

IN THE COURT OF THE MEMBER, 3RD MOTOR ACCIDENT CLAIMS
TRIBUNAL, BHUBANESWAR.

PRRESENT:-

Sri I.K. Das, LLB
Member, 3rd MACT, Bhubaneswar.

MACT Case No. 336 of 1998

Date of argument- Dt. 17.10.14

Date of judgment- Dt. 25.10.14

1. Ashalata Routray, aged about 52 years
W/o Late Purna Chandra Routray
2. Himansu Sekhar Routray, aged about 29 years
S/o : Late Purna Chandra Routray
3. Kabita Routray, aged about 25 years
D/o: Late Purna Chandra Routray
4. Sushil Kumar Routray, aged about 24 years
S/o: Late Purna Chandra Routray
5. Lalita Kumar Routray, aged about 23 years
S/o: Late Purna Chandra Routray

All are of Vill: Jaipur, PO/PS: Baliana
Dist: Khurda, A/p: Bikash Nagar, PO/PS: Baliana
Dist: Khurda

... Petitioners

Vrs.

1. Settlement Officer, Dhenkanal,
At/Po/PS/Dist: Dhenkanal

... Opp. Parties.

Counsels

For the petitioners

For the O.P.

...

Sri B.N. Mishra & Associates

...

Sri J.K. Mishra, Addl. Govt. Pleader

AWARD

- 1) The petitioners in this case being the wife, son and daughter of the deceased filed claim petition U/S 166 of Motor Vehicle Act praying for compensation due to untimely death of the deceased in a motor vehicle accident.

On 29.7.98 the deceased was working as settlement officer in the

District of Dhenkanal and he was proceeding towards Keonjhar in his official jeep bearing Regd. No. ORD 6982 in connection to his official duty. The driver of the jeep was driving the vehicle with high speed, although the condition of the road was very rough. The deceased although protested such rash driving, the driver continued to drive in the same manner and near Pallahara, the jeep met with the accident and capsized at the left side of the road. While other occupants of the jeep sustained grievous injuries, the deceased breathed his last and was removed to Pallahara hospital for his post mortem examination where he was declared dead. The petitioners attributed negligence on the part of the driver of the Government jeep which is responsible for the accident. At the time of accident, the deceased was 57 years old, but he was strong and active. He being a senior officer in the cadre of Orissa Administrative Service was drawing salary of Rs.14,200/- per month. He was likely to be promoted to the cadre of ADM very soon and would have got much salary in future. Various companies were inviting the deceased to join in their company after his retirement as he was very competent in survey knowing and demarcation of the land. Due to premature death of the deceased, all the family members are in financial distress and mental agonies and therefore, they claimed compensation of Rs.10 lakhs through the petition.

2. The Government of Odisha through the settlement officer, Dhenkanal-Keonjhar filed written statement and admitted that Late P.C. Routray, the deceased in this case was working as Settlement Officer and he expired due to motor vehicle death on 29.7.98. The monthly pay of the deceased was Rs.11,625/- by the time of his death. It is further contented in the written statement that as the deceased was the custodian of the Government jeep and the driver was working under him, negligence in driving cannot be attributed to the driver only. It is also pointed out in the written statement that the wife of the deceased is getting family pension and applicant No.4, the son of the deceased has been appointed as Jr. Clerk under Rehabilitation scheme.

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

1. Whether the death of Purna Chandra Routray occurred due to motor vehicle accident involving vehicle No. ORD 6982 (Jeep) ?
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 from O.P. ?

4. During the course of hearing, petitioner No.1, the wife of the deceased examined herself by filing affidavit evidence as P.W.1 and another witness has been examined on behalf of the petitioners who produced relevant papers of the deceased from GA Department, Government of Odisha. On the other hand, no rebuttal evidence has been adduced from the side of OP. During pendency of the proceeding, a petition was filed by the petitioners u/s 140 MV Act under No fault Liability Scheme and this Tribunal in Misc. Case No. 337/98 has awarded cash of Rs.50,000/- towards No Fault Liability vide judgment dtd. 27.9.01 which has been filed vide Ext.7. P.W.1 while supporting the averments of the claim petition also exhibited the police papers in connection to the accident vide GR case No. 70/98 wherein Rahas Chandra Das, the driver of the Government jeep has been charge sheeted and faced the trial. The certified copy of seizure list discloses that the RC book of the jeep was seized which was in the name of Settlement Officer, Dhenkanal-Keonjhar Major Settlement. The inquest report and PM report of the deceased are also filed in the Court marked as Ext.5 and 6. This Tribunal on perusal of records and having been satisfied has already awarded compensation under No Fault Liability Scheme and therefore, there is no necessity again to examine all the papers, but only to assess the compensation amount, the evidence and documents filed in the Court are to be thoroughly scrutinized. The service book of the deceased from the year 1993 is filed in the Court marked as Ext.8. GA Department also submitted a report showing that by the time of death, the gross monthly pay of the deceased was Rs.11,625/-. The deceased joined in the Government job on 27.5.1959 and he was due to retire on 30.4.1999 after attaining the age of superannuation. His date of birth was 2.4.1941 and by the time of his death his last gross monthly pay was Rs.11,625/-.

Taking into consideration that the age of the deceased was 57 years and his monthly income was Rs.11,625/-, the amount of compensation is to be computed u/s 166 MV Act.

The deceased was having 5 dependents at the time of his death. Therefore, personal expenses of the deceased for himself will be 1/4th of his income i.e. Rs.2906/-. Hence, net loss of income per month will be Rs.11,625-Rs.2906= Rs.8719/-. In view of the decision of Hon'ble Apex Court reported in **2013 STPL (Web) 262 SC between Reshma Kumari and others vrs. Madan Mohan and another** held that no addition should be made towards future prospect where the age of the deceased is more than 50 years. In the instant case, the deceased was 57 years by the time of his death. Hence, the petitioners are not entitled to get any compensation under the head future prospect. Annual loss of income will be Rs.8719x12= Rs. 1,04,628/-.

6. As the deceased was 57 years by the time of his death, multiplier 9 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. 1,04,628 x 9 = Rs. 9,41,652/-. Besides the above amount, the petitioner No.1 being the widow, she 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 love and affection and 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 loss of income | : Rs. 9,41,652/- |
| 2. Loss of consortium | : Rs. 5000/- |
| 3. For love and affection | : Rs. 5000/- |
| 3. For funeral expenses | : Rs. 5,000/- |

Total : Rs. 9,56,652/-

(Rupees Nine Lakhs Fifty Six Thousand Six Hundred Fifty Two) Only.

Hence, it is ordered.

A W A R D

The claim petition is accordingly allowed on contest against O.P. and the compensation amount is to be paid by O.P. to the petitioners proportionately.

The total compensation amount is determined at Rs. 9,56,652/- (Rupees Nine Lakhs Fifty Six Thousand Six Hundred Fifty Two) only out of which cash of Rs.50,000/- paid to the petitioners under No Fault Liability Scheme u/s 140 MV Act shall be deducted from the awarded amount. The rest compensation amount shall carry simple interest at the rate of 7% both pendentelite and future from the date of filing of the claim petition i.e. 23.12.98 till the date of payment. 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. The fixed deposit can not be mortgaged or released earlier without the permission of the Tribunal. The O.P. is to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 25th day of October, 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:- Ashalata Routray

P.W.2:- Chittaranjan Patra

List of witness examined for the O.P.

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 inquest report

Ext.6: Certified copy of PM repprt

Ext.7: Certified copy of judgment in MAC 337/98

- Ext.8: Service Book of the deceased
- Ext.9: Authorized letter
- Ext.10: Information
- Ext.10/1 & 10/2: Signature of P.W.2
- Ext.11: Attested copy of service book

List of Exhibits marked for O.P.

Nil

Member
3rd MACT, Bhubaneswar