

IN THE COURT OF 6TH M.A.C.T , KHURDA.

Present:

Sri A.K.Sahoo, LL.M.,
Member 6th M.A.C.T, Khurda.

M.A.C.T NO 16/56 of 13/09

1. Charan Sahu, aged about 45 years, S/o Late Radhamohan Sahoo
Vill/P.O-Itamati, P.S- Itamati, Dist. Nayagarh.
At-Present) Bhaliabadi, P.O-Pallahat, P.S/Dist. Khurda.

..... Applicant.

Vrs.

1. Smt. Vijaya Devi
C/o Gopinath Ray, Khandagiri, P.O/P.S. Khandagiri,
Bhubaneswar, Dist. Khurda.

.....O.P No.1

2. Manager, IFFCO- TOKIO General Insurance Company Ltd,
Berhampur Branch, (Orissa)
being represented by its Manager, Claims,
Consumer Service Centre 8 AJC Bose Road, Circular Court,
1st Floor, Kolkata-700017(West Bengal) **.....O.P No.2**

Counsel for the applicant: Sri B.Paltasingh

Counsel for O.P No.1 : Sri G.R.Chhotaray,Adv.

Counsel for the O.P No.2: Sri Kallol Ghose, Adv.

Date of argument : 14.8.14

Date of Judgment:

28.8.14

J U D G M E N T

Petitioner Charan Sahu claiming himself as a bus conductor by profession has filed petition U/s.166 of M.V Act claiming compensation of Rs.6,75,000/- for amputation of his right leg caused due to vehicular accident taken place in the intervening night of 23.5.09 and 24.5.09 at 2.20 a.m on N.H-224 near Banibiri Ghati.

2. The petitioner has laid such claim on the ground that at the relevant time of the accident he was travelling from his village Itamati to Phulbani as a passenger on payment of rent in the offending passenger bus bearing Regd No.OR02G 0729. On the way at Banibiri Ghati, the bus halted for urination of the passengers. He had also got down, but while he was boarding the bus without prior indication of the conductor, the driver of the bus the set the vehicle on sudden motion, for which the claimant fell down from the bus and the left rear wheel of it ran over his right leg causing severe crush injury below the knee of his right leg. He was taken to Daspalla Government Hospital with critical condition from the spot with the help of other passengers, but considering his condition serious after preliminary treatment he was referred to S.C.B Medical, Cuttack and admitted there as indoor patient in emergency male ward, 3rd Unit vide Regd No. 688 dtd. 24.5.09. The amputation of right leg below knee was done on 26.5.09 and he was discharged from the hospital on 12.6.09 with advise for dressing of the stump on alternative day in local hospital. After some days for complicacy of affected stump of the amputated leg he was compelled to attend before the

treating doctor at S.C.B Medical, Cuttack on 27.6.09. Now the petitioner claims that he is still undergoing treatment at local hospital for non- healing of the affected leg.

3. For the accident a criminal case was registered at Banigochha P.S against the accused-driver of the passenger bus U/s.279, 337 and 338 I.P.C and in the meantime the investigation has resulted into submission of charge-sheet against the accused-driver U/s. 279, 337 and 338 I.P.C. The claimant alleges that the accident took place due to sole negligence of the driver of the passenger bus, in which he was travelling, for setting the bus into motion not sounding the horn and not looking into the boarding of the passengers to the bus. On such ground the petitioner claimed that Opp.party no.1 Smt.Vijaya Devi, vicariously is liable for the negligent act of her driver and Opp.party no.2 the insurer of the vehicle is liable to pay the entire compensation amount since the vehicle was validly insured with opp.party no.2.

4. The petitioner claims he was aged about 45 years and very strong and stout and maintaining his livelihood as a conductor of another passenger bus, owned by Pradip Kumar Sahu of Sarua and getting salary of Rs.5000/-. For the amputation of his leg he is not able to do normal day to day work and has become permanently physically, functionally disabled, resulting in considerable loss of earning capacity, claiming Rs. 3000/- as monthly loss of future income, he claims Rs. 5,40,000/- as compensation. Besides it Rs.35000/- for mental shock, physical pain, and Rs. 25,000/- as compensation for keeping an attendant, Rs. 50,000/- as cost of medicine, doctor's fees, special diet and cost of conveyance , so also Rs. 25,000/- for

future medical expenses such as cost of medicine, cost of doctor's fees, cost of special diet and conveyance etc with 12% interest from the opp.parties.

5. Opp.party no.1 Smt. Vijaya Devi appeared in court and filed W.S, submitting therein that she does not know the petitioner-claimant and the claimant has not filed any document and also that he has not spent Rs. 50,000/- for the treatment, besides the submission that the bus was duly insured and having valid Insurance cover under op.party no.2 on the date of accident.

6. Opp.party no.2 filed its W.S submitting there in that opp.party no.1 has not informed about the fact of accident, nor the police to the nearest motor accident claims tribunal. Opp.party no.2 further contend that opp.party no.1 is not contesting the case on all grounds as per Sec.110(C)(2-A) of M.V.Act. Opp.party no.2 called upon the petitioner to file the documents in his favour, so also the documents relating to the offending bus. Denying the alleged accident in the intervening night of 23.5.09 and 24.5.09. Opp.party no.2 called upon the petitioner to prove the accidental injuries and that it was caused by the driver for his driving in a rash and negligent manner. Even he denies travelling of petitioner by bus for not filing of documents in this regard. Opp.party no.2 takes a specific defence that the driver of the offending bus had no valid and effective driving license on the date of accident, for which opp.party no.2 is not liable to pay any compensation and that the amount of compensation claimed is arbitrary, excessive and without any basis.

7. On such pleadings of both parties following issues have been framed.

ISSUES

1. Whether the claim of the petitioner is maintainable?
2. Whether the injuries of the applicant Charan Sahoo caused on account of Motor vehicle accident involving Vehicle bearing Regd No.OR-02-G-0729 (Passenger Bus) ?
3. Whether the accident took place due to rash and negligent driving of the driver of the offending vehicle bearing Regd No. OR- 02-G-0729(Passenger Bus), resulting multiple fatal injuries of the applicant?
4. Whether the driver of the offending vehicle was having valid driving license and whether the said vehicle was validly insured by the date of the accident?
5. Whether the petitioner is entitled to get the compensation? If so, from which O.P & to what extent to the compensation amount ?

Petitioner has examined himself and has relied on the documents of the criminal case in support of his claim.

8. **Issue No.2 & 3** :- The petitioner has relied on Ext.1 the F.I.R in Banigochha P.S.Case No. 17/09 lodged by one Susanta Kumar Sahoo the S/o Claimant- petitioner on 26.6.09 at 11.15 a.m. The F.I.R contain that the offending passenger bus was moving to Phulbani carrying passengers and on the way at Banibiri Ghat the bus has stopped and all the passengers had got down for urination. While the claimant -petitioner Charan Sahoo was getting into the but, all on a sudden the driver moved the vehicle, for which the claimant Charan Sahoo fell down and the back wheel of the bus crushed his leg. By the time of lodging of F.I.R amputation of right leg below the

knee by the doctor was over. In such case after investigation police has submitted charge-sheet against accused driver Ramesh Kumar Sahu U/s.279, 337, 338 I.P.C. The seizure list vide Ext.4 indicates that the Insurance of the vehicle with Opp.party No.2 was valid till 3.10.09, the D.L of the accused -driver was also valid till 30.11.2011. Since after investigation police had submitted charge-sheet in this case against the driver for rash and negligent driving and causing injury to the informant and when opp.parties have not adduced any evidence to rebut it, basing on the statement of applicant Charan Sahoo coupled with such documents and the medical report vide Ext.6, original disability certificate marked as Ext.7 and the discharge certificate issued by S.C.B Medical College and hospital, Cuttack marked as Ext.8, it can be safely inferred that the injuries of the applicant Charan Sahoo was caused on account of motor vehicle accident involving the bus bearing Regd No. OR-02G-0729. When there is no contrary evidence, submission of charge-sheet in such case indicates that the accident occurred due to rash and negligent driving of the accused-driver of the bus bearing Regd No. OR-02G-0729. The injury report vide Ext.6 indicates that the claimant-petitioner Charan Sahoo had sustained crush injury on his right leg which is below the knee joint and there was crushing of both tibia and fibula and that the injuries are grievous in nature. Therefore, when there is no contrary evidence issue nos. 2 and 3 has to be answered assertively in favour of the petitioner.

9. **Issue Nos. 1 and 4** - The written statement filed by opp.party no.1 Smt.Vijaya Devi indicates that she is the owner of the offending bus. Admittedly she is not contesting the case. The investigation in the case by a police officer and submission of charge-sheet against the accused driver

Ramesh Kumar Sahu establishes that he was driving the offending bus in rash and negligent manner causing grievous injury to P.w.1. The driving license of the accused driver Ramesh Kumar Sahu was valid till 30.11.2011 and the Insurance Certificate seized by the police under Ext.4 was valid till 3.10.2009 with IFFCO TOKIO General Insurance Co. Ltd, Opp.party No.2. There is no contrary evidence in record to disbelieve it. Therefore, issue no.4 is answered assertively.

In view of such finding in Issue nos. 2 ,3 and 4 this case filed by injured-petitioner claiming compensation, the misc.case is held to be maintainable. . Accordingly Issue Nos.4 and 1 also answered assertively.

10. **Issue No.5** :- The Insurance certificate bearing No. 37328101 was valid and insured with IFFCO TOKIO General Insurance Co. Ltd. It is clear from the injury report as well as disability certificate filed by petitioner affixed with his photograph, that his right leg below the knee has been amputated. The doctor of the Medical Board, Nayagarh District have verified that the petitioner has permanently disability of 70%. Learned counsel for the petitioner relies the case Govinda Yadav Vrs. New India Assurance Co.Ltd 2012(1) T.A.C 1(SC) and submits that 70% permanent disability of the petitioner may be accepted. In the case Rashma Kumari Vrs. Madam Mohan (2009) 13 S.C.C, 422, Hon'ble Apex Court reiterated that the compensation awarded in M.V.Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. In the case Raj Kumar Vrs. Ajaya Kumar (2011) S.C.C 343, Hon'ble Apex court has also elucidated the principle concerning assessment of pecuniary damages (special damages) and also non-pecuniary damages (general damages). In the present case, it is crystal clear from the disability

certificate vide Ext.7 filed by the petitioner that his right leg has been amputated below the knee and he is walking with the help of cross-stick. The medical board has declared 70% permanent disability to the petitioner who claims to be a bus conductor who was travelling in the offending passenger bus as a passenger. He has given his statement affidavit in court, narrating that as the driver moved the bus while he was getting into, he fell down and the back wheels of the bus crushed his legs. The same has not been rebutted and the opp.party has not adduced any contrary evidence, such fact regarding the cause of accident is accepted. During argument of the case, learned counsel for the opp.party raised dispute regarding age of the petitioner. Relying on the document submitted by the Investigator of opp.party no.2, it is submitted that the conductor license of the conductor of the petitioner Charan Sahoo was renewed till 29.12.13, but during the year 2009 the valid of the license was not there. Be that whatever may, it is clear that the petitioner is a bus conductor by profession. Further, it is submitted that the certified copy of voter list of the petitioner indicates his age was 40 years on 1.1.94 i.e at the time of issue of voter I-card, for which for assessing multiplier his age in the year 2009 becomes 55 years. At the same time the petitioner has relied on the documents like his disability certificate, original photo I-card issued by Electoral Registration Office , Adhara Card indicating his year of birth as 1964, so also photo copy of one sale-deed in support of it, in which his father had purchased land in the name of petitioner mentioning his age 12 years in the year 1976. To draw a conclusion regarding the age of the petitioner his voter I-card issued by Election Commission of India, so also Adhara card, indicates his date of birth in the year 1964, which is corroborated by a sale-deed dtd. 11.6.76. During

issuing of Adhara card as well as voter I-card an inquiry is made and the photo of the card holder is taken, therefore, such inquiry can be relied then that of the inquiry conducted while preparing voter list. Consequent upon this, it can be safely concluded that the petitioner was 45 years at the time of accident for the purpose of determination of multiplier.

11. The claim petition contain that the petitioner was getting a sum of Rs.5000/- per month as his salary as a passenger bus conductor. During argument, it is urged that for amputation of leg below the knee permanent disability may be assessed at 70% and his income may be determined at Rs. 6000/- per month. In the present case the petitioner has claimed that he was getting salary of Rs. 5000/- which appears to be proper and acceptable for a bus conductor. In view of amputation of leg below the knee for a bus conductor, it is trite that his profession as such shall be affected due to it and he shall not be able to perform his duty properly, even if, he uses artificial limb. Therefore, I could not found any ground to discard that he has permanent disability to the extent of 70%. Accordingly his loss of income per month would be Rs.3500/- per month. Applying 14 multiplier considering his age at 45 years the total loss of income comes to Rs.5,88,000/-.

12. Besides it, the petitioner is entitled to compensation for the trauma suffering, physical pain and loss of health to the tune of Rs. 25,000/-. The petitioner has filed some vouchers relating to the medical expenses made by him which shall not be more than Rs.5000/-. However, he is entitled such expenses alongwith expense for a medical attendant claimed by him. Accordingly it shall be just and proper in giving compensation of Rs. 15,000/- for such purpose. Petitioner as claimed Rs.25,000/- for probable future medical expenses, like cost of medicine, cost of doctors fees, cost of

special diet and cost of conveyance etc. In this regard, I am of considered view that Rs.10,000/- shall be just and proper to meet such expenses. Consequent upon this, the petitioner is entitled to (Rs. 5,88,000/- + Rs. 25,000/- + Rs. 15,000/- + Rs.10,000/-) = Rs. 6,38,000/- as compensation with P.I and F.I @ 6% from the date of filing of the case till the money is disbursed with cost of Rs.1000/-.

AWARD

The misc.case is allowed exparte against opp.party no.1 and on contest against opp.party no.2 with cost of Rs.1000/-. The Opp.party no.2 is directed to pay the compensation of Rs. 6,38,000/- within 2 months hence with PI & FI @ 6%, failing which the petitioner to take steps for realisation of the dues through the process of law. Out of the compensation amount 75% of the compensation amount be deposited in any Nationalised Bank in the name of petitioner no.1 for five years and rest amount with cost and interest be given to the petitioner. The fixed deposit can not be mortgaged or released earlier without the permission of the court.

Member, 6th M.A.C.T, Khurda.

Judgment is transcribed to my dictation, corrected, sealed and signed by me and pronounced in the open court this the 28th August, 2014.

Member, 6th M.A.C.T, Khurda.

List of witnesses examined on behalf of applicant.

P.w.1 Charan Sahoo

List of witnesses examined on behalf of Opp.party No.2

N i l.

List of documents marked for Exhibits for applicant.

- Ext.1 Certified copy of F.I.R lodged in Banigochha P.S No.17/09
- Ext.2 Certified copy of formal F.I.R
- Ext.3 Certified copy of Charge-sheet against the accused-driver.
- Ext.4 Certified list of offending vehicle, R.C Book, Insurance certificate, D.L of accused driver and connected documents.
- Ext.5 Certified copy of zimanama of offending vehicle.
- Ext.6 Certified copy of injury report.
- Ext.7 Original disabled certificate issued by Medical Board.
- Ext.8 Discharge certificate(Original).
- Ext.9 Original conductor license.

List of documents marked for Exhibits for Opp.party No.2

- Ext.A. Certified copy of conductor license of Sri Charan Sahoo.
- Ext.B. Voter list

Member, 6th M.A.C.T, Khurda.