

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. 367 of 2003**

Date of argument- Dt. 31.10.13

Date of judgment- Dt. 14.11.13

Sarbeswar Pradhan, aged about 32 years  
S/o Late Bhabagrahi Pradhan, Resident of Vill: Arua,  
PO: Govindpur, PS: Pipili, Dist: Puri

... Petitioner

Vrs.

1. General Manager, Puri District Coopeative  
Milk Federeation Ltd, (PUMUL), OMFED  
Chandrasekhapur, Bhubaneswar, Dist: Khurda
2. The Divisional Manager, United India Insurance Co. Ltd.  
Ashoka Market, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri S.C. Pradhan, Advocate.
For the O.P. No.1	...	Sri B.K. Sahu, Advocate
For the O.P. No.2	...	Sri P.K. Mohapatra, Advocate

AWARD

1) This is a petition U/S 166 of Motor Vehicle Act moved by the claim petitioner for compensation of Rs. 3,00,000/- who was injured in a motor vehicle accident.

2. The brief facts of the case is that on 20.8.03 at about 2 PM, the petitioner was proceeding by riding his Luna from Bhubaneswar towards Pipili on the left side of the road. In the meantime, the offending milk tanker bearing Regd. No. OR 02 R 9611 came in rash and negligent manner and near BJD office,

Pipili, dashed against the petitioner with violent force. As a result of such accident, the petitioner sustained severe injury on his person. Soon after the accident, the injured was shifted to Pipili PHC wherefrom he was referred to Capital Hospital for treatment. As the condition of the injured was serious, again he was referred to SCB Medical College & Hospital, Cuttack where his right leg was operated. In connection with such accident, a police case was registered under Pipili PS case No. 204/03 u/s 279/337/338 IPC. Hence, the petition claiming compensation for injury.

3. O.P. No.1, the owner of the offending Car has entered appearance and filed written statement. O.P. No.1 has averred that the accident was caused due to rash and negligent driving of the driver of Luna but not due to the negligent driving of the driver of the milk tanker. O.P. No.2, the insurance company, on the other hand, has filed a separate 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 Sarbeswar Pradhan sustained injuries due to motor vehicle accident involving vehicle No. OR 02 R 9611 (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 two witnesses in its behalf. P.W.1 is the petitioner himself and P.W.2 is an eye witness to the accident. 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 20.8.03 at about 2 PM while he was going from his village towards Pipili by riding his Luna, all on a sudden, the offending truck bearing Regd. No. OR 02 R 9611 came in high speed from opposite direction and dashed against the Luna. As a result, the petitioner sustained fracture on his right leg. Soon after the accident, the injured was shifted to Pipili PHC wherefrom he was referred to Capital Hospital for treatment. Due to lack of care, he was shifted to SCB medical College & Hospital, Cuttack for better treatment where his right leg was operated. During the course of examination the injured has produced the connected documents in GR case No. 339/03 i.e. FIR, final form, injury reports, seizure list and discharge certificates which are marked as Exts. 1 to Ext. 8 respectively. P.W.2 is an eye witness to the accident fully corroborated the evidence of P.W.1 by narrating the manner of accident.

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. 339/03 was registered under Pipili PS case No. 204/03 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 reports reveal that the injured had sustained multiple bleeding injury and compound fracture on his right leg. 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.Ws.1 and 2 at length, but 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 going in his Luna and the offending truck bearing Regd. No. OR 02 R 9611 is responsible due to rash and negligent driving of the driver.

Issue No. 3

9. The seizure list (Ext.6) discloses that during investigation, police seized the Luna in which the petitioner was proceeding. Another seizure list reveals that police seized the offending truck and its documents such as RC book and insurance policy bearing No. 034100/31/03/00140 of United India Insurance Co. Ltd. Which stands in favour of the offending truck bearing Regd. No. OR 02 R 9611 valid from 14.6.03 to 13.6.04 which covers the date of accident. Since the factum of seizure of the documents under the seizure list has not been challenged by the Opp. Party stands undisputed in favour of the petitioner. Besides that on further perusal of the seizure list, it is found that the investigating officer also seized the driving license of the accused driver of the offending vehicle bearing No. 4257 dtd. 22.7.88/BBSR, Dist: Puri stands in favour of accused driver who was authorized to drive LMV/Transport vehicle/Heavy vehicle and it was renewed upto 30.8.05 which also covers the date of accident. Admittedly, the accident took place on 20.8.03. 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. In the present case, the petitioner has not filed any disability certificate in order to assess his loss of income. The injury report obtained from Govt. Hospital, Pipili marked Ext.4 discloses that the injured had sustained compound fracture on his right leg and three lacerated bleeding wound on his person. With regard to medical expenses, the petitioner has filed the discharge certificate obtained from SCB Medical College & Hospital, Cuttack marked Ext.7 which shows that the injured was admitted in the hospital on 26.8.03 and was discharged on 18/9/03. Ext.7 further reveals that during the admission in the hospital, the injured has undergone an operation on 28.8.03 due to compound fracture on right tibia. Another discharge certificate obtained from the same hospital marked as Ext.8 shows that he was admitted on 20.10.03 and was discharged on 24.10.03. During the period of treatment at SCB Medical College & Hospital, Cuttack, the

petitioner must have incurred some expenditure towards medicines. However, the petitioner has filed the medicine bills amounting to Rs.10,000/- which he is entitled to get. 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<br>by the petitioner | : Rs. | 10,000/- |
| 2. Physical and mental shock<br>pain and sufferings       | : Rs. | 10,000/- |

Total	: Rs.	20,000/-
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(Rupees Twenty 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. 20,000/- (Rupees Twenty 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. 26.9.03 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 14<sup>th</sup> day of November, 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:- Sarbeswar Pradhan @ Hadu

P.W.2:- Susanta Parida

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 injury report

Ext.5:- Certified copy of injury report

Ext.6:- Certified copy of seizure list

Ext.7:- Discharge certificate

Ext.8:- Discharge certificate

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

Nil

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