

**BEFORE THE DISTRICT JUDGE-CUM- FIRST MOTOR
ACCIDENT CLAIM'S TRIBUNAL, JAGATSINGHPUR.**

P R E S E N T. **Sri R.N.Mishra,LL.M.,**
District Judge-cum- Ist M.A.C.T,
Jagatsinghpur.,

MOTOR ACCIDENT CLAIM CASE No.1494/2014
(Arising out of Simulia P.S case No.138/2014).

1. Kalpataru Behera,aged about 45 years,
S/o Krushna Behera,
 2. Niranjan Behera,aged about 20 years,
S/o Kalpataru Behera,
 3. Kalpana Behera,aged about 18 years,
D/o Kalpataru Behera,
 4. Kamalakanta Behera,aged about 16 years,
S/o Kalpataru Behera,
- All are of vill- Kusunpur, P.O-Ada, P.S-Simulia,
Dist-Baleswar, At present- Badabazar,
P.O/P.S/Dist-Jagatsinghpur.

... **Petitioners.**

V e r s u s

1. Ganesh Behera,S/o Akhya Behera,
At- Sabira,P.O-Soro,P.S-Soro,
Dist- Baleswar,
2. The Divisional Manager(Legal),
M/s Bajaj Allianj General Insurance Co.Ltd,
At-Janapath, Unit-3,P.O-Kharabela Nagar,
Bhubaneswar, Dist-Khurda.

... **Opp.Parties.**

Appearance:-

Counsel for the petitioners.	Sri S.K.Parida,Advocate,
Counsel for the O.P No.1	Sri K.C.Singh,Advocate.
Counsel for the O.P No.2.	Sri S.K.Mishra,Advocate.

Date of Argument: 8.4.2019
Date of Award: 24.4.2019.

AWARD

This is an inquiry held U/s 168 M.V Act in response to the petition filed U/s 166 of Motor Vehicle Act by the claimant-petitioners claiming compensation to the tune of **`10,00,000/-(Rupees ten lakhs)** from the O.Ps for the death of the deceased Parbati Behera who died in a motor vehicle accident.

2. The case of the petitioners is that the petitioner No.1 is the husband of the deceased &, petitioner Nos.2 & 4 are the sons of the deceased & petitioner No.3 is the daughter of deceased. On 29.5.2014 at about 9.30 P.M, while Parbati Behera was going towards market by sitting in a Honda Shine Motor Cycle bearing registration No.OD-01-C 8991 (hereinafter referred to be as "**offending Motor cycle**"),suddenly fell down from the said motor cycle due to rash and negligent driving of the rider of the offending motor cycle, as a result of which she sustained grievous head and chest injury and was first of all shifted to Simulia CHC and thereafter

to SCB MCH,Cuttack for better treatment but the victim died while undergoing treatment there.

The deceased was hale and hearty. She is 40 years old and doing her tailoring business and was earning Rs.9,000/- per month & contributing all her income towards family maintenance. Due to said demise of the deceased, her family members have lost the source of their earning forever. Thus, the petitioners being their legal heirs have filed this petition claiming the aforesaid amount towards compensation.

3. O.P No.1 filed the written statement admitting the offending motor cycle bearing registration No.OD-01C-8991 was involved in the accident which took place on 29.5.2014 at about 9.30 P.M. It is stated that on the

aforesaid date at about 9.30P.M when the O.P No.1 was going towards Bhadrak side in his motor cycle, an woman asked for lift and O.P No.1 also gave her lift and while going near Chandrapada chhack, the said woman fell down from the offending vehicle driven by O.P No.1, as a result of which she sustained grievous head injury and subsequently died. It is also admitted, in this connection Simulia Police registered P.S case No.138/2014 U/s 279/338/304(A) of IPC corresponds to C.T No.450/2014. The offending motor cycle was insured with O.P No.2 vide policy No.OG-14-2411-1802-00006077 which is valid from 30.1.2014 to 29.1.2015 and he himself possessed valid and effective driving licence which is issued by the RTO,Maharashtra State. In view of the above fact, the offending motor cycle was insured with O.P No.2. It is further contended that if the Tribunal finally comes to the conclusion that the petitioners are entitled to get compensation for the death of the deceased in the road traffic accident, then it is O.P No.2 who would indemnify the loss caused to the petitioners.

4. O.P No.2 is the Bajaj Allianz General Insurance Co.Ltd appeared through its Counsel filed the written statement denying averment of the petition inter alia stated that the U.D case record consisting of inquest report, P.M report of the deceased reveal that the deceased met with an accident on 30.5.2014 and the contents of the Inquest report(Ext.D) specifically reveals that the deceased while proceeding in a offending motor cycle, another motor cycle came and dashed against the deceased's motor cycle, as a result of which she fell down & got the injuries on her person and died. Moreover, the FIR was filed seven days after the accident, although the place of accident situated at a distance of 3 Km from the police station. The contents of

the FIR reveal that the same was filed after delay of 7 days at the P.S. There is contradiction regarding manner of accident which occurred and it also transpires the involvement of other motor cycle in the alleged accident. Therefore, there was no rash & negligence driving by the rider of the offending motor cycle while driving the same, rather it gives rise to the contention that the petitioners in connivance with O.P No.1 and police have filed the criminal case in order to get the compensation from the O.P No.2. The O.P No.2 further denied the occupation & income of the deceased. Further a petition U/s 170 M.V Act is also filed on behalf of O. P No.2 permitting the Insurer to seek permission of the Tribunal to contest the claim on all grounds, which is allowed. Thus, O.P No.2 disown its liability for payment of compensation to the petitioners.

5. In view of the rival pleadings of the parties, the following issues have been settled for adjudication.

ISSUES

1. Whether the MAC case is maintainable ?
 2. Whether accidental death of deceased Parbati Behera ensued due to rash and negligent driving of the rider of the offending motor cycle bearing registration No.OD-01-8991 ?
 3. Whether the petitioners are entitled to compensation, if so what would be it's quantum ?
 4. To what other relief/reliefs, if any, the petitioners entitled to ?
6. In order to prove its case, petitioners examined two witnesses including petitioner No.1 as P.W1 and have filed their affidavit evidence incorporating the averments of the petition and exhibited as many as 7

documents, whereas O.P No.2 examined its Legal Executive as O.P.W.1 and proved Exts.A to F.

F I N D I N G S.

7. Issues No.2.

This issue being vital is taken up first for adjudication. The petitioner No.1 has examined himself as P.W.1. He filed his affidavit evidence reiterating the facts stated in the claim petition and exhibited certified copies of FIR marked Ext.1, Final Form marked Ext.2, seizure list marked as Ext.3, zimnanamas marked as Ext.4, C.C of Inquest report marked Ext.5, C.C of Dead Body challan marked Ext.6, C.C of P.M report marked Ext.7. During cross-examination P.W.1 admitted since 6/7 days after the occurrence, the FIR was lodged, although 3/4 days after the accident the deceased died. The deceased is the sister-in-law (Bhauja) of one Panchanan Mahalik who was present when the inquest on the dead body of the deceased was done which relates to U.D case No.799 dtd.1.6.2014. P.W.1 also admitted in para-13 of his cross-examination that the cause of the death of the deceased was reflected in the Inquest report of the deceased. Moreover, P.W.2 filed his affidavit evidence stating that while he was sitting at Maminabad chhach, saw a woman was coming from market side by sitting in a motor cycle as a pillion rider, who suddenly fell from the motor cycle due to rash and negligent driving of the rider, as a result of which she seriously injured and shifted to Simulia Hospital and then again she was shifted to SCH MCH, Cuttack for further treatment. After the victim was shifted to Simulia Hospital, he could know her name as Parbati Behera and also gave information to her family members. Soon after the accident, Simulia P.S reached at the spot and he deposes that the accident took

place solely due to the rash and negligent driving of the rider of the offending motor cycle. During cross-examination by O.P No.2, he admitted that although he is one of the charge sheeted witness (C.T No.450/2014) arising out of the this case but he has no knowledge regarding U.D case No.799 dtd.1.6.2014 which was initiated in connection with the accidental death of the deceased in Mangalabag P.S. He admitted that he is not a witness to the inquest on the dead body of the deceased. No witness is examined from the side of the O.P No.1(registered owner of the offending motor cycle). But O.P.W.1 was examined from the side of O.P.Np.2 filed his affidavit evidence and exhibited documents marked Exts.A to F.

8. It is clarified that both the parties relied have upon the inquest report which is marked Ext.5 from the side of petitioners, whereas the O.P.No.2 proved the same as Ext.D. It is also seen that a request was made through Superintendent of Police, Balasore from the Insurance Company(O.P No.2) to order for re-investigation of G.R case No.450/2014 initiated in FIR No.138 dtd.4.6.2014 in order to ascertain regarding the genuiness of this accident. On perusal of the evidence, documents filed on behalf of the parties, it is brought to light that soon after the accident occurred, the deceased was admitted at Simulia Hospital in a serious condition and thereafter, on the advice of the doctor she was referred to SCB MCHC,Cuttack for better treatment and while undergoing treatment, the victim succumbed to the injuries for which on the basis of the information from the SCB MCH authority a U.D case No.799/14 was registered at Mangalabag P.S and the inquest of the dead body of the deceased was conducted in presence of the police officer and other witnesses. The inquest report(Ext.5) was prepared wherein, it

is clearly stated while the deceased was travelling in a motor cycle, another motor cycle dashed against the said motor cycle, as a result of which the deceased fell down and sustained serious injuries on her person and during her treatment she died. Admittedly, the FIR(Ext.1) was lodged on 4.6.2014 at about 11 A.M, the contents of which reveals that the deceased while travelling in the offending motor cycle as a pillion rider, fell down on the way and sustained serious injuries on her person. First of all, she was admitted at Simulia Hospital and then was shifted to SCB MCH,Cuttack for further treatment and while being treated, she died. It is also seen that there was six days delay in filing the FIR, although the inquest report reveals the date as 1.6.2014. Therefore, story of the prosecution narrated in Ext.1 relating to the death of the deceased is completely different from the contents of the inquest report(Ext.5).

So far delay of lodging of FIR, it is stated that due to the cause of death of the deceased, the informant lost his mental balance and filed the written report after delay of six days. But after comparing with the contents of FIR(Ext.1) with that of inquest report(Ext.5), which clearly shows that FIR is filed after delay of six days mentioning a new facts in order to get the compensation from the O.P No.2. In other words, it can be concluded that the petitioners set up another case regarding the death of the deceased which cannot be accepted, keeping in view the revelation made in the inquest report regarding the death of the deceased. O.P No.2 has pleaded the said facts in the written statement. O.P.W. No.1 is examined on behalf of the O.P No.2 and filed his affidavit evidence also stated the said facts. Thus,it is submitted that the petitioners have filed this case with connivance with O.P No.1 and the

police in order to get the compensation from O.P No.2. Further, it appears that the petitioners filed a false case against the O.P No.2 in connivance with O.P No.1 and police which is evident from the pleadings, affidavit evidence and the documents filed to that effect for which it is not established that rider of the offending motor cycle was ever riding it in a rash and negligent manner at the time of the accident. Rather the death of the deceased is outcome of the collusion between the motor cycle bearing registration No.OD 01-C-8991, wherein the deceased was travelling as a pillion rider with that another motor cycle. Rather the case of the petitioners is not believable in view of the pleadings and the submissions made on behalf of the O.P No.2 and the decisions relied on by O.P No.2 titled **Anil and others vrs New Delhi Assurance Co.Ltd, 2018 ACJ, 729, United India Insurance Co.ltd vrs Rajendra Singh and Ors, United India Insurance Co.Ltd vrs Pawan Tikkiwal and Ors (RLW-2007(3), Raj, 2111), Veerappa and Anr vrs. Siddappa and Anr** also fortify the submissions of O.P No.2 and negatives the contention of the petitioners. Hence this issue is answered against the petitioners.

9 **Issue Nos.1,3 & 4.**

In view of the above findings, there is no need to discuss the Issue No. 1, 3 & 4. The petitioners are not entitled to get any compensation from the O.P No.2. Hence, it is ordered.

ORDER.

The MAC case is dismissed against the O.Ps but without cost.

**D.J-cum-Ist M.A.C.T,
Jagatsinghpur.**

The Judgment is transcribed to my dictation and pronounced by me in the open Court this 24th day of April, 2019 given under my hand and seal of this Court.

**D.J-cum- Ist M.A.C.T,
Jagatsinghpur.**

List of witnesses examined on behalf the of the Petitioners.

- P.W.1. Kalpataru Behera,
P.W.2. Nanda Kishore Das,

List of witnesses examined on behalf of the Opp.Parties.

- O.P.W.1. Pratik Srichandan.

List of documents marked on behalf of Petitioners.

- Ext.1. C.C of FIR.
Ext.2. C.C of F.F.
Ext.3. C.C of Seizure list,
Ext.4. C.C of Zimanama,
Ext.5. C.C of Inquest report,
Ext.6. C.C of Dead body challan,
Ext.7. C.C of P.M report.

List of documents marked on behalf of O.Ps.

- Ext.A. Authorization letter,
Ext.B. Computer generated policy, terms and conditions.
Ext.C. C.C of U.D case No.799/14.
Ext.D. C.C of Inquest report in U.D case No.799/14.
Ext.E. C.C of FIR in G.R case No.138/14.
Ext.F. Copy of letter to O.P No.1.

**D.J-cum-Ist M.A.C.T,
Jagatsinghpur.**