

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

PRRESENT:-

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

MACT Case No. 289 of 2007

Date of argument- Dt. 15.11.13

Date of judgment- Dt. 25.11.13

Rabi Behera, aged about 34 years
S/o Late Raghaba Behera, Resident of Vill: Naripur,
PO/PS/Dist: Bhadrak, A/p: Old Town, PS: Lingaraj
Bhubaneswar, Dist: Khurda

... Petitioner

Vrs.

1. Sarojini Rout, W/o: Subash Chandra Rout
At: Kanpur, PO: Agarpara, PS: Sosa
Dist: Keonjhar, A/p: Lalatendru Jena @ Lulu
At: Samaraipur, PS/Dist: Bhadrak
2. The Divisional Manager, New India Assurance Co. Ltd.
94, Janpath, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri S.K. Mohapatra, Advocate.
For the O.P. No.1	...	None
For the O.P. No.2	...	Sri B.K. Mohanty, Advocate

AWARD

- 1) This is a petition U/S 166 of Motor Vehicle Act moved by the claim petitioner for compensation of Rs. 10,00,000/-.
2. The brief facts of the case is that the petitioner was working as a Cook in a hotel. On 7.8.03 at about 11 PM, after completing his cooking work in the hotel, the petitioner was coming to his house from Aradi Chawk on the left

side of the road. In the meantime, the offending truck bearing Regd. No. OR 09 A 1895 came in high speed in rash and negligent manner and dashed against the petitioner from his back side. As a result of such accident, the petitioner fell down on the road and the wheel of the truck ran over his right hand and leg. Soon after the accident the petitioner was shifted to District Headquarters Hospital, Bhadrak where his right hand was amputated above the elbow joint. It is further averred in the pleading that a number of operation was done in the hospital but finally his right leg was amputated above the knee joint. In connection with such accident, a police case was registered under Bhadrak PS case No. 177/03 u/s 279/337/338 IPC. The petitioner attributes rash and negligent driving of the driver of the offending truck in causing the accident. Hence, the claim petition.

3. O.P. No.1, the owner of the offending truck has been set ex-parte vide order dtd. 12.10.09. O.P. No.2, on the other hand, has filed written statement wherein it challenged the claim of the petitioner. O.P. No.2, specifically denies the validity of the insurance policy and driving license of the driver of the offending vehicle.

4. On consideration of the aforesaid pleadings, the following issues have been framed.

1. Whether the petitioner Rabi Behera sustained injury due to motor vehicle accident involving vehicle No. OR 09 A1895 (Truck) ?
2. Whether the driver of the offending vehicle was rash and/or negligent in causing the accident ?
3. Whether the petitioner is entitled to get compensation and if so to what extent and from which O.Ps. ?

5. The petitioner in order to prove its case has examined three witnesses in its behalf. P.W.1 is the petitioner himself and P.W.3 is the wife of the petitioner. P.W.2 is an eye witness to the accident. O.P. No.2, on the other hand, did not adduce any evidence.

FINDINGSIssue Nos. 1 and 2

6. Since some common facts emerged, Issue No.1 and 2 are taken up together for a convenient discussion. The petitioner himself is examined as P.W.1. He states that on 7.8.03 at about 11PM, while he was coming from Aradi Chawk to his house on the left side of the road, near Bant Chawk, the offending truck bearing Regd. No. OR 09 A 1895 came in high speed from the back side of the petitioner and due to rash and negligent driving, the vehicle was dashed against the petitioner. As a result of such accident, the petitioner had sustained severe bleeding injury on his person as the wheel of the truck ran over his right hand and leg. Soon after the accident, the injured was shifted to District Headquarters Hospital, Bhadrak for treatment where his right hand was amputated in the casualty. The evidence of P.W.1 further discloses that in the hospital a number of operation was done and finally, his right leg above the knee was amputated. During the course of examination the injured has produced the connected documents in GR case No.1222/03 i.e. FIR, final form, injury report, seizure lists, disability certificate, discharge certificates which are marked as Exts. 1 to Ext. 10 respectively. P.W.2 is an eye witness to the accident. He has stated in his evidence that on the relevant date and time, while he was returning to his house, he saw the offending truck came in high speed from the backside of the injured and due to rash and negligent driving, the vehicle was dashed against the injured for which the injured fell down on the road and the wheel of the truck ran over his right hand and right leg. Thereafter, he alongwith other local people shifted the injured to District Headquarters Hospital, Bhadrak for treatment. P.W.3 is the wife of the injured. She states that she lodged FIR at Bhadrak Town PS for the accident caused by the offending truck to her husband Rabi @ Rabindra Behera.

7. As such in order to substantiate the case it is to be seen how far the petitioner adduced evidence in respect of his case. Admittedly, on perusal of the documents produced by the petitioner it shows that soon after the accident a GR case No.1222/03 was registered under Bhadrak PS case No. 177/03 u/s 279/337/338 IPC against the driver of the offending vehicle. 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 279/337/338 IPC. The injury report obtained from District Headquarters Hospital, Bhadrak marked Ext.3 reveals that the injured has sustained fracture injury and other injuries on his person which are grievous in nature. Since no rebuttal evidence has been led on behalf of O.P. No. 2 the above opinion of medical officer and material facts available from record stands undisputed in favour of the case of the petitioner.

8. On further perusal of record, it is found that even though O.P. No.2 has cross examined P.Ws.1 and 2 at length, no iota of rebuttal evidence is brought on record to dispute the accident. Accordingly, these issues are answered in favour of the petitioner and it is proved that the petitioner faced with accident with truck bearing Regd. No. OR 09 A 1895 due to rash and negligent driving of the driver and sustained injuries.

Issue No. 3

9. The seizure list (Ext.4) discloses that during investigation, police seized the offending truck and its documents such as RC book and insurance policy bearing No. 550700/31/02 of New India Assurance Co. Ltd. Which stands in favour of the offending truck bearing Regd. No. OR 09 A 1895 valid upto 15.12.03 which covers the date of accident. Since the factum of seizure of the documents under seizure list Ext.4 has not been challenged by the Opp. Party stands undisputed in favour of the petitioner. Besides that on further perusal of Ext.4, it appears that the investigating officer also seized the driving license of the accused driver of the offending vehicle bearing No. 1007/95-96 stands in favour of accused-driver namely, Braja Kishore Jena which was valid till 29.4.05. Admittedly, the accident took place on 7.8.2003. Accordingly, it is O.P. No.2 who is to indemnify the liability of O.P. No.1 by way of paying compensation to the petitioner towards third party insurance.

10. In order to assess the quantum of compensation, the social status, the income, expenditure incurred by the injured are to be taken into consideration. It is averred in the claim petition that the petitioner was working as a Cook in a hotel and was getting Rs.4500/- per month. In order to substantiate the stand of

his income out of the above noted profession, the petitioner has not taken any step to examine the owner of the hotel where he was working nor any certificate from the owner of the hotel has been filed in support of his employment. Since, the accident took place in the year 2003, it will be just and proper to assess the income of the petitioner notionally at Rs.2500/- per month. Hence, the annual income of the petitioner is Rs.2500x12= Rs.30,000/-

11. The petitioner has mentioned in his evidence affidavit that he is aged about 37 years at the time of giving deposition i.e. on 6.7.10. Admittedly, the accident took place on 7.8.03. Hence, the injured was 30 years at the time of accident. Accepting the age of 30 years, 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. Sarla Verma & others vrs. Delhi Transport Corporation & Another**). The total loss of income is accordingly, assessed at Rs. 30,000 x 17 = Rs. 5,10,000/-.

12. The disability certificate obtained from District Medical Board, Bhadrak marked as Ext.8 shows that the injured has sustained 100% permanent disability due to amputation of right hand and leg. Accepting 100% disability, the net loss of income of the injured is calculated at Rs.5,10,000/-.

13. As regards medical expenses, the petitioner has stated in his evidence affidavit that he has incurred a sum of Rs.1,40,000/- towards his treatment. Admittedly, the petitioner has undergone treatment for a long time at the hospital and during that period he must have spent some amount towards his treatment. Furthermore, the petitioner has files x-ray plates and some medicine bills which he has purchased during the course of his treatment. Taking into consideration that it is a case of amputation of both right hand and leg and the injured has become 100% invalid, I feel that at least Rs.50,000/- might have been spent towards the treatment in the year 2003. Thus looking to the over all facts and circumstances of the case, it is considered to make the following award under different heads.

- | | |
|--|------------------|
| 1. Net Loss of Income incurred | : Rs. 5,10,000/- |
| By the petitioner | |
| 2. Medical Expenses already incurred | : Rs. 50,000/- |
| by the petitioner | |
| 3. Physical and mental shock | : Rs. 20,000/- |
| pain and sufferings | |
| 4. Loss of amenities & loss of expectation | : Rs. 20,000/- |
| of life | |

Total : Rs. 6,00,000/-

(Rupees Six Lakhs) only. Hence, it is ordered.

A W A R D

The claim petition is accordingly allowed on contest against O.P. No 2 and ex-parte against O.P. No.1 to be paid by O.P. No.2 to the petitioner.

The total compensation amount is determined at Rs. 6,00,000/- (Rupees Six Lakhs) only which shall carry simple interest at the rate of 7% both pendente lite and future from the date of filing of the claim petition i.e. 6.8.07 till the date of payment. Out of the compensation amount, 75% be kept in fixed deposit in any Nationalized Bank for a period of five years and the rest 25% together with interest be paid in cash by O.P. No. 2 to the petitioner. The fixed deposit can not be mortgaged or released earlier without the permission of the Court. The insurance company is directed to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 25th day of November, 2013.

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:- Rabi Behera
P.W.2:- Prasanta Kumar Jena

P.W.3:- Sukanti Behera

List of witness examined for the O.P. No.2

None

List exhibits marked for the petitioner

- Ext.1:- Certified copy of FIR
- Ext.2:- Certified copy of final form
- Ext.3:- Certified copy of injury report
- Ext.4:- Certified copy of seizure list
- Ext.5:- Certified copy of seizure list
- Ext.6:- Certified copy of bed head ticket
- Ext.7:- Discharge certificate
- Ext.8:- Disability Certificate
- Ext.9:- Xerox copy of driving license
- Ext.10:- Outdoor ticket of NIRTAR, Cuttack

List of Exhibits marked for O.P. No.2

Nil

Member
3rd MACT, Bhubaneswar