

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. 364 of 1997

Date of argument- Dt. 17.10.14

Date of judgment- Dt. 25.10.14

1. Subarana Dei, aged about 30 years
W/o Late Jayadev Behera
2. Santilata Behera, aged about 08 years
D/o: Late Jayadev Behera
3. Asanti Behera, aged about 06 years
D/o: Late Jayadev Behera
4. Samir Behera, aged about 02 years
D/o: Late Jayadev Behera
5. Pitei Bewa, aged about 55 years
W/o: Late Nila Behera

All are resident of Vill: Gouda Tumandi, PO: Karadapada
PS: Gania, Dist: Nayagarh

(Applicant Nos. 2,3 and 4 being minors represented though their mother
guardian petitioner No.1)

... Petitioners

Vrs.

1. Udayanath Sahu, S/o: Banambar Sahu
At/PO: Patia, PS: Chandrasekharapur
Bhubaneswar, Dist: Khurda
2. The Divisional Manager, New India Assurance Co. Ltd
94, Janpath, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner

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Sri B.N. Mishra, Advocate.

For the OP No.1

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None

For the O.P. No.2

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Sri BSN Murty, Advocate

AWARD

1) Petitioners in this case are wife and minor son, daughter and mother of the deceased who expired in a motor vehicle accident on dtd. 10.5.97 on Gania Daspalla public road. The deceased was returning to his village in a truck being custodian of the wooden furnitures loaded in it. The furnitures were given by the father of the bride to the bridegroom loaded in the truck bearing Regd. No. OR 02 E 5705. While proceeding in the truck its driver was driving the truck in rash and negligently in high speed and therefore, faced with the accident causing the death of the deceased and some others. The PM examination over the dead body was conducted at Nayagarh hospital where the doctor declared him dead.

FIR was lodged before police regarding the accident and police took up investigation during which visited the spot, examined witnesses, conducted inquest over the dead body and forwarded for PM examination. The truck in questions was seized alongwith its documents and ultimately, charge sheet was filed against the driver of the offending truck for the offence u/s 279/337/338/304 A IPC. Further, case of the petitioners is that the petitioner was only 35 years old by the time of his death and he was a carpenter earning Rs.50/- per day. He was also looking after the cultivation of his land and was having some income by this way. Due to untimely death of the deceased, the petitioners are in mental and financial distress for which they claimed compensation u/s 166 MV Act.

2. O.P. No.1 being the owner of the offending truck was set ex-parte and OP No.2 being the insurance company who insured the offending truck filed its written statement challenging the contention of the petitioners. It is averred in the written statement that the deceased was boarding the truck at the time of accident and he being a gratuitous passenger, the petitioners are not entitled for any compensation.

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

1. Whether the death of Jayadev Behera occurred due to motor vehicle accident involving vehicle No. OR 02 E 5705 (Truck) ?

2. Whether the driver of the offending vehicle was rash and/or negligent in causing such accident and subsequent death of the deceased ?

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

4. During the course of hearing, petitioner No.1 who is the wife of the deceased examined herself as P.W.1 by filing her affidavit evidence. In her affidavit, she claimed that while her husband was returning to his village in a truck as the caretaker of the furnitures met with the accident and expired. The truck in question was insured by OP No.2 and the driver was also having valid driving license. Her affidavit further discloses that some occupants of the truck were pressed to death alongwith her husband. She claimed compensation for un-time death of her husband. P.W.2 is an eye witness to the occurrence who also supported the case of the petitioner regarding the death of the deceased due to motor vehicle accident. In support of her contention, she filed certified copy of police papers in connection to Gania PS case No. 13 dtd. 10.5.97 regarding seizure of the offending truck alongwith dowry articles loaded in it. The PM report is also filed which shows that the death of the deceased was due to profuse haemorrhage and shock. Xerox copy of insurance certificate is also filed. During her cross examination by the insurance company, P.W.1 said regarding income of her deceased husband and his death in the accident. She said that her husband was coming in the truck being entrusted with the furnitures by the father of the bride. She further admitted that she has one acre of landed property but she did not say that her husband was having some income from the land which suggests that the averments in the claim petition that the deceased was having some income by cultivating his land is not true. On the other hand, OP No.2 has not examined any witness, but at the stage of argument filed certified copies of police papers in the same PS case. The certified copy of FIR shows that one Grama Rakhi lodged FIR at Gania PS that the truck faced with the accident and some members of the barat party about 30 to 40 members who were sitting in the dala of the truck sustained injuries out of which three persons died at the spot. The

charge sheet also discloses that about 48 persons were sitting on the dala of the truck at the time of accident. In the statement of one witness namely, Kalyani Naik also said before police that the members of the barat party while sitting in the truck met with the accident out of which some persons died at the spot. On the other hand, learned counsel for the petitioners has filed the certified copy of ex-parte judgment passed by this Tribunal in MACT No. 366/97 which relates to the same accident and this Tribunal has awarded compensation in respect of one of the deceased.

5. Learned counsel for OP No.2 argued that as per the police investigation, all the members of the barat party were travelling in the truck sitting on its dala and due to the accident while some of them sustained injuries, some others expired at the spot. The truck being a goods vehicle any person travelling in the said truck cannot claim compensation from the insurance company being gratuitous passenger. He relied on a decision reported in **2009 (1) TAC 420 (SC) between National Insurance Co. Ltd vrs. Rattani and others**. On the other hand, learned counsel for the petitioners submitted that there is absolutely no evidence from the side of OP that the deceased was travelling in the truck and was gratuitous passenger. On the other hand, substantive evidence has been led through the mouth of P.W.1 that while her husband was coming in the truck as an agent of the father of the bride to hand over the furnitures, the truck met with the accident causing his death. In the written statement, OP No.2 has also not clearly stated that the deceased was a gratuitous passenger and therefore, not entitled for any compensation. It is true no evidence has been led from the side of O.P. No.2. Only basing on FIR and charge sheet, the insurance company claimed that the claimants fabricated the case only to get the compensation. Even if for the sake of argument, it is believed that the deceased was boarding the truck as the custodian of the furnitures it is settled principle under law that his legal heirs are entitled for compensation for his death in the said accident. Hon'ble High Court of Orissa in a decision reported in 1994 ACJ 1303 between Mataji Bewa and others vrs. Hemanta Kumar Jena and another, held that the charge sheet cannot be treated as an evidence in a claim proceeding. The case before the Hon'ble Court was very

much similar to the case at hand. But, Hon'ble Court taking into consideration that there was no evidence from the side of OP in support of the charge sheet rejected the plea of the OP. In another decision reported in 1997 (1) TAC 840 between Smt. Anita Jena and others vrs. Sarat Chandra Pattnaik and another. Hon'ble Court held that in a accident case evidenentiary value of FIR and charge sheet cannot be tested in absence of any evidence in support of such document. In the instant case also neither the informant nor the IO of the case has been examined by the OP in order to believe the police investigation. On the other hand, Hon'ble Court held that non examination of material witnesses to prove such document will lead to adverse inference. On perusal of the decisions of Hon'ble Courts, I am of the view that simple filing of police papers in the case without any corroborative evidence is of no use and therefore, the case of the petitioner is to be believed. Hence, in my view both the petitioners are entitled for compensation as prayed for.

6. As regards the liability of insurance company, it is submitted that the driver of the truck was not having any driving license at the time of driving of the truck. During investigation of the case police although seized the documents of the truck, but the driving license of the driver was not seized or produced by the owner before the police. But, the insurance certificate in favour of OP No.2 was seized which was valid on the date of accident. The owner of the truck permitting a person to drive his vehicle without driving license is a breach of condition of the insurance policy and therefore, OP No.2 is not liable to pay the compensation. Hon'ble Apex Court of India in a decision reported in 2004 (1) TAC 366 (SC) between M/s National Insurance company Ltd vrs. Baljit Kaur and others held that in such cases the insurance company is to pay the awarded compensation amount at first and to realize the same from the owner of the vehicle. In view of such observation OP No.2 is liable to pay the compensation with right to liberty to realize the same from OP No.1.

7. As per the evidence of P.W.1, the deceased was 35 years old on the date of his death. Furthermore, he was a carpenter and his daily wage was 50/-, but no such document is produced before the Tribunal. On the other hand, the labour

department notification of Govt. of Odisha shows the daily wage of a labourer in the year 1997 was only Rs.32.50/-. If it is accepted that he was getting daily wage of Rs.35/-, the monthly income of the deceased will be Rs. 1050/-. As regards prospective income, Hon'ble Apex Court of India in a decision reported in 2013 STPL (Web) 262 SC between Reshma Kumari and others vrs. Madan Mohan and another held that in the case where the deceased was self employed or was on a fixed salary without provision for annual increment, the actual income at the time of death will be computed for the purpose of compensation without any addition to income for future prospects. Therefore, the deceased being a daily labourer, the petitioners are not entitled for compensation towards future prospect. The deceased was having 5 dependents at the time of his death. Hence, 1/4th income will be deducted towards loss of dependency. Hence, net monthly income of the deceased is assessed at Rs.787/-. Annual loss of income will be Rs.787x12= Rs.9444/-.

8. As the deceased was 35 years old, multiplier 16 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. 9444 x 16 = Rs. 1,51,104/-. Besides the above amount, the petitioner No.1 being the widow is entitled to get a sum of Rs.10,000/- towards loss of consortium. All the petitioners are also entitled to get a sum of Rs. 15000/- 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 death	: Rs. 1,51,104/-
2. Loss of consortium	: Rs. 10,000/-
3. Love and affection	: Rs. 15,000/-
4. For funeral expenses	: Rs. 5,000/-

Total : Rs. 1,81,104/-

(Rupees One Lakhs Eighty one Thousand One Hundred Four) Only.

Hence, it is ordered.

AWARD

The claim petition is accordingly allowed on contest against OP No.2 and without contest against OP No.1 and the compensation amount is to be paid by O.P. No.2 to the petitioners with right to liberty to realize the same from OP No.1 the owner of the truck.

It has been submitted by learned counsel for insurance company that although the case was filed in the year 1997, the petitioner examined herself in the year 2011 and the second witness was examined in the year 2014. The case is purposefully delayed for getting interest over compensation from OP No.2. Therefore, no interest over the awarded amount should be ordered to be paid to the petitioner. On perusal of the record, I find sufficient force in such contention. Hence, it is ordered that OP No.2 is not liable to pay any interest over the awarded amount.

The total compensation amount is determined at Rs. 1,81,104/- (Rupees One Lakhs Eighty one Thousand One Hundred Four). 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% be paid in cash by O.P. No.2. The amount fallen in the share of petitioner No.2,3 and 4 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 with right of liberty to realize the same from the owner of the offending vehicle in accordance with law.

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:- Subarna Dei
P.W.2:- Dilip Kumar Naik

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 PM report.

List of Exhibits marked for OP No.2

Ext.A: Certified copy of 161 Cr.P.C statement of Kalyani Nayak

Ext.B: Xerox copy of insurance policy

Member 3rd MACT, Bhubaneswar