.No.2 has adduced the evidence of one Sri Sumanta Kumar Biswal, its investigator as O.P.W.1 and have exhibited Exts.A to E from its side.

Issue Nos. 1 & 2:-

7. At the threshold, these two issues are taken up together for discussion. In her evidence, P.W.1, the petitioner no.1 deposed regarding the sequence of events leading to the accident in question as described in the claim application who also proved Exts.1 to 6, the certified copies of the F.I.R, charge sheet and other police papers in connection with Purunakote P.S. case No.01 dtd.02.01.2020. However, it is seen that P.W.1 was not privy to the accident in question who during her

cross-examination admitted that she had not witnessed the accident. Be that as it may, it is seen that even though she has been subjected to cross-examination, nothing tangible could be elicited from her mouth by the learned advocate for the O.P.no.2.

During the course of argument, the learned advocate appearing for the O.P.No.2 submitted that due to the negligence of the deceased himself, the accident took place and as such, there was no negligence on the part of the driver of the alleged offending vehicle in the accident in question. However, the said contention is repudiated by the learned advocate for the petitioners.

In my earnestly considered view, there appears no compelling reason to disbelieve the version of P.W.1 deposed before this court which is otherwise bolstered by Ext.1, the F.I.R., Ext.2, charge sheet, Ext.3, seizure list, Ext.4, the zimanama, Ext.5, the inquest report and Ext.6, the P.M. examination report of the deceased. At this stage, it would be apposite to cite a recent authority decided by the Hon'ble Apex Court of the country in the matter of **Anita Sharma –vrs- New India Assurance Co.Ltd. and another** (2021) 1 ACC 171 wherein it has held

> "*the standard of proof required in motor accident claim cases under the Act is preponderance of probabilities and not that of*

proof beyond reasonable doubt. The strict principles of evidence and standard of proof required in a criminal trial are not applicable in accident cases register under the Act."

It is significant to note that after due investigation, the I.O. has submitted charge sheet vide Ext.2 against one Manoj Sahu, the accused driver of the offending vehicle u/s.279/304-A of IPC. The submission of charge sheet prima facie establishes the case of the claimants as regards the rash and negligent driving of the alleged offending vehicle by its accused-driver and so also the involvement of the said vehicle in the alleged accident which resulted in the untimely death of the deceased. Inspiration in this regard can be drawn from the authority decided by the Hon'ble Court of Orissa in the matter of **Anita Chand-vrs- Manas Ranjan Patra and others, reported in 2011 (Supp.-I) OLR 900** wherein it was held

"conclusion can be drawn by the Tribunal that the accident was caused by the offending car in view of the submission of charge sheet against the driver".

As such, the oral as well as the documentary evidence adduced from the side of the claimants as a whole appear to be trustworthy and cogent and no inherent fallacy appear to have crept therein. In view of such matter, this Tribunal comes to the irresistible conclusion that the death of the deceased occasioned on account of the accident caused due to the rash and negligent driving of the offending vehicle by the accused-driver of the same on 01.01.2020.

Besides, it is seen that the petitioners being the legal representative of the deceased have come up with the instant claim application u/s.166 of the M.V.Act. Accordingly, it is seen that the claim application is maintainable.

In view of the aforesaid discussion, the issue Nos.1 and 2 are answered in affirmative in favour of the claimant-petitioners.

Issue No.3

8. The petitioners being the widow mother and younger sister of the deceased Sudam Behera have come up with the instant claim application thereby seeking compensation. Undisputedly, they are the legal representatives of the deceased who come within the meaning of Sec.166 of M.V. Act and hence are entitled to claim compensation on account of his death towards loss of dependency etc. As such, nothing has been elicited by the O.P.No.2 regarding their economic condition.

9. In the claim application, the age of the deceased has been mentioned as 22 years at the time of his death.

In this regard, Ext.5, the inquest report and Ext.6, the P.M report of the deceased reveal his age as 22 years at the time of his death. During the course of argument, it was submitted by the learned advocate for the O.P.No.2 that in the claim application, the age of the claimant-petitioner no.1, the mother of the deceased has been mentioned as 55 years at the time of filing of the claim application on 24.2.2020. In view of the same, her age is 58 years at present. During her cross-examination, P.W.1, the petitioner no.1 has admitted that the deceased was 20 years younger to her. In view of such matter, the age of the deceased was 38 years at the time of his death on account of the accident. In my earnestly considered view, to buttress such line of argument, no evidence is forthcoming from the side of the O.P.No.2 regarding the age of the deceased. Rather, the petitioners have proved Ext.5, the inquest report and Ext.6, the P.M. examination report of the deceased wherein his age has been mentioned as 22 years. In view of such matter, a stray admission on the part of the petitioner no.1, a woman of rural set up cannot take the sheen off the case of the petitioners. In the absence of any document like the Aadhaar Card, birth certificate, voter i-card etc. filed by the petitioners, there appears no impediment in accepting the entries made in the aforesaid documents. Reference in this regard can be made to an authority decided by the Hon'ble Madras High Court in the matter of **The Divisional Manager, Oriental Insurance Co.Ltd. –vrs- K.Veeralakshmi** decided on 29.11.2016 in CMA (MD) No.758/2014 and M.P (MD) No.01/2014 wherein it was held-

> *"In the absence of any other document like ration card, birth certificate, passport, Aadhaar Card and voter I.D, the age prescribed in the post mortem certificate shall be considered."*

Hence, in view of such matter, regard being had to the ocular and documentary evidence tendered by the petitioners as referred supra, the age of the deceased is held to be 22 years at the time of his death for the purpose of this case who accordingly comes within the age group of 18 to 25 years at the time of his death on 01.01.2020. Accordingly, regard being had to the ratio laid down in the matter **of Sarla Verma-vrs- Delhi Transport Corporation (2009) ACJ 1218 (SC),** reiterated in **Santoshi Devi-vrs- National Insurance Co.Ltd. (2012) ACJ 1482 (SC),** the multiplier '18' is applicable in the case of the deceased.

10. Now coming to the aspect of income of the deceased, it is the claim of the petitioners that the deceased was working as a photo copier mechanic and operator in Kacheri Xerox at Angul Court and was

earning Rs.15,000/- per month. In this connection Ext.7, a salary certificate of the deceased issued by one Smt.Arati Sahu, owner of Kacheri Xerox, Angul has been pressed into service by the petitioners to substantiate the factum of avocation and income of the deceased. However, it is seen that the petitioners have not taken the slightest pain to summon and examine the author of Ext.7 to vouchsafe their assertion and evidence. Though, in this regard, the learned advocate appearing for the petitioners submitted that on the basis of Ext.7, the salary certificate concerning the deceased, this forum can arrive at a conclusion regarding the income of the deceased and in this regard, pressed into service the authority decided in the matter of **Rajwati @ Rajjo and others –vrs- United India Insurance Co.Ltd and others** 2023 SAR (Civ.) 216, in my earnestly considered view, the said authority was rendered in a different context in the factual matrix involved therein and as such, is not found applicable to the matter at hand. In view of such matter, the averment made by the petitioners in the claim application and so also the evidence tendered by P.W.1 who proved Ext.7 before this forum cannot be taken as gospel truth as regards the income of the deceased. However, merely because the petitioners are unable to produce any documentary evidence regarding the monthly income of the deceased, the same would not disentitle them to get appropriate relief from this forum in as much as a proceeding u/s.166 of the M.V.Act is the part and parcel of a benevolent legislation intended to give succour to the bereaved dependent family members of a person whose life was abruptly snuffed out due to an accident. In this regard, reference can be made to the authority decided in **Chandra @ Chanda @ Chandraram and another –vrs- Mukesh Kumar Yadav and others** 2021(4) TAC 346 (SC). Regard being had to the aforesaid aspects and in the absence of any cogent material adduced by the petitioners regarding the income of the deceased, in my earnestly considered view, his income can be notionally put on a similar pedestal with the wage of an unskilled worker as was prevailing on 1.1.2020 i.e. the date of death of the deceased by taking recourse of the slab of minimum wage prevailing as per the Notification issued by the Labour and Employment Department, Govt. of Odisha in the Orissa Gazette. It is seen that the minimum wage per day w.e.f. 01.10.2019 was Rs.298/- in respect of an unskilled person. In view of such matter, the monthly income of the deceased is held to be at Rs.8,940/-(Rs.298 x 30) at the time of his death on

01.01.2020. So, his annual income comes to Rs.1,07,280/-(Rs.8,940 x 12).

A reference is made to the ratio decided by the Apex Court in the case of **Sarla Verma –vrs- Delhi Transport Corporation, reported in (2009) ACJ 1218 (SC)** with regard to the deduction to be made from the income of the deceased looking at his marital status and the number of the dependent family members. At para-15 of the judgment, the Hon'ble Supreme Court held that in case of unmarried person, 50% deduction from his annual income is to be made towards his personal expenses, which accordingly comes to Rs. 53,640/- (Rs. 1,07,280– 50% i.e. Rs.53,640/-). Since the multiplier '18' is applicable in case of the deceased, the loss of dependency of the petitioners is quantified at **Rs.9,65,520/-** (Rs. 53,640/-x 18).

11. It is seen from the claim application that the petitioners No.1, the widow mother is past her prime and petitioner no.2, the younger sister of the deceased was dependent on her. It is also the claim advanced by the claimants that they were dependent on the income of the deceased. As such, it is seen that nothing tangible has been elicited by the O.P.No.2 regarding the economic condition of the petitioners. In my earnestly considered view, had the deceased remained alive, he would have

added to the income of the family and the comfort of the petitioners, his family members. His untimely death must have brought the entire family into severe shock, loss of dependency etc. For this reason also, the claimants are required to be properly compensated.

12. As per the ratio decided by the Apex Court in the authority decided in **National Insurance Co. Ltd. -vrs- Pranay Sethi and others reported in 2017 AAC 2436 (SC),** 40% of the annual income of the deceased is to be added towards the future prospect, since he was less than 40 years of age and can be treated at par with a self employed person. Applying such principle to the instant case, the annual loss of future income of the deceased is determined at Rs.42,912/-(40% of Rs. 1,07,280/-).

Accordingly, the total loss of future income of the deceased is determined at Rs. 42,912 x 18 (multiplier) =Rs.7,72,416/-. As per the decision of the Hon'ble Supreme Court in the case of **Sarla Verma –vrs- Delhi Transport Corporation, reported in (2009) ACJ 1218 (SC)**, the deceased being an unmarried person, 50% deduction from his future income is to be made towards his personal expenses, which comes to **Rs.3,86,208/-** (Rs. 7,72,416/– 50% i.e.Rs.3,86,208/-). As per the settled position of law in case of **Pranay Sethi** (supra), the amount calculated towards future prospects i.e. Rs. 3,86,208/- shall carry no interest.

Besides, in view of the authority decided in the matter of **Magma General Insurance Co.Ltd. –vrs- Nanu Ram @ Chuhru Ram** on 18.09.2018 in Civil Appeal No.9581 of 2018 (arising out of SLP (Civil)No.3192 of 2018) and the recent authority rendered by the Hon'ble Apex Court in the matter of **Smt.Anjali and others –vrs- Lokendra Rathod and others** AIR Online 2022 SC 1076 (wherein the Hon'ble Apex court referred to the authority decided in **National Insurance Co.Ltd.-vrs- Pranay Sethi** (2018) 69 OCR (SC) 1 wherein it was reflected that "*We think that it would be condign that the amount we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years*"), the petitioners Nos.1 & 2 are entitled to get **Rs.44,000/-** each towards consortium. Besides, the petitioners are also entitled to get **Rs.15,000/-** towards the loss of estate and **Rs.15,000/-** towards funeral expenses. Thus, the total compensation amount is determined at **Rs.14,69,728/-** (Rs. 9,65,520/- + Rs.3,86,208/- + Rs.88,000/-(Rs.44,000/- x 2) + Rs.15,000/- + Rs.15,000/-). Even though, in preferring the claim application, the claimant-petitioners have claimed compensation of Rs.12,00,000/-, there is no bar in awarding compensation amount in excess of the claim advanced by the claimants as it is “Just compensation” which is required to be awarded. Reference in this regard can be made to the authority decided in the matter of **S.Iyyapan –vrs- M/s.United India Insurance Co.Ltd. 2013(3) TAC-392(SC).**

13. As regards the liability of paying compensation, it is the contention of the learned advocate for the O.P.No.2 that the offending vehicle in question which was registered as a transport vehicle under the class of Motor Cab (LPV) was not having a valid permit as on the date of accident on 01.01.2020. It is contended by him that the same being an infraction of the condition of the policy, the O.P.No.2 cannot be saddled with the aspect of compensating the petitioners by way of indemnifying the O.P.No.1. On this score, evidence of O.P.W.1, the investigator of the O.P.No.2 reveals that he had sought information through RTI from the office of the MVI-cum-PIO, Angul and such information supplied reveals that the road permit of the offending vehicle as on the date of accident i.e. 01.01.2020 was not valid. On this score, he proved Ext.D, the office copy of the application sought for by him from the office of the PIO-cum-MVI, Regional Transport Office, Angul and so also proved

Ext.E, the letter no.1699 dtd.6.5.2023 issued by the PIO-cum-MVI, Regional Transport Office, Angul. It is seen from Ext.E that information has been submitted therein to the effect that the road permit of the offending vehicle was not valid as on 01.01.2020 as per the details found on Vahan data base. As such, in spite of being noticed, the O.P.No.1 has not taken the pain to appear and contest the matter before this forum who could have thrown light on this score. In view of such matter, it is luculent that the offending vehicle was not having valid permit on the date of accident on 01.01.2020. Admittedly, the same is an infraction and violation of the condition of policy. However, this being a claims Tribunal, in adjudicating the matter in interpreting the policy conditions would apply "the rule of main purpose" and the concept "fundamental breach" to allow defences available to the insurer u/s.149(2) of the Act and emphasis has to be given on "pay and recover principle". When there was violation of condition of policy of insurance as issued by the O.P.No.2, it is the O.P.No.1 who is to compensate the petitioner. When the material in the record as produced by the petitioner prima facie established the fact that the offending vehicle in question was under due insurance coverage covering the period of accident which however shows that it was plying on the road without having any valid permit, it is a case of violation of the condition of the policy of insurance. However, when the offending vehicle in question was under due insurance coverage, the provision u/s.147(5) and 149(1) of the MV Act along with the beneficial object of the legislature conjointly make the O.P.No.2, the insurance company liable to deposit the compensation awarded in the name of the petitioners and thereafter, recover the same from the owner of the offending vehicle i.e. O.P.No.1 in accordance with law. In this regard, this tribunal draws inspiration from the authorities decided by the Hon'ble Supreme Court in the matter of **Amrit Pal Singh and another-vrs- TATA AIG GIC and others** (2018) 7 SCC 558 and **Rani and others -vrs- National Insurance Co.Ltd** (2018) 8 SCC 492 where the "pay and recover principle" was emphasized. Similar sentiment has also been echoed by the Hon'ble Court of Orissa in the matter of **Dhiren Kumar Mishra and another –vrs- Kande Purty and another** 2019 STPL 6813 Orissa. Though in this regard, the learned advocate appearing for the O.P.No.2 placed reliance on the authorities decided in the matter of **National Insurance Co.Ltd -vrs- Parvathneni & another** decided in Civil Appeal No.10993/2009 in my humble view, the said authority was rendered on a different context and not found applicable to the matter at hand. Accordingly being enlightened by the authorities referred supra and regard being had to the factual matrix involved, it is incumbent upon the O.P.No.2 to pay the compensation amount to the claimants having a **right to recover** the same from the O.P.No.1 at a subsequent stage.

Issue No.3 is answered accordingly.

Hence ordered.

<u>ORDER</u>

The MAC Case is allowed on contest against the O.P.No.2 and ex parte against O.P.No.1, however without cost. The O.P. No.2 is directed to pay **Rs**. **14,69,728/-** (Rupees fourteen lakhs sixty nine thousand and seven hundred twenty eight only) to the claimant-petitioners as compensation with simple interest @6% per annum from the date of application i.e. 24.02.2020 within one month hence. The sum of Rs. 3,86,208/- awarded towards future prospect shall carry no interest.

Out of the compensation amount, a sum of Rs.7,00,000/- in the name of the petitioner no.1 and a sum of Rs.4,00,000/- in the name of the petitioner no.2 be deposited in F.D. Scheme in any Nationalized Bank for a period of six years. The balance amount of compensation along with the accrued interest be given to the petitioner no.1 in the shape of cash. The petitioners are prohibited to encash the F.D. before the date of maturity or to pledge for any loan without prior permission of this Tribunal. Cheques be issued accordingly. As indicated above, the O.P.No.2 shall have the right to recover the same from O.P.No.1 at a subsequent stage.

Court fees on the claim petition, if not already paid, be realized from the claimant-petitioners at the time of disbursement of the compensation amount.

Send a copy of this judgment forthwith in the Email address of O.P.No.2 in obedience to the direction of Hon'ble Supreme Court in **Bajaj Allianz General Insurance Company Pvt. Ltd. Vrs. Union of India & Ors. in Writ Petition(s) (Civil) No.(s) 534/2020 dtd. 16.03.2021.**

Pronounced the judgment in the open court, this, the 25th day of August, 2023 under my hand and seal of the court.

District Judge- Cum-1st MACT,Angul.

Judgment is dictated and corrected by me.

District Judge-Cum-1st MACT, Angul.

list of witnesses examined for the petitioners.

P.W.1. Ratnamani Behera

List of witnesses examined for O.P.No.2

O.P.W.1	Sri Sumanta Kumar Biswal

List of documents admitted in evidence for the petitioner.

Ext.1	Certified copy of F.I.R.
Ext.2	Certified copy of Charge sheet
Ext.3	Certified copy of seizure list.
Ext.4	Certified copy of zimanama.
Ext.5	Certified copy of inquest report.
Ext.6	Certified copy of P.M. report.
Ext.7	Salary certificate of deceased

List of documents admitted in evidence for the O.P No.2

Ext.A	Letter of authorization.
Ext.B	Certified copy of R.C book of the offending vehicle.
Ext.C	Certified copy of insurance policy
Ext.D, D/1	Letter for information under RTI Act and signature thereon of OPW.1.
Ext.E	Letter issued by the PIO of RTO, Angul.

District Judge-Cum-1st MACT, Angul.