

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. 232 of 1998

Date of argument- Dt. 24.09.14

Date of judgment- Dt. 29.09.14

Sukanti Nayak, aged about 30 years
W/o Bijay Kumar Nayak, resident of Vill/PO: Tirundia
PS: Nimapara, Dist: Puri

... Petitioner

Vrs.

1. Atanu Panda, S/o: Ananda Chandra Panda
Mahatab Road, PS: Madhupatna, Dist: Cuttack
2. Bhupesh Kumar Muduli, S/o: Bhagirathi Muduli
C/o: Bhupati Kumar Muduli, State Bank of India
IRC Village, Bhubaneswar, Dist: Khurda
3. The Divisional Manager, Oriental Insurance Co. Ltd.
Bhubaneswar, Dist: Khurda
4. The Divisional Manager, United India Insurance Co Ltd
Sahied Nagar, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner

... Sri B.N. Mishra, Advocate.

For the O.P. No.1 & 2

... None

For the O.P. No.3

... Sri B.B. Das, Advocate

For the OP No.4

.... Sri B.R. Patnaik, Advocate

AWARD

- 1) The claimant in this case is a lady who was traveling in an auto rickshaw alongwith her husband on dtd. 1.6.98 at Rajmahal Chawk, Bhubaneswar. The driver of the auto rickshaw bearing Regd. No. OR 05 F 5049

was driving the auto in high speed and in the meantime, one Maruti Car bearing Regd. No. WB 02 4791 came from Sisu Bhavan with high speed and collided with each other for which the auto rickshaw was severely damaged and the petitioner sustained multiple fracture and bleeding injuries on her person. Her husband also sustained injuries. She was immediately shifted to Capital Hospital and was admitted as indoor patient in the Orthopedic department. She was admitted for about a fortnight with plaster on her fracture. The accident took place due to composite negligence of both the vehicles. One FIR having been lodged before Capital PS, PS case no. 247/98 was registered by the police and the case was investigated. During the course of investigation, police ascertained that the cause of accident is due to rash and negligence of both the drivers and accordingly, charge sheet u/s 279/338 IPC was filed against both the accused persons. The alleged auto was insured by OP No.4, the United India Insurance Co. and the Maruti Car was insured by Oriental Insurance Company. When the case was filed in the year 1998, Oriental Insurance company was not arrayed as a party and after long lapse of time, on 24.10.09 amended claim petition was filed claiming compensation from both the insurance company. During investigation in the accident case, police seized the offending auto rickshaw alongwith its insurance certificate which was valid till 30.1.99. The driving license of auto driver was valid till 7.12.2017 from the year 1998. The Maruti van was also seized alongwith its documents. The insurance certificate was valid upto 2.7.98 and driving license of the driver was valid till 27.7.2017. The injury requisition by the police alongwith injury report from Capital Hospital is also filed in the Court which shows that the petitioner sustained fracture on her right femur and she was referred to Orthopedic Specialist for treatment.

2. OP Nos. 3 and 4 have filed their respective written statements wherein they challenging the claim of the petitioner. They specifically denies the validity of the insurance policy and driving license of the offending vehicles.

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

1. Whether the petitioner Sukanti Nayak sustained injury due to

motor vehicle accident involving vehicle No. OR 05 F 5049 (Auto Rickshaw) and WB 02 4791 (Maruti Car) ?

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 course of hearing of the case, the petitioner examined herself by filing her affidavit evidence and her husband was also examined as P.W.2. In their affidavit evidence, they supported the averments of the claim petition regarding the accident and injuries. As regards treatment of the petitioner, it is stated that she sustained one fracture on her thigh for which she was subjected to one operation by nailing and again in the year 2000, the nail was removed by another operation. Number of complications arose for the movement of her body after the operation. She was maintaining her family by opening a utensil shop with her husband at Sunabeda and after the operation she is limping and unable to do her business. That apart she has engaged another person for domestic help with monthly salary of Rs.1000/-. Due to such accident she has been permanently handicapped and therefore, claimed compensation. OP Nos. 1 and 2 being the owner of the auto rickshaw and Maruti Van have been set ex parte as they did not participate in the trial. However, OP Nos. 3 and 4 cross examined the witnesses and brought out from her mouth that due to composite negligence of both the vehicles, the accident took place. Similar is the evidence of P.W.2 who is another victim of the case. He said that his wife sustained multiple injuries including fracture and ultimately, she has been permanently disabled. In support of their connection, they filed a disabled certificate issued by District Medical Board, Puri showing her disability to the extent of 40%. The medical papers of Capital Hospital are also filed showing that the petitioner was operated on shaft of right femur during her admission in the hospital from 1.6.98 to 19.6.98. She also filed another certificate showing removal of the nail by operation during the year 2000. That apart medical bills to the tune of Rs.20,000/- are also filed showing their expenditure towards treatment. No evidence has been led by OP Nos. 3 and

4 nor any material has been elicited from the mouth of P.Ws.1 and 2 to discredit their evidence. Hence, I am of the view that the petitioner sustained injuries due to motor vehicle accident due to composite negligence of both the vehicles and the vehicles were insured by OP Nos. 3 and 4 at the relevant time. The drivers of the vehicles being negligent in driving and driving the vehicle on behalf of the owners, OP Nos. 1 and 2 are vicariously liable for the accident. As OP Nos. 3 and 4 are the insurers of the vehicle on behalf of their owners, OP Nos. 3 and 4 are liable to pay compensation towards third party liability to the petitioner.

5. As regards quantum of compensation, it is the case of the petitioner that she was maintaining her family by opening an utensil shop at Sunabeda and was helping her husband in the business. Due to such accident, now she is limping and unable to do any business. It is her evidence that she was making profit of Rs.2000/- per month from her business. But, not a single scrap of paper has been filed showing that she had any business or was having any profit out of it. Learned counsel for OP Nos. 3 and 4 objected that in absence of any document, it cannot be said that the petitioner was having any income from the business. That apart, learned counsel for Oriental Insurance Co. has pointed out that driver of the auto rickshaw namely, Prasant Kumar Mohanty produced his driving license before the police bearing DL No. 6956/98. But, such DL is fake and forged. He filed certified copy of DL bearing No. 6956/98 which stands in the name of one Srikumar Sahu. Although, permanent disability certificate to the extent of 40% has been filed in the Court, the functional disability will be maximum 15% and therefore, the compensation will cover 15% income of the injured which is net loss to her. Taking into consideration that a housewife is at least discharging her duty in the household affairs her income per month will not be less than Rs.2000/- per month. Accordingly, the annual income of the injured is Rs. 2000 x12= Rs.24,000/-

6. The injured has mentioned in the claim application that she was aged about 30 years by the time of accident. Accepting the age of 30 years, multiplier 17 will be made applicable to her while assessing her 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 Rs. 24,000 x 17 = Rs. 4,08,000/-.

7. As the petitioner had sustained 15% functional disability, the net loss of income will be Rs. 61,200/- (15% of Rs.4,08,000/-). The petitioner also entitled to get Rs. 40,000/- towards her medical 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. 61,200/-
By the petitioner	
2. Medical Expenses already incurred by the petitioner	: Rs. 40,000/-
3. Physical and mental shock pain and sufferings	: Rs. 5000/-
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	Total : Rs. 1,06,200/-

(Rupees One Lakhs Six Thousand Two Hundred) only. Hence, it is ordered.

A W A R D

The claim petition is accordingly allowed on contest against O.P. Nos. 3 and 4 and ex-parte against O.P. Nos.1 and 2 and the compensation is to be paid by O.P. Nos.3 and 4 to the injured in 50::50 basis.

The total compensation amount is determined at Rs. 1,06,200/- (Rupees One Lakhs Six Thousand Two Hundred) only which shall carry simple interest at the rate of 7% both pendentelite and future from 24.10.09 i.e. after filing amended claim petition till the date of payment. Out of the compensation amount, 60% be kept in fixed deposit in any Nationalized Bank for a period of five years and the rest 40% together with interest be paid in cash by O.P. Nos. 3 and 4 to the petitioner. The fixed deposit can not be mortgaged or released earlier without the permission of the Court. OP No.3, the Oriental Insurance Co. is directed to pay his share with right of liberty to realize the same from the owner of the offending Auto rickshaw and OP No.4 is directed to pay his share of compensation to the petitioner within two months hence.

This award is pronounced in the open court to-day the 29th day of September, 2014.

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:- Sukanti Naik

P.W.2:- Bijay Kumar Nayak

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 injury report

Ext.6: Discharge certificate

Ext.7: Discharge certificate

Ext.8:- Disability Certificate

List of Exhibits marked for O.Ps.

Ext.A: True coy of Driving license

Member
3rd MACT, Bhubaneswar

This award is pronounced in the open court to-day the 21st day of July, 2014.

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:- Raj Kishore Panda
List of witness examined for the O.P. No.2

None
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Ext.3:- Certified copy of injury report
Ext.4:- Certified copy of seizure list
Ext.5: Discharge certificate
Ext.6: Discharge certificate
List of Exhibits marked for O.P. No.2
Ext.A: Attested copy of driving license

Member
3rd MACT, Bhubaneswar

