

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. 426 of 2001

Date of argument- Dt. 03.12.13

Date of judgment- Dt. 10.12.13

Kedar Bhol, aged about 25 years
S/o: Raghav Bhol, resident of Vill: Baonlei
PO: Bheteswar, PS: Banpur, Dist: Khurda

... Petitioner

Vrs.

1. Yudhistri Sethy, S/o: Late Ananda Sethy

2. Sahadev Sethy, S/o: Late Arakhita Sethy
Both are of vill: Chupuringi, PO: Gada Sahi
PS: Brahmagiri, Dist: Puri

2. The Divisional Manager, New India Assurance Co. Ltd.
Master Canteen, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri D.K. Patra, Advocate
For the O.P. Nos.1&2	...	Sri B.K. Rath, Advocate
For the OP No.3	...	Sri B.S.N. Murty, Advocate

AWARD

1) This is a petition moved by the claim petitioner U/S 166 of Motor Vehicle Act for compensation of Rs. 1,76,000/- who was injured in a motor vehicle accident.

2. The brief fact of the case is that on 30.4.01 at about 7.30PM the petitioner and his friend were coming by bicycle after finishing their marketing. In the meantime, the offending trekker bearing Regd. No. OR 13 4395 came in high speed from opposite side and dashed against the petitioner. As a result of

such accident, the petitioner fell down on the road and sustained bleeding injury on his head. Soon after the accident, the injured was shifted to Banpur PHC for treatment. As the condition of the injured was serious, he was again shifted to a private Nursing Home for better treatment. The petitioner attributes rash and negligent driving of the offending bus in causing the accident. Hence, the claim for compensation.

3. O.P. Nos. 1 and 2 who are the joint owners of the offending vehicle have appeared in the proceeding and filed their joint written statement. In their written statement, they denied the accident in toto. They have also challenged the claim of the petitioner. O.P. No.3, the New India Assurance Co. Ltd has filed its written statement wherein it denies the validity of the driving license and the insurance policy.

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

1. Whether the petitioner Kedar Bhol sustained injuries due to motor vehicle accident involving vehicle No. OR 13 4395 (Trekker) ?
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, as to what extent and from which O.Ps. ?

5. Neither the petitioner nor the Opp. Parties adduced any sort of evidence in order to prove their case.

FINDINGS

Issue Nos. 1 and 2

6. Since some common facts emerged in both the issues, are taken up together for a convenient discussion. In spite of several opportunities the petitioner has failed to prove its case against the Opposite Parties. Both O.P. Nos. 1 and 2 appeared in the proceeding and filed their joint written statement wherein they have challenged the claim of the petitioner. O.P.No.3, the insurance company appeared in the proceeding and filed written statement wherein he denied any such accident that has taken place on 30.4.01. It cannot be taken for granted that the prayer of the claimant will be simply allowed only basing on the

pleading. It is the case of the claimant that in relation to the accident FIR was lodged at Banpur PS vide PS case No. 60/01. During hearing of the case, the claimant neither preferred to call for the police record in order to establish regarding the accident and to show that because of negligence on the part of the offending vehicle he sustained injuries. It is more surprising that the petitioner did not examine himself to support his pleading even if Opp. Parties filed their respective written statements and contest the proceeding. No other witness from the side of the petitioner is also examined. Again I find that the petitioner sustained multiple injuries due to the accident and he was shifted to Banpur PHC for his treatment from the spot. He was also spent some amount of money for his treatment. No medical certificate or injury report is also available on record in order to believe that in fact there was injuries on the body of the claimant. In absence of any evidence and documents it is also not possible to say that a trekker bearing Regd. No. OR 13 4395 faced with accident which resulted in causing injury to the petitioner. Moreover, in absence of any document in relation to the vehicle, it cannot be said which company insured the offending trekker and whether O.P. No.3 is liable to pay any compensation to the claimant. It is the cardinal principle in civil proceeding that the petitioner is to prove his case beyond preponderance of probabilities. But, in the instant case, I find the claimant failed miserably to prove his case either by adducing evidence in the Court or by producing any document in support of his pleading. Hence, the case is liable for dismissal with zero award.

AWARD

The claim application is dismissed with contest against O.P. Nos.1,2 and 3 granting nil award in favour of the petitioner.

This award is pronounced in the open court to-day the 10th day of December, 2013.

Member, 3rd MACT, Bhubaneswar

Typed to my dictation and corrected by me.

Member, 3rd MACT, Bhubaneswar

List of witness examined for the petitioner

None

List of witness examined for the O.Ps.

None

List exhibits marked for the petitioner

None

Member
3rd MACT, Bhubaneswar