

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. 397 of 1993**

Date of argument- Dt. 31.10.14

Date of judgment- Dt. 10.11.14

1. Sabnam Jarrar, aged about 22 years  
W/o Late Jarrar Hussain Satar
2. Sabab Sabnam Jarrar, aged about 3 ½ years  
D/o : Late J.H. Sattar
3. Shabinda Sabnam Jarrar, aged about 11 months  
D/o: Late J.H. Sattar

All are resident of Mastan Road, Buxi Bazar  
PS: Mangalabag, Dist: Cuttack

... Petitioners

Vrs.

1. Sk. Islam, S/o: Sk. Amir of Dakehankia  
Purna Bazar, Bhadrak, Dist: Bhadrak
2. Gouri Kumar Mishra, S/o: Biswanath Mishra  
At/Po: Jhanjirmangala, Dist: Cuttack
3. The Divisional Manager, National Insurance Co. Ltd  
Lewis Road, Bhubaneswar, Dist: Khurda
4. The Divisonal Manager, Oriental Insurasnce Co. Ltd  
Mission Road, Cuttack

... Opp. Parties.

Counsels

For the petitioners	...	Sri S.K. Choudhury & Associates
For the OP No.1	...	None
For the OP No.2	...	None
For the O.P. No.3	...	Sri K.C. Patnaik, Advocate
For the OP No.4	...	Sri B.B. Das, Advocate

AWARD

- 1) The petitioners in this case are wife and two minor daughters of the

deceased who succumbed to the injuries sustained due to a motor vehicle accident on 15.3.1993 at Khandagiri chawk. The claim petition was already disposed of by this Tribunal vide judgment dtd. 3.9.11 awarding compensation of Rs.1,22,400/- in favour of the petitioners. The petitioners preferred MAC Appeal No. 793 of 2011 alongwith Misc. case No. 395/13 before the Hon'ble Court with a prayer to permit the petitioners to file some documents as additional evidence and thereafter, to dispose of the matter afresh in terms of equity. Hon'ble Court vide order No. 7 dtd. 24.1.14 observed as follows:-

“In view of the aforesaid facts situation and after hearing the learned counsel for the parties, this Court feels it proper to remit the matter to the Tribunal to reconsider the material now available with the appellants and treat those documents as additional evidence from the side of the appellants by giving opportunity of hearing to the respondents. Accordingly, the impugned award passed by the learned Tribunal is set aside with a direction to treat the documents as additional evidence from the side of the appellants and give opportunity of hearing to the respondents by way of rebuttal evidence so that the learned Tribunal can arrive at a just and proper conclusion with regard to grant of proper compensation in favour of the appellants.”

2. In compliance to the above observation of the Hon'ble Court, the petitioners filed certified copy of order of the Hon'ble Court alongwith 13 nos. of documents obtaining from different authorities under RTI Act and prayed to accept the document as additional evidence for just decision of the case. Copy of such documents are also supplied to OP Nos. 3 and 4, the contesting opposite parties in this case. The said documents have also been admitted into evidence without any objection from the O.Ps from Ext.7 to 19 respectively. The argument of the case is heard afresh and judgment is passed taking into consideration the material available on record alongwith the additional evidence produced by the

petitioners in this case.

3. The deceased in the case was a Film Director, producer, story writer and screen play writer and his hobby was to make classical films with human virtues. On the relevant night at about 1.30 AM, the deceased after completing one shooting assignment at Kalinga Studio was proceeding to Lingaraj temple at Bhubaneswar for next outdoor shooting of the film "Sulochana". Some other colleagues of the deceased were also boarding the van and while passing through Khandagiri Chawk, one truck bearing Regd. No. ORY 181 came with high speed in rash and negligent manner and dashed with the van of the deceased. Due to such heavy force, the deceased was thrown away from the van and sustained multiple injuries including head injury. He was shifted to capital hospital, Bhubaneswar in a critical condition and therefrom he was shifted to SCB Medical College, Cuttack for his treatment. But, unfortunately, he could not survive and breathed his last within few hours. The police conducted inquest and PM examination over the dead body and thereafter, on the basis of one FIR at Khandagiri PS, police registered PS case No. 77/93 and took up investigation of the case. During investigation of the case, police ascertained that the driver of both truck and van were negligent in driving the vehicle which resulted in the accident causing the death of the deceased. But, as the truck driver expired at the spot, the driver of the van has been charge sheeted for the offence u/s 279/337/304 A IPC. Police has also seized both the damaged vehicles and the documents of the vehicles during investigation which shows that both the vehicles were insured by OP Nos. 3 and 4 and the drives were also having valid driving license.

4. It is the contention of the petitioners that the deceased was only earning member of the family at his young age. He was highly qualified having educational qualification M.Com., MA LLB and was a very successful film maker. He has produced number of Oriya films and achieved different awards for such extra ordinary genius films. That apart he was in the panel of Directors of Doordarsan to make tele films and documentaries and was also a member in Eastern India Motion Pictures Association. His income was approximately Rs.3000/- per month and there was every chance of earning more in future

because of his prospering business in film making. Hence, the petitioners claimed compensation for untimely death of the deceased.

5. OP Nos. 3 and 4 have filed their separate written statements challenging the averments of the claim petition and claimed that the insurance company is not liable to pay any compensation to the petitioners.

6. Basing on the pleadings of both the sides, the following issues have been framed.

1. Whether on 15.3.93 at about 1.30 AM, the death of Jarrar Hussain Satar occurred due to motor vehicle accident involving vehicle No. ORY 181 (Truck) and MH 02 9954 (Van) ?

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. ?

7. During the course of hearing, petitioner No.1 examined herself by filing her affidavit evidence and also filed certified copy of police papers in connection to the accident case in Khandagiri PS case No. 77 (20) of 1993. Petitioners also filed 13 documents at the stage of fresh argument as per the direction of Hon'ble Court.

Issue Nos. 1 and 2:-

8. These two issues are taken up together for sake of convenience as those are interlinked. The wife of the deceased has been examined as P.W.1. She advanced her case that on 15.3.93 while her husband was returning from Kalinga Studio alongwith other staff in a van, the offending truck came in high speed and dashed with the van. Due to such accident, her husband sustained severe injuries on his head. Thereafter, the deceased was shifted to Capital Hospital, Bhubaneswar wherefrom he was referred to SCB Medical College & Hospital, Cuttack where the deceased succumbed to the injuries. During the course of examination she produced the connected documents in GR case No. 933/93 i.e. FIR,, final form, seizure list, PM report, inquest report which are marked as Exts. 1 to 6 respectively.

9. As such in order to substantiate the case, it is to be seen how far the petitioners adduced evidence in respect of their case. Admittedly, on perusal of the documents produced by the petitioners goes to show that soon after the accident GR case No. 933/93 was registered under Khandagri PS case No. 77/93 u/s 278/337/338/304 A IPC. On perusal of Ext.2, it appears that after completion of investigation, police placed charge sheet against the accused for the offence u/s 279/337/338/304 A IPC. Ext.5 (PM report) discloses that the injuries were ante mortem in nature and cause of death was due to shock and haemorrhage as a result of injuries to vital organ like brain. Since no rebuttal evidence has been led on behalf of OP No.3 and 4, the above opinion of medical officer and material facts available from record stands undisputed in favour of the case of the petitioners.

10. On further perusal of record, it is found that even though OP Nos. 3 and 4 has cross examined the petitioner at length, no iota of rebuttal evidence is brought on record to dispute the accident. Accordingly, these issues are answered in favour of the petitioners.

Issue No.3:-

11. During her evidence, P.W.1 who is the wife of the deceased admitted that although she is not an eye witness to the accident, she received detail information from the Producer of the film on the same day. She further stated in her affidavit that her husband was aged about 35 years and was earning about Rs.3000/- per month. She also exhibited certified copy of police papers. In her cross examination by the insurance companies, she admitted that she has not filed any document to show the income of her late husband. As per her evidence, both the driver of the van and the truck are responsible for the accident due to rashness in driving of the vehicles on the public road. No rebuttal evidence is available from the side of O.Ps to disbelieve the evidence of P.W.1 which is supported through police investigation. Admittedly, the petitioners are the wife and minor daughters of the deceased are entitled for compensation. The drivers of both the vehicles working as agent on behalf of the owners of the vehicles, OP Nos. 1 and 2 being the owner of the offending vehicles are liable to pay towards their vicarious

liability. But, during investigation of the case, police seized the offending bus, its RC book and insurance policy bearing No. 345101/000/00004/31/64173/93 of Oriental Insurance Co. Ltd which stands in favour of the offending bus bearing No. MH 02 9954 valid upto 23.2.94 which covers the date of accident. Ext.4 (seizure list) further discloses that the IO has seized the offending truck bearing Regd. No. ORY 181 alongwith other documents i.e. insurance policy bearing No. 153001/63/RE/5992-93 of National Insurance Co. Ltd which was valid upto 21.1.94 which similarly covers the date of accident. Since the factum of seizure of the documents under seizure list Ext.4 has not been challenged by the Opp. Party stands undisputed in favour of the petitioners. Besides that on further perusal of Ext.4 the IO also seized the driving license of the driver of the offending bus bearing No. 1174/86 stands in favour of driver Chandramohan Mohanty which was renewed upto 12.11.93. But, the IO has not seized the driving license of the driver of the offending truck. Apart from that, neither OP No.3 nor the petitioners have ever tried to file the driving license of the accused driver. Admittedly, the date of accident is 15.3.93. Be that as it may, the claimant should not suffer for any breach of condition of policy. Accordingly, in view of the discussions, it is found that OP Nos. 3 and 4 are to indemnify the liability of OP Nos. 1 and 2 by paying compensation to the petitioners in 50::50 basis. OP No.3 has right of liberty to realize the same from the owner of the offending truck in accordance with law.

12. As regards quantum of compensation, the income of the deceased by the time of his death is to be taken into consideration and in the instant case, although the petitioners claimed that the deceased was having income of Rs.3000/- per month, no document was filed and this Tribunal vide its earlier judgment took the notional income of the deceased @ Rs.800/- per month. Learned counsel for the petitioners argued that the deceased was highly educated and was working as lecturer in different government colleges with a good salary. But, because of his fashion to produce films he quit his job and was producing number of films such as Arati, Radha, Puja Fula, Kasturi, Ninada etc. At the time of his death he was also producing a film namely, "Sulochana". As a Director of the films, he was

receiving his remuneration from the producers and if it is taken into consideration that his monthly income was Rs.3000/- only, it will not be unbelievable. I have perused the documents filed by the petitioners marked as Ext.7 to 19 respectively disclosing the qualification and performance of the deceased in the line of film making. Hence, on due consideration, I feel the compensation should be computed @ Rs.3000/- per month as income of the deceased.

The deceased was having 3 dependents at the time of his death. Therefore, personal expenses of the deceased for himself will be 1/3<sup>rd</sup> of his income i.e. Rs.1000/-. Hence, net loss of income per month will be Rs.3000-Rs.1000= Rs.2000/-. Annual income of the deceased is assessed at Rs.2000 x 12= Rs. 24,000/-.

13. As the deceased was 35 years by the time of his death, 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. 24,000 x 16 = Rs. 3,84,000/-. Besides the above amount, the petitioner No.1 being the widow, she is entitled to get a sum of Rs.10,000/- towards consortium. Further, taking into consideration that the petitioner Nos. 2 and 3 are minor daughters of the deceased, they are to be compensated towards love and affection for their father. I feel Rs.15,000/- under this head will be proper and all the petitioners are also entitled to get a sum of Rs. 10, 000/- 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. 3,84,000/-
2. For consortium	: Rs. 10, 000/-
3. For love and affection	: Rs. 15, 000/-
3. For funeral expenses	: Rs. 10, 000/-

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Total : Rs. 4,19,000/-

(Rupees Four Lakhs Ninteen Thousand) Only. Hence, it is ordered.

AWARD

The claim petition is accordingly allowed on contest against O.P. Nos. 3 and 4 and ex-parte against OP Nos. 1 and 2 with cost of Rs.1000/- to be paid by OP Nos. 3 and 4 to the petitioners in equal shares.

The total compensation amount is determined at Rs. 4,19,000/- (Rupees Four Lakhs Ninteen 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.13.9.93 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 cost and interest be paid in cash by O.P. Nos. 3 and 4 in equal shares. The fixed deposit can not be mortgaged or released earlier without the permission of the Tribunal. The O.P. Nos. 3 and 4 are to pay the compensation amount within two months hence to the petitioners in equal shares. OP No. 3 has right to liberty to realize the same from the owner of the offending truck in accordance with law.

This award is pronounced in the open court to-day the 10<sup>th</sup> day of November, 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:- Shabnam Jarrar

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 PM report

Ext.6: Certified copy of inquest report

Ext.7 to 7/C: Educational Certificates

Ext.8: Attested copy of notification No. 35866 dtd. 14.11.1977

- Ext.9: Attested copy of notification
- Ext.10: Attested copy of notification
- Ext.11: Attested copy of notification
- Ext.12: Attested copy of notification
- Ext.13: Attested copy of certificate No. 2891/CAL/7-81 dtd. 26.6.1982
- Ext.14 & 14/A: Attested copy of reply from OPSC on RTI
- Ext.15 & 15/A: Attested copy of letter from Canara Bank
- Ext.16: Attested copy of letter from Higher Education Department
- Ext.17: Attested copy of certificate issued by EIMPA
- Ext.18: Attested copy of certificate issued by Institute of Film, Acting and Music
- Ext.19: Attested copy of letter of OFDC alongwith Censor Board Certificate

List of Exhibits marked for O.P.

Nil

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