

(2025) 03 OHC CK 1397
In the Orissa High Court
Case No : MACA NO.77 Of 2021

Divisional Manager, United India Insurance Co. Ltd	APPELLANT
Vs	
Jagynaseni Naik & Others Vs	RESPONDENT

Date of Decision : 13-03-2025

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A
Motor Vehicle Act, 1988 — Section 166, 173

Citation : (2025) 03 OHC CK 1397

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : R. C. Sahoo(1), G.R. Prusty, D. Mund, S. Khan, P.K. Behera, A.K. Mishra, P. Sahoo, S. Srichandan

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel for the parties.
3. The present appeal has been filed inter alia challenging the judgment dt.17.12.2019 passed by the learned District Judge-cum-Member, 1st MACT, Kalahandi Bhawanipatna in MAC No.86 of 2015. Vide the said judgment, the Tribunal allowed the claim of the claimants-respondents No.1 & 2 with a direction on the appellant-company to pay compensation amount of Rs.7,18,000/- along with interest payable @6% per annum from the date of filing of the claim application till its realization.
4. While assailing the impugned judgment, learned counsel appearing for the appellant vehemently contended that the claim application was not at all entertainable before the Tribunal as in the F.I.R lodged by the informant who happens to be the Home Guard working under Kesinga P.S., it was clearly indicated that the deceased while coming from Bhawanipatna in a Yamaha

motorcycle dashed against a tree besides the road and sustained multiple injuries. Accordingly, the deceased was taken to Kesinga PHC in an ambulance.

4.1. It is also contended that while forwarding the deceased (injured) at the relevant point of time for medical examination, the I.O of the case clearly indicated that on 12.11.2014 at about 4.30 P.M, the deceased while coming from Bhawanipatna to Kesinga in a motorcycle, near Jolaka chhawk, the rider of the motorcycle dashed against a road side tree and as a result he sustained bleeding injuries.

4.2. It is contended that on the face of the information reflected in the F.I.R so lodged by the informant who is non other than the Home Guard attached to Kesigna P.S on 12.11.2014, the claim application filed by the claimants, that the deceased died due to the accident caused by the offending vehicle, was not at all entertainable. But the Tribunal without proper appreciation of the contents of the F.I.R and the materials placed, held the appellant-company liable to pay the compensation so awarded.

4.3. It is also contended that no other F.I.R was lodged by the claimants, indicating therein that the deceased died due to the rash and negligent driving of the offending vehicle bearing Registration No. OR-05-E-0606.

4.4. It is also contended that on the face of such information reflected in the F.I.R dt.12.11.2014, the I.O of the case without conducting proper investigation, while submitting the final form, wrongly came to a conclusion that the deceased died due to the rash and negligent driving of the driver of the offending Maruti Omni Van bearing Registration No. OR-05-E-0606.

4.5. It is contended that no such F.I.R was ever filed indicating therein that the deceased died due to the rash and negligent driving of the driver of the offending vehicle Maruti Omni Van bearing Registration No. OR-05-E-0606. But without any reason and basis, the said vehicle was charge-sheeted by the I.O. along with the driver. Basing on such material, the Tribunal came to a wrong conclusion that the offending vehicle having been insured with the appellant-company, the appellant-company is liable to pay the compensation.

4.6. It is contended that since at no point of time any information was lodged by the claimants and/or any other person indicating therein that the deceased died because of the accident caused by the driver of the offending Maruti Omni Van bearing Registration No.OR-05-E-0606, the said vehicle could not have been charge-sheeted and Tribunal could not have relied on the same by holding the appellant liable to pay the compensation. It is accordingly contended that the impugned award is not sustainable in the eye of law.

5. Mr. D. Mund, learned counsel for the Respondent No.1 & 2 on the other hand contended that even though no F.I.R was lodged either by the claimants or by any other person indicating therein that the deceased died due to the accident caused by the offending Maruti Omni vehicle OR-05-E-0606, but in course of

investigation, since the I.O of the case found that the deceased died due to the accident caused by the offending vehicle OR-05-E-0606 and the vehicle was charge-sheeted along with the offending driver, no illegality or irregularity can be found with the impugned award.

5.1. In support of his aforesaid submission, learned counsel appearing for the Respondent Nos.1 & 2 relied on a decision of the Hon'ble Apex Court in the case of Ranjeet & Another Vs. Abdul Kayam Neb & Another, SLP (C) No. 10351 of 2019. Hon'ble Apex Court in para 4 of the said order has held as follows:

4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eye-witnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.

5.2. Reliance was also placed to a decision of this Court in the case of Anita Chand & Others Vs. Manas Ranjan Mohapatra & another, reported in 2011 (Supp.-I)1 OLR 900. This Court in paragraphs 9, 10 & 13 of the said judgment has held as follows:

9. Law is well settled that the claim application under Section 166 of the Motor Vehicles Act is to be treated differently from a criminal case as held by the apex Court in the case of Om Prakash Batish v. Ranjit alias Ranvir Kaur & others reported in AIR 2008 SC 2143. The apex Court in the said case further held that the claim application filed under the Motor Vehicles Act is summary in nature and the provisions of Civil Procedure Code or Evidence Act are not strictly applicable to such proceedings. The Tribunal must take care to see that the innocent victims do not suffer and the Court should not succumb to the niceties, technicalities etc.

10. The apex Court in the case of Bimala Devi and others v. Himachal Road Transport Corporation and others reported in AIR 2009 SCW 4298 has held that it was necessary to be borne in mind that the strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the tough stone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

Xxx xxx xxx

13. The charge sheet was submitted by the Investigating Officer under Sections 279/304-A IPC against the driver of the offending vehicle which attained its finality. Therefore, it can safely be concluded that the accident was caused by the offending vehicle bearing registration number OSX 0227. Since the vehicle in question has a valid insurance policy covering the date of accident, the insurer is liable to indemnify the liability of the insured.

5.3. It is accordingly contended that since the offending vehicle was charge-sheeted by the I.O of the case, in view of the decision rendered by the Hon'ble

Apex Court and this Court, as cited supra the impugned award needs no interference.

6. Having heard learned counsel for the parties and considering the submission made, this Court finds that the accident of the deceased was reported to the I.I.C Kesingha P.S by the Homeguard of the said Police Station on 12. 11.2014. In the said F.I.R, it was intimated that the deceased while coming in a Yamha motorcycle from Bhawanipatna towards Kesinga, he dashed against a road side tree and sustained bleeding injuries. The deceased accordingly was taken for treatment in an ambulance to Kesinga PHC. Subsequently while under treatment the deceased died.

6.1. It is also found that while forwarding the deceased (injured) for medical examination, the I.O of the case also indicated that the deceased sustained the injury while coming from Bhawanipatna on 12.11.2014 as the deceased dashed against a roadside tree. No document has been exhibited before the Tribunal showing that any other F.I.R was lodged by the claimants-respondents and/or any other person alleging therein that the deceased sustained the injury because of the accident caused by the offending Maruti Omni vehicle bearing Registration No.OR-05-E-0606.

6.2. It is found that the F.I.R lodged by the Homeguard of the Police Station on 12.11.2014 was exhibited vide Ext.1. On the face of such information made by the informant in the F.I.R, implication of the offending vehicle by the I.O of the case while filing the charge-sheet as per the considered view of this Court is without any basis. Since the offending vehicle OR-05-E-0606 was never implicated in the alleged accident by the claimants or any other person by making any information and the prosecution case was initiated basing on the FIR lodged on 12.11.2014 so exhibited vide Ext.1, on the face of such information indicated in the F.I.R, filing of the charge-sheet by implicating the offending Maruti Omni Van OR-05-E-0606, as per the considered view of this Court is illegal.

6.3. Therefore, it is the humble view of this Court that the decision rendered by the learned counsel for the claimants-respondents cannot be made applicable to the facts of the present case. This Court is of the prima facie view that the offending vehicle has been planted in order to get the benefit.

6.4. In view of the aforesaid analysis, this Court is inclined to quash the impugned judgment dt.17.12.2019 passed by the learned District Judge-cum-Member, 1st Motor Accident Claims Tribunal, Kalahandi, Bhawanipatna in M.A.C No.86 of 2015 and allow the appeal.

The MACA accordingly stands disposed of.

.....