

IN THE COURT OF THE MEMBER, 3RD MOTOR ACCIDENT CLAIMS
TRIBUNAL, BHUBANESWAR.

PRRESENT:-

Sri I.K. Das, LLB
Member, 3rd MACT, Bhubaneswar.

MACT Case No. 171 of 2006

Date of argument- Dt. 15.04.14

Date of judgment- Dt. 26.04.14

1. Saroj, aged about 27 years
W/o Late Krishna Lal
2. Sumit Kumar, aged about 8 years
S/o : Late Krishan Lal
3. Sahil Kumar, aged about 6 years
S/o: Late Krishan Lal
4. Malkhan Singh, aged about 60 years
S/o: Late Mala Ram
5. Raj Bala, aged about 58 years
W/o: Malkhan Singh
6. Satyaban, aged about 27 years
S/o: Malkhan Singh
7. Sonu, aged about 17 years
S/o: Malkhan Singh

(Claimant Nos. 2 and 3 are minor hence they are presented through
their mother guardian).

All are of Qr. No. 1677, Sector-52, Chandigarh

... Petitioners

Vrs.

1. Muntaz Khan, S/o: Maddar Khan
Vill/PO/PS: Balugaon, Dist: Khurda
2. The Divisional Manager, National Insurance Co. Ltd
Sahid Nagar, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri D.K. Patra, Advocate.
For the O.P. No.1	...	Sri M.R. Das, Advocate
For the O.P.No.2	...	Sri B.R. Mishra, Advocate

A W A R D

1) This is a petition U/S 166 of Motor Vehicle Act for compensation of Rs. 19,32,850/- moved by the claim petitioners who are the parents of the deceased .

2. The brief fact of the case as stated by the petitioners is that the husband of petitioner No.1 Krishan Lal who is the deceased in this case was working in Indian Navy and was posted at INS Chilka. On 4.9.05 at about 11 PM the deceased and his friend were returning from Balugaon side towards INS Chilka by riding a motor cycle bearing Regd. No. UP 15 J 6174. In the meantime, an ambassador Car bearing Regd. No. OR 02 E 2955 came in high speed in rash and negligent manner from opposite direction and dashed against the motor cycle. As a result of such accident, the deceased and his friend fell down from the motor cycle and sustained grievous injury on their person. Thereafter, the deceased was admitted at Nivarani hospital in the campus of INS Chilka for treatment. During the course of treatment, the deceased succumbed to the injuries. A police case was registered under Balugaon PS case No. 102/05 u/s 279/304 A IPC.

The further case of the petitioners is that at the time of accident, the deceased was 23 years old and was working in Indian Navy. His monthly salary was Rs.7791/-. Due to the death of only bread earner, all the petitioners are suffering on the death of the deceased who was the only caretaker and was maintaining them. Hence, they claimed for compensation for their future livelihood.

3. O.P. No.1, the owner of the offending vehicle has appeared in the proceeding and filed written statement wherein he pleaded that he is the owner of the offending vehicle and his vehicle was insured under OP No.2. O.P. No.2, on the other hand, has filed separate written statement denying the validity of the driving license and insurance policy of the offending vehicle.

4. On consideration of the aforesaid pleadings, the following issues

have been framed.

1. Whether the death of Krishan Lal occurred due to motor vehicle accident involving vehicle No. OR 02 E2955 (Ambassador Car) ?
2. Whether the driver of the offending vehicle was rash and/or negligent in causing such accident?
3. Whether the petitioners are entitled to get compensation as claimed and if so to what extent and from which O.Ps. ?

5. The petitioners in order to prove their case have examined two witnesses. Petitioner No.1 who is the father of the deceased has been examined as P.W.1. P.W.2 is an eye witness to the accident. OP No.2, on the other hand, has examined one witness Tusar Kanta Mohanty as OPW No.1.

FINDINGS

Issue Nos. 1 and 2

6. Both the issues deal with the manner of driving by the driver of Ambassador Car which resulted in the accident. Therefore, both the issues are taken up together for convenient discussion. The petitioner No.1 has been examined as P.W.1. She states that on 4.9.05 at about 11 PM while her deceased husband was proceeding towards INS Chilka in a motor cycle, the offending Ambassador Car bearing Regd. No. OR 02 E 2955 came in high speed and dashed against the motor cycle for which the deceased and his friend fell down and sustained grievous injury on their body. Soon after the accident, the deceased was shifted to Nivaran Hospital for treatment, but during the course of treatment, the deceased succumbed to the injuries. During the course of examination she produced the connected documents in GR case No. 308/05 i.e. FIR, final form, seizure list, inquest report, PM report, Salary certificate of the deceased which are marked as Exts. 1 to Ext.8 respectively. P.W.2 is an eye witness to the accident who said when he was returning to home after taking dinner at Chilka Dhaba, he saw the offending Car dashed against the motor cycle violently for which the deceased had sustained grievous injury on his person.

The Insurance company has examined one witness namely, Tushar Kanta Mohanty, investigator as OPW No.1 who said he had visited the spot and

examined the owner of the offending car and its driver and came to know that on the relevant day the vehicle of OP No.1 had not met with any accident nor the accused driver was driving the car on the same day.

In order to substantiate the case of the petitioners, they have filed the certified copy of police papers. On perusal of the documents produced by the petitioners, it goes to show that soon after the accident a GR case No. 308/05 was registered under Balugaon PS case No. 102/05 u/s 279/304 A IPC on the report of Lieutenant Officer on duty INS Chilka. On perusal of Ext.2 it appears that after completion of investigation, police placed charge sheet against the accused driver for the offence u/s 279/304 A IPC concluding that due to negligence and careless driving of the driver of the Ambassador Car the accident took place causing death of the deceased. The post mortem examination report of the deceased (Ext.7) discloses that the injuries were ante mortem in nature and cause of death was due to haemorrhage and shock. Admittedly, the wife of the deceased who is examined P.W.1 is not witness to the occurrence. She said that her husband was working as LSPTI as a defence personnel under Indian Navy at INS Chilka who was strong and stout. Her husband had no bad habit and therefore, he was not spending a single pie towards his personal expenditure and getting free accommodation and fooding inside the campus. If her husband would have survived he could definitely got 2 service promotions and earn more than Rs.15,000/- per month as salary. In her cross examination by OP No.2 she has categorically denied that her husband was not taking liquor at any point of time and therefore, there is no occasion to believe that under influence of liquor he met with the accident.

On the other hand, OP No.2 examined the investigator of his company who submitted his investigation report marked as Ext.A. In his affidavit evidence, OPW No.1 stated that he examined OP No.1 being the owner of the offending Ambassador car who disclosed before him that his car is not involved in such accident. The investigator also enquired the driver of the car who disclosed before him that he was not driving the car at the time of accident. It is also his investigation that the deceased while riding the motor cycle in highly intoxicated condition, fell down on the road and succumbed to the injuries. The

evidence of OPW No.1 does not appear to be legally sustainable on the ground that OP No.1 has filed his written statement in the Court admitting that his car met with the accident on the relevant day.

It is surprising that the investigator did not record the statement of such persons who disclosed before him about the case nor OP No.2 tried to examine those persons before the Tribunal to believe the contention of the investigator on the face of evidence adduced by two witnesses from the side of the petitioners and certified copy of police papers after the investigation by police, the evidence of OPW No.1 does not account for any merit. Hence, in view of such evidence on record there is no doubt to believe that the death of the deceased was the result of careless driving of the driver of the offending ambassador car at the relevant time. Accordingly, these issues are answered in favour of the petitioners.

Issue Nos. 3:-

7. In order to test the liability of paying compensation, I have perused the seizure list which is marked as Ext.5. Ext.5 discloses that after the accident, police seized the offending ambassador car alongwith its documents such as RC book and insurance policy bearing policy No. 163201/31/04/6902899 of National Insurance Co. Ltd which was valid till 4.11.05 covering the date of accident. Police also seized driving license of the accused driver bearing DL No. 326 (K)/03 and DL No. 5073/98 BBSR which was valid till 29.7.06. Admittedly, the accident took place on 4.9.05. Accordingly, OP No.2 is to indemnify the liability of OP No.1 by paying compensation to the petitioners towards third party insurance.

8. In order to assess the quantum of compensation, the social status, job and the income of the deceased are to be taken into consideration. P.W.1 has stated that her deceased husband was working in Indian Navy and was getting salary of Rs.7791/- per month. In order to substantiate the income of the deceased, P.W.1 has filed the salary slip of the deceased for the month of August, 2005 marked Ext.8 which shows that the deceased was getting gross salary of Rs.7791/- per month. It is argued on behalf of the petitioners that the deceased was working in Indian Navy and he was staying in the campus of INS Chilka where he got free

clothing, fooding, accommodation etc. for which his personal expenses are very less. Taking into consideration the above fact, since the deceased has 7 dependants, I feel 1/6th amount should be deducted towards personal expenses. After deducting 1/6th amount, the net income comes to Rs. 7791-Rs.1298= Rs.6493/-. In view of the decision reported in 2009 (43) OCR (SC) 349 (**Smt. SarlaVerma & others vrs. Delhi Transport Corporation & Another**), since the deceased was aged about 29 years as per the post mortem report, 50% of net loss of income should be added in order to calculate the gross loss of income. After adding 50%, the total monthly loss of income comes to Rs.9739/-. Thus, the annual loss of income in dependency will be Rs.9739 x12= Rs. 1,16, 868/-.

9. The petitioners have mentioned in the claim petition that the deceased was aged about 29 years by the time of accident which is accepted. Considering such age group multiplier 17 will be made applicable to him while assessing his total loss of income in view of the decision reported in 2009 (43) OCR (SC) 349 (**Smt. SarlaVerma & others vrs. Delhi Transport Corporation & Another**). The total loss of income is accordingly, assessed at Rs. 1,16,868 x 17 = Rs. 19, 86,756/-. Besides the above amount, the petitioner No.1 being the widow, she is entitled to get Rs.5000/- towards loss of consortium. All the petitioners are also entitled to get a sum of Rs. 10,000/- towards loss of estate and Rs. 5000/- towards funeral expenses. Thus, looking to the over all facts and circumstances of the case, It is considered just and proper to make the following award under different heads.

1. For loss of income	: Rs. 19, 86, 756/-
2. For loss of consortium	: Rs. 5000/-
2. For loss of estate	: Rs. 10,000/-
2. For funeral expenses	: Rs. 5,000/-

Total : Rs. 20,06,756/-

(Rupees Twenty Lakhs Six Thousand Seven Hundred Fifty Six)

Only. Hence, it is ordered.

A W A R D

The claim petition is accordingly allowed on contest against OP Nos. 1 and 2 and the compensation amount is to be paid by O.P. No.2 to the

petitioners proportionately.

The total compensation amount is determined at Rs.20,06,756/- (Rupees Twenty Lakhs Six Thousand Seven Hundred Fifty Six) only which shall carry simple interest at the rate of 7% both pendentelite and future from the date of filing of the claim petition i.e. 3.5.06 till the date of payment. Out of the compensation amount payable to the petitioners, 75% be kept in fixed deposit in any Nationalized Bank for five years and the rest 25% together with cost and interest be paid in cash by Opp. party to the petitioners. The fixed deposit can not be mortgaged or released earlier without the permission of the Court. The O.P. No.2 is to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 26th day of April, 2014.

Member
3rd MACT, Bhubaneswar

Typed to my dictation and
corrected by me.

Member
3rd MACT, Bhubaneswar
List of witness examined for the petitioner
P.W.1:- Saroj
P.W.2:- Dhaneswar Palai
List of witness examined for Opp. Party
OPW No.1: Tusar Kanta Mohanty
List exhibits marked for the petitioners
Ext.1:- Certified copy of FIR
Ext.2:- Certified copy of Charge sheet.
Ext.3:- Certified copy of seizure list
Ext.4:- Certified copy of seizure list
Ext.5:- Certified copy of seizure list
Ext.6:- Certified copy of inquest report
Ext.7:- Certified copy of PM report
Ext.8:- Salary certificate of the deceased
List of Exhibits marked for O.P. No.2
Mark X: Xerox copy of investigation report

Member
3rd MACT, Bhubaneswar

