

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. 366 of 1997

Date of argument- Dt. 09.09.14

Date of judgment- Dt. 18.09.14

1. Rupei Behera, aged about 26 years
W/o Late Adikanda Behera
2. Binata Behera, aged about 04 years
D/o : Late Adikanda Behera
3. Banambar Behera, aged about 04 years
S/o: Late Adikanda Behera
4. Manda Behera, aged about 55 years
W/o: Changua Behera
5. Changua Behera, aged about 60 years
S/o: Late Benu Behera

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

(Applicant Nos. 2 and 3 being minors represented through their
mother guardian Rupei Behera)

... 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

...

Sri B.N. Mishra, Advocate.

For the O.P. No.1

...

None

For the O.P. No.2

...

None

AWARD

1) The petitioners in this case are the wife, daughter, son and parents of the deceased wherein they claimed compensation for untimely death of late Adikanda Behera on dtd. 10.5.97 at about 8.30 AM in a motor vehicle accident.

As per the pleading in the claim petition the deceased was going in the offending truck bearing Regd. No. OR 02 E 5705 from Gouda Tumadi to Paradip as a labour for unloading the goods. On the way, a bride groom party raised hands to give them lift on the truck. As the truck was in high speed, the driver applied sudden brake for which the driver could not control the speed of the vehicle and the truck capsized to its right side. Due to such accident, the deceased had sustained severe injuries on his head, brain and other parts of his body. Soon after the accident, the deceased was shifted to Government Hospital, Nayagarh for treatment. As the condition of the deceased was serious, he was referred to SCB Medical College & Hospital, Cuttack for better treatment. During the course of treatment, the deceased succumbed to his injuries. One police case was initiated for the offence u/s 279/338/304 A IPC against the driver of the offending truck bearing Regd. No. OR 02 E 5705. Negligence on the part of driver of the truck is the sole reason for causing the accident. The deceased was a labour by profession and was aged about 30 years. His monthly income was around Rs.2000/- and taking into consideration the petitioners claim compensation of Rs.3,35,000/- on different heads.

2. Both OP No.1 being the owner of the truck and OP No.2, the insurer have been set ex parte as they did not contest the case. Even none of them filed written statement, challenging the contention of the petitioners in their claim petition. One of the witness who is an witness of the accident has been examined as P.W.1 by filing his affidavit evidence. He himself is the groom who was coming in a bus after marriage and the deceased was coming in the truck loaded with dowry articles. The speed of the truck was so high that due to application of sudden brake, the truck capsized at the side of the road causing injury to many persons and death to the deceased. He also said that the deceased was going in the truck

as a labourer for loading and unloading of dowry articles, but not as a passenger. Certified xerox copy of police papers in Gania PS case No. 13/97 is filed by the petitioners which was submitted by the police after completion of investigation. During investigation, police seized RC book of the offending truck bearing Regd. No. OR 02 E 5705. The insurance certificate of the truck was also seized and New India Assurance Co. Ltd vide Policy No. 3155010107558 of 1996. The insurance was valid upto 10.6.97 as per the entries in the seizure list. The damaged truck was also seized alongwith its permit. The post mortem report of the deceased is also filed showing the death of the deceased was due to the accident. The deceased was 31 years old by the time of accident as per the opinion of the doctor. A xerox copy of insurance certificate is also filed. On perusal of evidence of P.W.1 alongwith the documents relied by him, it appears that the deceased was travelling in the truck for loading and unloading of dowry articles as per the instruction of the owner of the truck. His death due to the accident has also been proved. The insurance of the vehicle was valid on the date of accident by OP No.2 is also apparent on the record.

3. During the course of argument, it is submitted by the learned counsel for the petitioners that both the owner of the truck and insurance company did not participate in the trial of the case and ex-parte judgment be passed on the basis of claim petition alongwith evidence of the witness. The driver of the truck was also having valid driving license, although it was not seized during the investigation by the police. Therefore, OP No.2 is liable to pay the compensation for the death of the deceased.

4. As regards quantum of compensation, as per the claim petition the deceased was a daily labourer and was getting wage of Rs.50/- per day. But, no such material is available nor any witness has been examined from the family of the deceased to say about his income. However, taking into consideration that the daily wage of a labourer was Rs.32/- per day as per Government of Orissa Notification, I feel if Rs.40/- is accepted as daily income of the deceased from all the sources, it will meet the ends of justice. Accordingly, monthly income of deceased is assessed at Rs.1200/-. In **(2012) 52 OCR (SC), 241 in the case of**

Santosh Devi vrs National Insurance Co. Ltd and others, it is held that it would be reasonable to say that a person who is self employed or is engaged on fixed wages will get 30% increase in his total income over a period of time. In the instant case, it is no doubt that the deceased could have earned much more in future if he would have survived from the fatal accident and therefore, granting additional income towards future prospects by 30% will meet the ends of justice. Accordingly, monthly income of the deceased is assessed at Rs.1560/- per month

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.390/-. Hence, net loss of income or loss of dependency per month will be Rs.1560-Rs.390= Rs. 1170/-. Annual loss of income will be Rs.1170x12= Rs. 14,040/-.

5. As it appears from the post mortem report, the deceased was 31 years by the time of his death. Considering such age group 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. SarlaVerma & others vrs. Delhi Transport Corporation & Another**). The total loss of income and loss of dependency is accordingly, assessed at Rs. 14,040 x 16 = Rs. 2,24,640/-. Besides the above amount, 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. 2,24,640/- |
| 2. Loss of consortium | : Rs. 5000/- |
| 3. For love and affection | : Rs. 5000/- |
| 4. For funeral expenses | : Rs. 5,000/- |

Total : Rs. 2,39,640/-

(Rupees Two Lakhs Thirty Nine Thousand Six Hundred Fourty) Only.

Hence, it is ordered.

A W A R D

The claim petition is accordingly allowed ex-parte against O.P. Nos.1 and 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. 2,39,640/- (Rupees Two Lakhs Thirty Nine Thousand Six Hundred Fourty) 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. 15.9.97 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. No.2. The amount fallen in the share of petitioner Nos. 2 and 3 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 Tribunal. 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 18th 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:- Dilip Kumar Nayak
List of witness examined for the O.P.
Nil
List exhibits marked for the petitioner
Nil
List of Exhibits marked for O.P.
Nil

Member
3rd MACT, Bhubaneswar

