

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. 338 of 1997

Date of argument- Dt. 18.10.14

Date of judgment- Dt. 20.10.14

Joy Chandra Majhi, aged about 38 years
S/o: Late Padan Majhi, At: Choprapur
PO: Naranakhunta, PS: Badasadhi, Dist: Mayurbhanj
A/p: House No. 1631, Saranapalli, Jaydev Vihar
PO: Nayapalli, Bhubaneswar, Dist: Khurda

... Petitioner

Vrs.

1. Tarun Kumar Behera, S/o: Brundaban Behera
At: Santipada, PO: Pritipur, PS: Binjharpur
Dist: Jagatsinghpur, A/p: Qr. No. LIG 2/9,
Chandrasekharapur Housing Board Colony,
PO: Chandrasekharapur, Bhubaneswar, Dist: Khurda

2. The Divisional Manager, New India Assurance Co. Ltd.
Sahid Nagar, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri N.R. Swain, Advocate
For the O.P. No.1	...	None
For the O.P. No.2	...	Sri K.C. Parida, Advocate

AWARD

1) This is a petition moved by the claim petitioner U/S 166 of Motor Vehicle Act for compensation who was injured in a motor vehicle accident.

2. On 15.6.97 at about 8 PM, the petitioner was proceeding towards Jaydev Vihar side in a Luna bearing Regd. No. OR 02 1966 being a pillion rider. In the meantime, the offending auto rickshaw bearing Regd. No. OR 02 D 4143 came in high speed from Jaydev Vihar side and dashed against the petitioner from

its front side. As a result of such accident, the petitioner was thrown to a distance and sustained multiple bleeding injury on his person. Soon after the accident, the injured was shifted to Capital Hospital for treatment. In connection to such accident, Nayapalli PS case No. 119/97 was registered against the accused driver. The petitioner attributes rash and negligent driving of the driver of offending auto rickshaw in causing the accident. Hence, claim for compensation.

3. O.P. No.1, the owner of the offending auto has been set ex-parte vide order dtd. 22.8.05. O.P. No.2, the New India Assurance Co. Ltd has filed written statement wherein it challenges the claim of the petitioner. It specifically denies the validity of the driving license and the insurance policy of the offending auto.

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

1. Whether the petitioner Joy Chandra Majhi sustained injury due to motor vehicle accident involving vehicle No. OR 02 D 4143 (Auto Rickshaw) ?

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, as to what extent and from which O.Ps. ?

4. To what other reliefs the petitioner is entitled ?

5. Neither the petitioner nor the Opp. Parties adduced any sort of evidence in order to prove their case.

FINDINGS

6. In spite of several opportunities the petitioner has failed to adduce any evidence in support of his case. O.P. No.2, the insurance company appeared in the proceeding and filed written statement wherein he denied any such accident that has taken place on 15.6.97. It cannot be taken for granted that the prayer of the claimant will be simply allowed only basing on the pleading. It is the case of the claimant that in relation to the accident FIR was lodged at Nayapalli PS vide PS case No. 119/97. During hearing of the case, the claimant neither preferred to

call for the police record in order to establish regarding the accident and to show that because of negligence on the part of the offending vehicle he sustained injuries. It is more surprising that the petitioner did not examine himself to support his pleading even if O.P. No.2 filed written statement and contest the proceeding. No other witness from the side of the petitioner is also examined. Again, the claim petition discloses that the petitioner sustained multiple injuries due to the accident and he was shifted to nearby Hospital for his treatment from the spot. But, no medical certificate or injury report is also available on record in order to believe that in fact there was injuries on the body of the claimant. In absence of any evidence and documents it is also not possible to say that the auto rickshaw bearing Regd. No. OR 02 D 4143 faced with accident which resulted in causing injury to the petitioner. Moreover, in absence of any document in relation to the vehicle, it cannot be said which company insured the offending auto and whether O.P. No.2 is liable to pay any compensation to the claimant. It is the cardinal principle in civil proceeding that the petitioner is to prove his case beyond preponderance of probabilities. But, in the instant case, I find the claimant failed miserably to prove his case either by adducing evidence in the Court or by producing any document in support of his pleading. Hence, the petitioner is not entitled to get any compensation as claimed for.

A W A R D

The claim application is disposed of without contest against O.P. No.1 and on contest against O.P. No. 2 granting nil award in favour of the petitioner.

This award is pronounced in the open court to-day the 20th 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

None

List of witness examined for the O.Ps.

None

List exhibits marked for the petitioner

None

Member
3rd MACT, Bhubaneswar