

IN THE COURT OF MEMBER 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. 118 of 12

1. Sabita Parida, aged about 34 years, W/o late Tareswar Parida.
2. Biswajit parida, aged about 14 years, S/o late Tareswar Parida (minor) represented through his mother guardian Sabita Parida (the applicant no.1). Both are resident of vill. Kuradhamalla, P.O. Daleiput, P.S. Khorda Sadar, Dist. Khurda.

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Applicants.

Vrs.

1. Parida Construction, Plot No. 262/1802, Saralanagar, Cuttack road, Bhubaneswar, Dist. Khurda Pin- 751006.
2. The Divisional Manager Legal T.P.Claim Cell.

The Cholamandalam MS General Insurance Co. Ltd At- Chola MS GIC Ltd, 45/46, 2nd floor Ashok Nagar, Bhubaneswar, Dist. Khurda Pin- 751009, Head Office-Chhabildas Tower, 3rd floor 6A Middleton street, Kolkata-700071.

.....Opp.parties no.2

Counsel for the applicant: Sri Jagat Ranjan D.Raisingh

Counsel for the O.P No.1 None.

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

Date of argument : 11.7.2014

Date of Judgment: 26.7.2014

JUDGMENT

The applicants have filed petition U/s.166 of M.V Act claiming compensation of Rs. 10, 40,000/- from the opp.parties for the death of Tareswar Parida, the husband of petitioner No.1 as well as father of petitioner no.2 who died due to a vehicular accident on 12.6.12 at 6.30 a.m at Kuradhamala chhak on N.H-5.

2. The claimants have laid their case alleging that on 12.6.12 at about 6.30 a.m while the deceased Tareswar Parida was proceeding towards Tapanga chhak to perform his duty as a driver by walking at the left side of the road, the offending vehicle a truck bearing Regd No. OR 02 BB 3837 coming from Khurda side towards Jankia i.e behind the deceased, at a very high speed without applying horn in a rash and negligent manner, for which the driver of the truck lost control over the vehicle and the vehicle proceeded towards left extremity of the road and dashed against the deceased from behind with violent force, and the deceased was thrown to a distant place and received fatal injuries on his body. He was shifted to D.H.H, Khurda for treatment, but he succumbed to the injuries on the way to the hospital. A criminal case was registered against the driver of the truck and the investigation resulted into submission of charge-sheet against the driver U/s.279 and 304-A I.P.C. The petitioners claimed that the manner in which the accident has taken place speaks of the negligence of the driver by application of res ipsa locuter and that the opp.party no.1 owner of the vehicle is veraciously liable for the act of the driver. Further that since the vehicle was validly insured with opp.party no.2 and the applicant being a 3rd party, the Insurance company is liable to pay the entire amount of compensation.

3. As regards the quantum of compensation the petitioners claimed that the deceased was 37 years old and as a driver earning Rs. 8000/- per month and contributing Rs. 5000/- to the family. On such ground they claimed Rs.9,60,000/-. They claimed Rs. 20,000/- each for loss of future happy and prospects of the deceased, loss of love affection, care and company of the applicants, loss of consortium of applicant no.1 and the amount incurred in funeral and post funeral of the deceased.

4. Opp.party no.1 though appeared, but did not file W.S, nor participated in the hearing of the case. Opp.party no.2 has filed W.S assailing maintainability of the case and traversing of the assertion made by the petitioners, it is submitted that opp.party no.1 has not informed about the accident to them as required U/s.158 (6) of M.V Act and collided with the petitioners, and accordingly has filed the petition U/s.170 of M.V Act. Opp.party no.2 denies to be insurer of the vehicle and has called upon the petitioner to produce the documents of the criminal case and valid D.L, R.C Book, Route permit and Insurance of the offending vehicle.

5. Basing on such pleadings of the parties the following issues have been framed.

ISSUES

- 1) Whether the claim of petitioner maintainable?
- 2) Whether the Truck bearing Registration Number OR 02BB 3837 coming with very high speed in rash and negligent manner collided against the deceased from his back side causing his death?
- 3) Whether the Insurer is liable to pay compensation?

4) To what extent of compensation?

6. The petitioners have examined petitioner No.1 Sabita Parida, the wife of the deceased and have relied on the documents like Ext.1 the, certified copy of F.I.R in Khurda sadar P.S. Case No. 121 dtd. 12.6.12 registered as G.R.Case No. 767/12 in the court of learned S.D.J.M, Khurda, the certified copy of charge-sheet vide Ext.2, the certified copy of seizure list of the offending vehicle bearing Regd No. OR 02BB3837 and its document vide Ext.3, the certified copy of zimanama of the offending truck vide Ext.4, the certified copy of inquest report of the deceased Tareswar Parida vide Ext.5, certified copy of P.M report of deceased vide Ext.6, certified copy of D.L of deceased vide Ext.7, the photo copy of death certificate vide Ext.8 and the photo copy of R.C Books, Insurance policy, D.L of the accused driver vide Ext.9 and the original D.L of the deceased vide Ext.10.

7. **Issue Nos. 1,2 and 3** :- P.w.1 is the wife of deceased and mother of petitioner No.2. She has filed the case on behalf of her son also. She corroborates the avernments of the claim petition regarding the alleged vehicular accident on 12.6.12 implicating the offending truck bearing Regd No. OR 02BB 3837. Opp.party No.2 challenges the status of P.w.1 as wife of deceased. As a matter of fact, it remains that the deceased is now living with her son petitioner No.2 studying at Kaipadar college. Nothing more has been elicited from her. P.w.2 is the eye witness to the accident. He says that the deceased was proceeding towards Dadhimachhagadia by walking at the left side of the road at a distance of 100 ft from him. The offending vehicle moving at very high speed, crossed him and dashed against the deceased from his back side causing his death. He had informed P.w.1 about such tragic incident and has been examined by police during investigation.

Nothing material has been elicited from him to disbelieve the submission of charge-sheet against the accused driver Bamdev Rout, the driver of opp.party no.1, Parida Construction , Plot No. 262/1802, Saralanagar, Cuttack road, Bhubaneswar U/s.279, 304-A I.P.C establishes that the truck was being driven in rash and negligent manner, causing death of Tareswar Parida. Ext.3 indicates that the vehicle was having valid permit and insurance policy bearing no. 3379/00406659/000/02 valid up to 29.11.12. The petitioner has filed copy of such Insurance certificate which was valid till 29.11.12. It indicates that opp.party lno.2 is liable to pay the entire amount of compensation. The petitioners being LR's of the deceased have filed such case U/s.166 of M.V.Act. Accordingly issue nos. 1,2 and 3 are held assertively in favour of the petitioners.

8. **Issue No.4** :- As regards the quantum of compensation, the petitioners claimed that the deceased was a driver and getting salary of Rs. 8000/- per month and has filed the D.L of the deceased vide Ext.10, but no evidence adduced as to under whom he was working as a driver and how much salary he was getting. No documentary evidence has been adduced in this regard. Learned counsel for the opp.party urged that the D.L itself does not indicate that the deceased was serving as driver and earning Rs. 8000/- per month , for which he be treated as a skilled labour. The petitioners say that now they survive on B.P.L card benefit and widow allowance of Rs. 300/- per month and that earlier her husband was earning and giving her money for maintenance of family. Since no evidence is adduced that the deceased was working as a driver, it can not be held that he was earning Rs. 8000/- per month. The status of the family of the petitioners appears to be poor. He was maintaining his family consisting of his wife and son. Learned

advocate for opp.party no.2 submits that he may be considered as a skilled labour. In the facts of the case I am of considered view that the deceased must be earning Rs. 6,000/- per month and contributing Rs. 4000/- for maintenance of his family deducting 1/ 3rd of it for his own use. Since the deceased is 37 years old at the time of accident, as per the case of Sarala Burma Vrs. Delhi Transport Corporation, 15 multiplier is to be applied with the multiplicand. Accordingly the petitioners are entitled to get loss of income of Rs. 4000/- x 12 x 15 = Rs. 7,20,000/-, besides it the petitioners are entitled to Rs. 10,000/- for loss of consortium, Rs. 5000/- for funeral expenses and Rs. 10,000/- for loss of love, affection, care and company of applicants. Accordingly the petitioners are entitled to get compensation of Rs.7,45,000/- with P.I & F.I @ 7% from the insurer opp.party no.2 only. Accordingly the issue no.4 is answered. Hence ordered.

AWARD

The misc.case is allowed exparte against opp.party no.1 and on contest against opp.party no.2 with cost of Rs.100/-. The Opp.party no.2 is directed to pay the compensation of Rs. 7,45,000/- within 2 months hence with PI & FI @ 7%, 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 26th day of July,2014.

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

List of witnesses examined on behalf of applicant.

P.w.1 Sabita Parida.

P.w.2 Indramani Harichandan.

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 in G.R

Ext.2 Certified copy of Charge-sheet.

Ext.3 Certified copy of seizure list showing seizure of the offending Truck bearing Regd No.OR02BB 3837 and its documents.

Ext.4 Certified copy of zimanama showing zima of offending Truck and its documents.

Ext.5 C.C of inquest report of deceased Tareswar Parida.

Ext.6 C.C of P.M report of deceased Tareswar Parida

Ext.7 C.C of D.L of deceased.

Ext.8 Photo copy of death certificate of deceased.

Ext.9 Photo copy of R.C book, Insurance Policy, Road permit, D.L of accused driver of offending truck in 7 sheets.

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

N i l.

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