

IN THE COURT OF THE MEMBER, 3<sup>RD</sup> MOTOR ACCIDENT CLAIMS  
TRIBUNAL, BHUBANESWAR.

PRRESENT:-

Shri I.K. Das, LLB,  
Member, 3<sup>rd</sup> MACT, Bhubaneswar.

**MACT Case No. 4/305 of 2001-2000**

Date of argument- Dt. 05.12.13

Date of judgment- Dt. 16.12.13

Anama Naik, aged about 17 years  
S/o Dhaneswar Naik, At: Haridaspur  
PO: Naharkanta, PS: Baliana, Dist: Khurda

... Petitioner

Vrs.

1. Nirmal Kumar Das, S/o: Late Nalinikanata Das  
resident of Vill: Santola, PO: Gababasta, PS: Sadar  
Dist: Cuttack, A/p: E 1/3, Police Colony, Tulasipur  
PS: Bidanasi, Dist: Cuttack
2. The Divisional Manager, New India Assurance Co. Ltd.  
Lewis Road, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner

... Sri B.N. Mishra, Advocate.

For the O.P. No.1

... Sri K. Mohanty, Advocate

For the O.P. No.2

... Sri A.K. Patnaik, Advocate

AWARD

1) This is a petition U/S 166 of Motor Vehicle Act moved by the claim petitioner for compensation of Rs. 2,00,000/- who was injured in a motor vehicle accident.

2. The brief facts of the case is that on 5.1.2000 at about 12 Noon, the petitioner was crossing the road by riding his cycle at Pahala Chawk on

Bhubaneswar-Cuttack National High Way. In the meantime, the offending bus bearing Regd. No. ORD 9655 came in high speed from Bhubaneswar side without blowing horn and dashed against the petitioner. As a result of such accident, the petitioner fell down on the road and sustained injuries on his person. Soon after the accident, the injured was shifted to SCB medical College & Hospital, Cuttack for treatment. In connection with such accident, a police case was registered under Baliana PS case No. 3/2000 u/s 279/337 IPC. Hence, the petition claiming compensation for injury.

3. O.P. No.1, the owner of the offending bus appeared in the proceeding and filed written statement wherein he challenged the claim of the petitioner. O.P. No.2, the insurance company, on the other hand, has filed its written statement wherein it 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 sustained injuries due to motor vehicle accident involving vehicle No. ORD 9655 (Bus) ?

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 himself as only witness. O.P. No.2, on the other hand, did not adduce any evidence.

### FINDINGS

#### Issue Nos. 1 and 2

6. Since some common facts emerged under Issue No.1 and 2, those are taken up together for a convenient discussion. The petitioner himself is examined as P.W.1. In his affidavit evidence he states that on 5.1.2000 at about 12 noon while he was crossing the road by riding his bicycle at Pahala Chawk, the offending bus bearing Regd. No. ORD 9655 came in high speed and dashed against the petitioner for which he fell down on the road and sustained deep cut

injury on his head. Soon after the accident, the injured was shifted to SCB Medical College & Hospital, Cuttack for treatment. During the course of examination the injured has produced the connected documents i.e. FIR, final form, seizure list, injury report and discharge which are marked as Exts. 1 to Ext. 5 respectively.

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 Baliana PS case No. 3/2000 u/s 279/337 IPC was registered 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 279/338 IPC. The injury report (Ext.4) reveals that the injured had sustained one grievous injury on his person. Since no rebuttal evidence has been led on behalf of O.P. No. 2 the above opinion as per the injury report and material facts available on 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.W.1 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 while crossing the road by riding his bicycle and the offending bus is responsible due to rash and negligent driving of the driver.

#### Issue No. 3

9. The seizure list (Ext.3) discloses that during investigation, police seized the offending bus and its documents such as RC book and insurance policy issued from New India Assurance Co. Ltd. Which stands in favour of the offending bus bearing Regd. No. ORD 9655 valid upto 1.10.2000 which covers the date of accident. Since the factum of seizure of the documents under seizure list Ext.3 has not been challenged by the Opp. Party stands undisputed in favour of the petitioner. Besides that on further perusal of Ext.3 the investigating officer also seized the driving license of the accused driver of the offending vehicle bearing No. 1256/1990-91 issued by Licensing Authority, Cuttack stands in favour of

accused driver Ganesh Behera valid upto 5.1.2002. Admittedly, the date of accident is 5.1.2000. Accordingly, in view of the above discussion, it is found that O.P. No.2 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. The petitioner has not filed any disability certificate in order to assess his loss of income. With regard to medical expenses, the petitioner has filed the discharge certificate obtained from SCB Medical College & Hospital, Cuttack marked Ext.5 which shows that the injured was admitted in the hospital on 5.1.2000 and was discharged on 10.1.2000. During the period of treatment at SCB Medical College & Hospital, Cuttack, the petitioner must have incurred some expenditure towards medicines. Moreover, the petitioner has filed some medicine bills in order to satisfy that he has incurred some expenditure on medicines. But, on perusal of the medicine bills, the name of the patient and the doctor who advised for such medicines has not been mentioned in the medicine bills. However, taking into consideration the nature of injury and the available evidence on record, I feel Rs. 10,000/- will be just and proper to award towards medical expenses as the accident took place in the year 2000. Thus looking to the over all facts and circumstances of the case, it is considered to make the following award under different heads.

1. Medical Expenses already incurred by the petitioner	: Rs.	10,000/-
2. Physical and mental shock pain and sufferings	: Rs.	5000/-

Total	: Rs.	15,000/-
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(Rupees Fifteen Thousand) only. Hence, it is ordered.

#### A W A R D

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

The total compensation amount is determined at Rs. 15,000/- (Rupees Fifteen Thousand) 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. 30.8.2000 till the date of payment. The O.P. No.2 is directed to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 16<sup>th</sup> day of December, 2013.

Member  
3<sup>rd</sup> MACT, Bhubaneswar

Typed to my dictation and  
corrected by me.

Member  
3<sup>rd</sup> MACT, Bhubaneswar

List of witness examined for the petitioner  
P.W.1:- Anama Naik

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 seizure list  
Ext.4: Certified copy of injury report  
Ext.5: Discharge certificate

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

Member  
3<sup>rd</sup> MACT, Bhubaneswar