

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

PRRESENT:-

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

MACT Case No. 53 of 1999

Date of argument- Dt. 02.12.13

Date of judgment- Dt. 07.12.13

Alekha Charan Moharana, aged about 50 years  
S/o: Late Pathani Moharana, resident of Vill: Janmajaypur  
PO: Phulnakhara, PS: Baliana, Dist: Khurda

... Petitioner

Vrs.

1. Manager, M/s Sagar Motor, Madhupatna  
Arunodaya Market, Cuttack

2. The Divisional Manager, National Insurance Co. Ltd.  
Master Canteen, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner

... Sri V.P. Saw, Advocate

For the O.P. No.1

... Sri P.R. Barik, Advocate

For the O.P. No.2

... Sri A.K. Patnaik, Advocate

AWARD

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

2. The brief fact of the case is that on 18.12.98 at about 10.30 AM the petitioner was going to attend his office at Bhubaneswar Municipal Corporation by riding a bicycle from his village at Janmejyapur, Baliana. In the meantime, near Phulnakhara Check gate, the offending Maruti Van bearing Regd. No. OR 06 1617 came in high speed from Bhubaneswar side and dashed against the petitioner from its front side. As a result of such accident, the petitioner was

thrown to a distance and sustained bleeding injury on his head and face. Soon after the accident, the injured was shifted to Capital Hospital, Bhubaneswar for treatment. The petitioner attributes rash and negligent driving of the driver of offending Maruti van in causing the accident. Hence, the claim for compensation.

3. O.P. No.1, the owner of the offending vehicle has appeared in the proceeding and filed written statement challenging the claim of the petitioner. He also denied the accident caused by the offending Maruti van on the relevant date. OP. No.2, the National Insurance Co. Ltd has filed 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 injured Alekha Charan Moharana sustained injuries due to motor vehicle accident involving vehicle No. OR 06 1617 (Maruti Van) ?

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 turn up to depose evidence in his behalf or filed any document in support of the accident caused by the offending vehicle. Both O.P. Nos. 1 and 2 appeared in the proceeding and filed their respective written statements wherein they denied any such accident that has taken place on 18.12.98. 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 Baliana PS vide PS case No. 197/98.

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 O.P. Nos.1 and 2 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 Capital Hospital 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 Maruti Van bearing Regd. No. OR 06 1617 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 Maruti Van and whether Opposite Parties are 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.

A W A R D

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

This award is pronounced in the open court to-day the 7<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

None

List of witness examined for the O.Ps.

None

List exhibits marked for the petitioner

None

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