

IN THE COURT OF THE MEMBER, 3<sup>RD</sup> MOTOR ACCIDENT CLAIMS  
TRIBUNAL, BHUBANESWAR.

PRRESENT:-

Sri I.K. Das, LLB  
Member, 3<sup>rd</sup> MACT, Bhubaneswar.

**MACT Case No. 276 of 1998**

Date of argument- Dt. 15.09.14

Date of judgment- Dt. 27.09.14

1. Kuntala Pradhan, aged about 48 years  
W/o Late Paban Pradhan
2. Kuni Pradhan, aged about 20 years  
D/o : Late Paban Pradhan
3. Rina Pradhan, aged about 16 years  
D/o: Late Paban Pradhan
4. Jhunarani Pradhan, aged about 13 years  
D/o: Late Paban Pradhan
5. Mina Pradhan, aged about 11 years  
S/o: Late Paban Pradhan
6. Chaina Pradhan, aged about 10 years  
D/o: Late Paban Pradhan
7. Susanta Kumar Pradhan, aged about 8 years  
S/o: Late Paban Pradhan
8. Sukanta Pradhan, aged about 23 years  
S/o: Late Paban Pradhan

All are of Vill: Nirakarpur, PS: Jankia, Dist: Khurda

(Applicant No. 3 to 7 being minors represented through  
their father guardian, the applicant No.1)

... Petitioners

Vrs.

1. Antaryami Sahu, At/Po: Rahama, Dist: Jagatsinghpur
2. The Divisional Manager, United India Insurance Co. Ltd, BBSR

... Opp. Parties.

Counsels

For the petitioners

...

Sri M.R. Mohanty & Associates

For the OP No.1

...

None

For the O.P. No.2

... Sri P.K. Mohapatra, Advocate

AWARD

1) The petitioners in this case are the legal representatives of deceased Late Paban Pradhan who faced with motor vehicle accident on dtd. 9.12.97 on NH No.5 near Malipada. On the relevant day, at about 11.30 AM, the deceased was boarding a bus bearing Regd. No. OR 05 A 9655 and was going to village Nirakarpur. The driver of the bus was very careless and was driving with maximum speed inspite of protest by the passengers. Near Malipada, the bus dashed with another bus which was coming at the extreme left side of the road. Due to the accident, the deceased sustained multiple bleeding injuries and he was shifted to Government Hospital, Khurda for his treatment. As some brain injuries were noticed the patient was referred to SCB Medical, Cuttack and thereafter, he was under private treatment and ultimately expired on 14.10.98 at his house during such treatment. One FIR having been lodged at Jankia PS vide PS case No. 165/97 was registered against the driver of the offending bus namely, Ananta Charan Patra. During investigation, police seized the offending bus bearing No. OR 05 A 9655 and the other vehicle bearing No. OR 07 A 8429. Police also seized insurance cover note of the offending bus, its route permit and driving license of the driver which was valid upto 12.5.99. The police after investigation also concluded that the accident between both the buses took place due to negligence driving on the part of the driver of the offending bus. Petitioner also examined two witnesses in support of its case.

3. OP No. 2 files written statement challenging the claim of the petitioners. OP No.2 specifically denies the validity of the insurance policy and driving license of the accused driver.

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

1. Whether the death of Paban Pradhan occurred due to motor vehicle accident involving vehicle No. OR 05 A 9655 (Bus) ?
2. Whether the driver of the offending vehicle was rash and/or negligent in causing such accident?

3. Whether the petitioners are entitled to get compensation as claimed and if so to what extent and from which O.Ps. ?

5. Petitioner also examined two witnesses in support of its case. P.W.1 is the wife of the deceased and P.W.2 is an eye witness to the accident. P.W.1 in her affidavit evidence stated that her husband was shifted from Government hospital to SCB Medical, Cuttack Neurosurgery department due to grievous injuries. After his discharge from the hospital he was getting treatment privately in the house, but subsequently her husband succumbed to the injuries during the treatment on 14.10.98 at the age of 50 only. Her husband was having a grocery shop having monthly income of Rs.2500/-. She claimed that the injuries caused in motor vehicle accident being the cause of death. They are entitled for compensation u/s 166 MV Act. In her cross examination by the insurance company she said after getting treatment for about 8 days at SCB Medical, Cuttack, her husband returned to the house, but although he was under treatment of private doctor. Such evidence is corroborated through the mouth of P.W.2 who is another victim of the same accident. In addition to police papers, petitioners filed discharge summary certificate by SCB Medical, Cuttack showing that the deceased was admitted on 10.12.97 and was discharged on 13.12.97. The patient was referred from headquarters hospital, Khurda due to head injury with convulsion. The reverse side of the said certificate shows that on 19.1.98 again the patient was referred to the same hospital and on consultation with the doctor obtained a prescription. As per the death certificate marked as Ext.7, he expired on 14.10.98 at Nirakarpur in the house of the deceased. No witness has been examined from the side of OP.

### FINDINGS

#### Issue No. 1

6. Learned counsel while submitting argument, claimed that the petitioners by adducing evidence and by producing documents have successfully proved that although the deceased expired after about 9 months of the accident. The cause of death is the brain injury due to the motor vehicle accident on the

alleged date. The petitioners being poor fellow could not afford to give treatment to the injured at SCB Medical, Cuttack for which they were forced to take back the deceased to their house. OP No.2 has not adduced any evidence or brought out any material from the mouth of the witnesses to disbelieve the contention of the petitioners that the death of the deceased was due to the motor vehicle accident and is the consequence of injuries sustained on the same day. It is true the police papers do not disclose that the case converted to Sec. 304 A IPC after the death of the deceased. But, it does not restrict the right of the petitioners to raise such claim in the Tribunal. Some cash memos are filed showing that although the treatment some medicines were purchased on different date. The head injury in the accident alongwith convulsion are the prime reasons for long illness of the deceased and his subsequent death. The injury requisition discloses that the age of the injured was 60 on the date of accident. He expired after about 10 months and therefore, his approximate age will be 61 years by the time of his death. As regards his income, it is stated that he was having grocery business having monthly income of Rs.2500/-. On perusal of order in Misc. case No. 223/01 dtd. 22.7.06, it appears that this case was dismissed for default on 10.7.01 which was set aside with the condition that the petitioners shall not claim any interest during the period from 10.7.01 to 3.8.01.

Issue Nos. 2 and 3:-

7. In order to calculate the compensation, accepting the case to be a death case because of motor vehicle accident is to be calculated on the basis of his age and income. As discussed above, monthly income of the deceased was Rs.2500/- per month.

The deceased was having 8 dependents at the time of his death. Therefore, personal expenses of the deceased for himself will be  $1/5^{\text{th}}$  of his income i.e. Rs.500/-. Hence, net loss of income per month will be Rs.2500-Rs.500= Rs.2000/-. Accordingly, annual loss of income of the deceased is assessed at Rs. 2000 x 12 = Rs. 24,000/-. As the deceased was aged about 61 years by the time of his death, multiplier 7 will be made applicable to him while assessing his 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 7 = Rs.1,68,800/-. Besides the above amount, the petitioner No.1 being the widow is entitled to get a sum of Rs.5000/- towards loss of consortium. All the petitioners are also entitled to get a sum of Rs. 5000/- towards funeral expenses. Thus, looking to the over all facts and circumstances of the case, It is considered just and proper to make the following award under different heads.

- |                         |                  |
|-------------------------|------------------|
| 1. For death            | : Rs. 1,68,000/- |
| 2. Loss of consortium   | : Rs. 5000/-     |
| 3. For funeral expenses | : Rs. 5,000/-    |

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Total : Rs. 1,78,000/-

(Rupees One Lakhs Seventy Eight Thousand) Only. Hence, it is ordered.

AWARD

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

The total compensation amount is determined at Rs. 1,78,000/- (Rupees One Lakhs Seventy Eight 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. 2.12.98 till the date of payment. But, the interest for the period from 10.7.01 to 3.8.01 will not be paid as per the above discussion.. Out of the compensation amount payable to the petitioners, 75% be kept in fixed deposit in any Nationalized Bank for five years and the rest 25% together with interest be paid in cash by O.P. No.2. The amount fallen in the share of Applicant No.3 to 7 shall be kept in fixed deposit till they attain majority. The fixed deposit can not be mortgaged or released earlier without the permission of the Court. The O.P. No.2 is to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 27<sup>th</sup> day of September, 2014.

Member  
3<sup>rd</sup> MACT, Bhubaneswar

Typed to my dictation and  
corrected by me.

Member, 3<sup>rd</sup> MACT, Bhubaneswar

List of witness examined for the petitioner

P.W.1:- Kuntala Pradhan

P.W.2:-Ananta Parida

List of witness examined for the O.P. No.2

Nil

List exhibits marked for the petitioner

Ext.1:- Certified copy of FIR

Ext.2:- Certified copy of Charge sheet.

Ext.3: Certified copy of seizure list

Ext.4: Certified copy of seizure list

Ext.5: Certified copy of injury report

Ext.6: Discharge summary

Ext.7: Death Certificate

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

Nil

Member  
3<sup>rd</sup> MACT, Bhubaneswar