

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. 651 of 2002

Date of argument- Dt. 14.11.13

Date of judgment- Dt. 21.11.13

Dillip Kumar Sahu, aged about 25 years
S/o Gouranga Charan Sahu, Resident of Vill: Majhiakhanda,
PO: Bhaliadiha, PS: Sarankul, Dist: Nayagarh

... Petitioner

Vrs.

1. Thiru P. Shanmuga Sundaram, S/o: T. Panuswamy
9, School Street, PO: Erode, State: Tamilnadu
2. The Divisional Manager, Oriental Insurance Co. Ltd.
Lewis Road, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

| | | |
|--------------------|-----|-----------------------------|
| For the petitioner | ... | Sri M.R. Mohanty, Advocate. |
| For the O.P. No.1 | ... | None |
| For the O.P. No.2 | ... | Sri S. Das, Advocate |

AWARD

1) This is a petition U/S 166 of Motor Vehicle Act moved by the claim petitioner for compensation of Rs. 4,00,000/-.

2. The brief facts of the case is that on 16.6.02 at about 3.30 PM, the petitioner and his friend were going in a motor cycle from Khurda side towards Bhubaneswar on the left side of the road. Near Janla, the offending truck bearing Regd. No. TN 33 P 2999 came in high speed and dashed against the motor cycle. As a result of such accident, the petitioner and his friend thrown to a distance

causing injury on their person. Soon after the accident the petitioner was shifted to Khurda Government Hospital for treatment. In connection with such accident, a police case was registered under Jatni PS case No. 116/02 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. 9.3.10. 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 Dillip Kumar Sahu sustained injury due to motor vehicle accident involving vehicle No. TN 33 P 2999 (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 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, 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 16.6.02 at about 3.30 PM, while he was coming to Bhubaneswar from his village in a motor cycle, the offending truck bearing Regd. No. TN 33 P 2999 came in high speed from its front side and due to loss of control over the vehicle, it came to its right side and dashed against the motor cycle of the petitioner. As a result, he sustained multiple injury on his person. Soon after the accident, the injured was shifted to District Headquarters Hospital, Khurda for

treatment. During the course of examination the injured has produced the connected documents in GR case No.1773/02 i.e. FIR, final form, injury report, seizure lists, disability certificate, discharge certificate which are marked as Exts. 1 to Ext. 6 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 a GR case No.1773/02 was registered under Jatni PS case No. 116/02 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, Khurda marked Ext.4 reveals that the injured has sustained one incised wound which is simple 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 the petitioner 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. TN 33 P 2999 due to rash and negligent driving of the driver and sustained injuries.

Issue No. 3

9. The seizure list (Ext.3) discloses that during investigation, police seized the offending truck and its documents such as RC book and insurance policy bearing No. 414300 of Oriental Insurance Co. Ltd. Which stands in favour of the offending truck bearing Regd. No. TN 33 P 2999 valid from 3.11.01 to 2.11.02 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. 1658/TN/1998 stands in favour of driver which was valid till 11.5.2004. 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 having a sweet and snacks stall at Godipada market, Nayagarh and was earning Rs.4000/- per month. In order to substantiate the stand of his income out of the above noted profession, P.W.1 has stated in his evidence affidavit that he was the owner of a sweet and snacks stall and was earning Rs.4000/- per month out of that business. But, he has not produced any document nor adduced any evidence in support of it. Under this circumstance, the income of the petitioner will be assessed notionally at Rs.3000/- per month. Hence, the annual income of the petitioner is $\text{Rs.3000} \times 12 = \text{Rs.36,000/-}$

11. The petitioner has mentioned in his evidence affidavit that he is aged about 35 years at the time of giving deposition i.e. on 3.11.12. Admittedly, the accident took place on 16.6.02. Hence, the injured was 25 years at the time of accident. Accepting the age of 25 years, multiplier 18 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 $\text{Rs. 36,000} \times 18 = \text{Rs. 6,48,000/-}$.

12. The disability certificate obtained from District Medical Board, Nayagarh marked as Ext.6 shows that the injured has sustained 45% permanent disability due to post traumatic stiffness of right knee. During course of argument, learned counsel for O.P. No.2 argued that the injured was having a tiffin shop at Godipada bus stand on the footpath. After the accident he is also continuing the said tiffin stall and therefore, it cannot be said that the accident caused any pecuniary loss to the injured. Only the right leg of the injured was affected and no other part of his body was affected by the accident. There was nailing of femur at DHH, Khurda

and the patient was confined in the hospital from 16.6.02 to 6.7.02. One investigator of the insurance company was deputed to investigate regarding loss of income of the injured after the accident. The said report is available in the record, although not exhibited. Learned counsel for insurance company relied on a decision reported in **2011 (1) TAC 785 (SC) in the case of Raj Kumar vrs. Ajay Kumar and another.** Hon'ble Court held that permanent disabilities arising from injuries do not result in loss of earning capacity. The percentage of disability as reported by the doctor will not always affect the income of the injured in the same proportion depending upon the nature of profession, occupation or job, age, education and other factors. The injured was only 25 years old by the time of accident. The Tribunal should consider what activities the claimant could carry on inspite of permanent disability. After perusal of the judgment of Hon'ble Apex Court and considering the profession of the injured, I do not feel that the disability of the injured will directly affect his loss of income. There is also no evidence in the mouth of the injured that he has lost all his income due to the accident. However, such injury must have caused some loss to his income even though he is able to continue his profession. Taking into consideration, the guideline of Hon'ble Apex Court and the material on record, I believe that the net loss of income will be Rs. 1,50,000/-

13. As regards medical expenses, the petitioner has stated in his evidence affidavit that he has incurred a sum of Rs.70,000/- towards his treatment. The petitioner has obtained the discharge certificate from the District Headquarters Hospital, Khurda marked Ext.5 shows that he was admitted in the hospital on 16.6.02 and was discharged on 6.7.02 and he has filed some medicine bills towards medicine. Taking into consideration that it is a case of compound fracture of femur and tibia and the injured has become 45% invalid, I feel that at least Rs.50,000/- might have been spent towards the treatment. 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. | 1,50,000/- |
| By the petitioner | | |
| 2. Medical Expenses already incurred | : Rs. | 50,000/- |
| by the petitioner | | |
| 3. Physical and mental shock | : Rs. | 5000/- |
| pain and sufferings | | |
| 4. Loss of amenities & loss of expectation | : Rs. | 5000/- |
| of life | | |

Total : Rs. 2,10,000/-

(Rupees Two Lakhs Ten Thousand) 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. 2,10,000/- (Rupees Two Lakhs Ten 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. 23.12.2002 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 21st 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:- Dillip Kumar Sahu

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

Ext.6:- Disability Certificate

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

Nil

Member
3rd MACT, Bhubaneswar