

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

Present:

Sri A.K.Sahoo, LL.M.,

Member 6<sup>th</sup> M.A.C.T, Khurda.

M.A.C.T NO.40/124 of 13/10

1. Riajuddin Khan, aged about 38 years, S/o Samsuddin Khan.
2. Najmun Bibi, aged about 35 years, W/o Riajuddin Khan

Both are being resident of vill. Kaipada, P.S. Khorda Sadar,  
Dist.Khurda

..... Applicants.

Vrs.

Mamata Pradhan, W/o Arjuna Pradhan, of vill. Palasahi, P.S.  
Balipatna, Dist. Khurda

..... Opp.party.

Counsel for the applicant: Sri Jagat Ranjan D.Rayasingh, Adv.

Counsel for the O.P No.1 Nil.

Date of argument : 11.7.2014

Date of Judgment: 26.7.14

J U D G M E N T

Both the petitioners being the father and mother of the deceased Nizamuddin Khan have filed joint petition U/s.166 of M.V.Act claiming compensation of Rs. 2,00,000/- from the opp.party Mamata Pradhan being the registered owner of the offending truck bearing Regd No. OR 05D 6303 for the death of their son Nizamuddin due to vehicular accident on dtd. 11.11.2010 at 9.40 a.m in front of the Indian Oversease Bank, Kaipadar on Dalatola-Kaipadar public road.

2. The deceased studying in Class-VIII was proceeding to school riding his bicycle slowly and cautiously on the left side of the road, at that time the offending vehicle coming from Kurhadamala side going towards the village Dalatola in very high speed in rash and negligent manner, for which the driver could not control the vehicle which moved towards the extreme left of the road and collided against the deceased from his behind with violent force. As a result of which it the deceased was thrown to a considerable distance and the wheel of the truck ran over his body causing the death at the spot. Local police registered a criminal case against the driver of the truck and conducted investigation . The investigation resulted into submission of charge-sheet against the driver of the offending truck of Opp.party U/s.279, 304-A I.P.C. It is contended that the manner in which the driver was driving the truck indicates his negligence by application of principle embodied in *res ipsa loquitor*.

3. The petitioners claim that their son was 13 years old and very strong and stout. He was liked by all due to his good manner and sober behaviour and was a brilliant student in Class-VIII Kaipadar M.E School and that he was their only son. On such ground the applicant have laid claim of Rs. 2,00,000/- for general as well as special damages with the interest @ 12%. Opp.party Mamata Pradhan W/o Arjuna Pradhan of vill. Palasahi, P.S. Balipatna, Dist.Khaurda did not choose to contest the case.

4. Points for determination in this case are;

a) Whether the driver of the opp.party was driving the offending vehicle in rash and negligent manner causing the accident and death of the son of petitioners?

b) Whether the opp.party is liable to pay compensation ? If so to what extent?

5. Issue No.1:- The petitioners have examined Riazuddin Khan, the father of the deceased. He corroborates the facts of the alleged accident mentioned in his claim petition. Such submission is coupled with the certified copy of F.I.R in Khurda Sadar P.S case No.122 dtd. 11.11.2010 registered as G.R.Case No.1212/10 vide Ext.1, certified copy of charge-sheet in such case vide Ext.2 indicating with charge-sheet has been submitted against the accused driver U/s.279, 304-A I.P.C having valid driving license up to 28.6.13, which has not been challenged by the opp.party, indicates and established the case of claimants. Further the Insurance Certificate seized by police indicates that it was valid up to 29.8.10 mid night, for which and when the accident had taken place on 11.11.10, the opp.party Mamata being the registered owner of the truck liable to pay compensation personally under vicarious liability for the rash and negligent driving of her driver Akhil Pradhan, for causing death of the son of the petitioners. Accordingly issue no.1 is answered assertively.

6. Issue No.2 :- The admitted fact remains that the deceased was a student of Class-VIII, for which he was having no income of his own. The P./M report vide Ext.7 indicates that the deceased was 13 years old at the time of accident. Since the deceased was 13 years old, in such case multiplication concerning his income or loss of income of his parents can not be determined. The case Sarala Burma Vrs. Delhi Transport Corporation, does not speak about the multiplier for a deceased below 15 years. At the same time Nalsa Guideline speaks for fixed sum in case of the deceased is 0 to 10 years, speaks for 13 multiplier for the age group of the deceased 11 to 20 years. Therefore, if the multiplicat is assessed at Rs. 15,000/- for the child, using 13 multiplier the compensation comes to Rs. 1,95,000/-. Learned counsel for the petitioners submits that for loosing the only son of the petitioners, who are parents, they lost their morale power and the entire

family brick have been battered and shattered and they have laid a modest claim of Rs. 2,00,000/-, for general and special damages. Accordingly I am of considered view that compensation of Rs. 2,00,000/- to the parents for the death of their only son aged about 13 years due to the vehicular accident shall be just and proper with cost of Rs. 1000/-. Issue No.2 is answered accordingly. Hence ordered.

### A W A R D

The Misc.case is allowed exparte against the opp.party Mamata Pradhan with cost of Rs. 1000/- and the opp.party Mamata Pradhan is directed to pay compensation of Rs. 2,00,000/- alongwith interest @ 7% from the date of filing of this case till the money is disbursed to the opp.party to be distributed equally within 2 months hence alongwith cost. Out of the compensation amount payable to the petitioners nos.1 and 2, 75% be kept in fixed deposit in their namely jointly in equal share in any nationalized bank for a period of 5 years and the rest 25% together the cost and interest be paid to petitioner no.1 and 2 by opp.party Mamata Pradhan. The fixed deposit can not be mortgaged or released earlier without the permission of the court. Opp.party Mamata Pradhan to pay the compensation amount within 3 months hence.

Member, 6<sup>th</sup> 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 26 th July, 2014

Member, 6<sup>th</sup> M.A.C.T, Khurda.

#### List of witnesses examined on behalf of applicant.

P.w.1            Riajauddin Khan.

#### 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                            |
| Ext.2 | Certified copy of formal F.I.R                     |
| Ext.3 | Certified copy of charge-sheet                     |
| Ext.4 | Certified copy of seizure list of offending truck. |
| Ext.5 | Certified copy of zimanama                         |
| Ext.6 | Certified copy of inquest report.                  |
| Ext.7 | Certified copy of P.M report.                      |

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

N i l.

Member, 6<sup>th</sup> M.A.C.T, Khurda.