

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. 128 of 2003

Date of argument- Dt. 23.12.14

Date of judgment- Dt. 03.01.15

Namita Rout, aged about 20 years
D/o Rushi Rout, of Vill/PO: Chanchol, Via: Danpur
PS: Patkura, Dist: Kendrapara, A/p: Rasulgarh
PS: Mancheswar, Dist: Khurda

... Petitioner

Vrs.

1. Braja Kishore Behera, S/o: Sibaram Behera
At: Hantapara, PO: Karilopatna, Dist: Kendrapara
2. The Divisional Manager, New India Assurance Co. Ltd.
94, Janpath, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri B.C. Mohanty, Advocate.
For the O.P. No.1	...	None
For the O.P. No.2	...	Sri B.R. Mishra, Advocate

AWARD

- 1) Applicant is the injured in a motor vehicle accident on dtd. 19.10.02. As per the claim petition on the same day at about 10.30 AM, the petitioner was travelling in the offending trekker bearing Regd. No. OR 05 N 1097 as a passenger and proceeding from Sun Temple, Konark towards Puri Town. The driver of the offending trekker was driving the vehicle in high speed and in rash and negligent manner. Due to high speed, the driver could not control the vehicle and near Liakhia bridge, the vehicle was dashed against a standing tree

and capsized. As a result of such accident, one of the passenger died at the spot and the petitioner had sustained serious injury on her person. Soon after the accident, the injured was shifted to District Headquarters Hospital, Puri for treatment. Again, due to serious injury, the injured was referred to SCB Medical College & Hospital, Cuttack for better treatment. After discharge from SCB Medical College, Cuttack, the injured was under treatment of Dr. N.K. Agarwala at Cuttack. In connection to such accident, Gop police registered PS case No. 165/02 u/s 279/337/338/304A IPC and took up investigation of the case. After completion of investigation, police submitted charge sheet against the accused-driver namely, B. Devraj Reddy for the offence u/s 279/337/338/304 A IPC. The trekker was insured by OP No.2, New India Assurance Co. and it is claimed that the trekker being validly insured OP No.2 is liable to pay compensation to the applicant.

2. O.P. No.2, the insurance company 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 occupied by the driver of the offending vehicle.

3. On consideration of the aforesaid pleadings, the following issues have been framed.

1. Whether the injured Namita Rout sustained injury due to motor vehicle accident involving vehicle No. OR 05 N 1097 (Trekker) ?

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. ?

4. During the course of hearing, petitioner has examined herself as P.W.1. In her affidavit evidence, the petitioner has supported her claim application. She deposed that on the relevant day, while she was proceeding in the offending trekker bearing Regd. No. OR 05 N 1097 towards Puri Town, the vehicle met with an accident for which she sustained brain injury, fracture on her collar bone, fracture on her left ankle joint and other injuries. In addition to oral

evidence, the petitioner has filed certified copy of police papers in GR case No. 678/02 in connection to accident case. Number of medical prescriptions and discharge certificate are also filed in support of the injuries sustained by the petitioner. In her evidence, P.W.1 said that the accident took place in such a force that she sustained multiple fracture alongwith bleeding injuries althrough her body. She was admitted as an indoor patient in Neurosurgery Department of SCB Medical College, Cuttack for about 5 days. The petitioner further claimed that she had spent more than Rs.1,50,000/-for her medical treatment. The police papers also corroborate that on the relevant day, the accident took place which was investigated by IIC, Gop PS. The driver of the offending trekker was arrested and after completion of investigation charge sheet was submitted u/s 279/337/338/304A IPC. The discharge certificate of Capital Hospital discloses that the injured had sustained fracture on his left ankle joint. During investigation police seized the offending trekker alongwith its documents such as RC book, insurance policy bearing No. 29922 of New India Assurance Co. Ltd valid upto 17.4.03. Police also seized one duplicate driving license No. 2514/88 dtd. 19.7.88 of the accused driver B. Devaraj Reddy who was authorized to drive transport vehicle which was valid upto 26.3.03.

Issue No.1

5. Admittedly, no requisition of police forwarding the injured to the hospital is available in the record. But, it is adduced in evidence that the injured was directly shifted from the spot of accident to the Headquarters Hospital, Puri and in support of such evidence, the discharge certificate issued by Headquarters Hospital, Puri is filed in the Court marked as Ext.8. Ext.8 shows that the injured was admitted as an indoor patient on 19.10.02 with injury on his neck, head and other injuries on her body. She was referred to SCB Medical College, Cuttack on 20.10.02. Ext.10 is the discharge certificate issued by department of Neurosurgery, SCB Medical College, Cuttack which shows that the injured was admitted on 20.10.02 and was discharged on 25.10.02. Another discharge certificate issued by the department of Neurosurgery is also filed vide Ext.11 which shows that the injured was admitted from 3.3.2011 to 12.3.11. Thus, I find

the injured moving in the offending vehicle and faced with the accident is well proved through the oral evidence as well as the documents filed by her. It is also well established that the accident took place due to rash and negligent driving of the driver. Therefore, the petitioner is entitled for compensation for the motor vehicle accident u/s 166 MV Act.

Issue Nos. 2 and 3:-

6. The IO of the case during investigation seized the driving license of the offending driver B. Devaraj Reddy which was valid upto 26.3.03. The insurance policy is also seized which shows the vehicle was insured by OP No.2. Learned counsel for OP No.2 filed copy of judgment dtd. 20.12.12 in MACT case No. 129/03 and MACT case No. 134/03 dtd. 12.11.12 respectively passed by this Tribunal wherein some other victims of the same accident approached the Tribunal for compensation and this Tribunal after examining the driving license of the driver of the offending vehicle was found defective. The driving license bearing No. 2514/88 which was seized by the police was renewed by the driver whose previous driving license was DL No. 2027/81 issued by the Licensing Authority, Bhubaneswar. But, on perusal of the said license it was noticed that DL No. 2027/81 was issued in favour of one Bipin Biswal. Hence, this Tribunal found the driving license seized from the accused-driver was a fake one. But, taking into consideration that the victim should not suffer for negligence of the owner of the vehicle made liable to the insurance company to pay the compensation with right of liberty to realize the said amount from the owner. Learned counsel for the petitioner has not been able to justify on the above point regarding genuineness of the driving license of the driver. Hence, I feel in the instant case the insurance company shall pay the compensation at the first instance to the petitioner and thereafter, the amount will be realized from the owner of the vehicle.

7. As regards quantum of compensation, it is submitted that the injured is a girl of about 20 years when she met with the accident. She was having number of injuries including one fracture. That apart she was admitted as indoor patient at different times in the Headquarter Hospital, Puri and SCB Medical College,

Cuttack. On consideration of the nature of injuries and period of treatment, I feel if compensation of Rs.75,000/- is awarded towards medical expenses, it will meet the ends of justice. That apart, the petitioner is also entitled for another Rs.5000/- towards pain and suffering. Hence, it is ordered.

A W A R D

The claim petition is accordingly allowed on contest against O.P. No 2 ad ex parte against O.P. No.1 and the amount of compensation is to be paid by O.P. No.2 to the petitioner.

The total compensation amount is determined at Rs. 80,000/- (Rupees Eighty 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. 2.3.03 till the date of payment. The O.P. No.2 is directed to pay the compensation amount within two months hence with right of liberty to realize the same from the owner of the offending trekker in accordance with law.

This award is pronounced in the open court to-day the 3rd day of January, 2015.

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:- Namita Rout

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 seizure list

Ext.5: Certified copy of zimanama

- Ext.6: Certified copy of zimanama
- Ext.7: Certified copy of MVI report
- Ext.8: Discharge certificate
- Ext.9: Discharge certificate
- Ext.10: Discharge record of SCB Medical College & Hospital, Cuttack
- Ext.11: Discharge certificate

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

Nil

Member
3rd MACT, Bhubaneswar