

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

PRRESENT:-

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

MACT Case No. 430 of 2000

Date of argument- Dt. 12.11.14

Date of judgment- Dt. 19.11.14

Mohammad Habibur Rehman, aged about 33 years
S/o Abdul Fazul Khan, of Vill: Chuda,
PO: Dabardhuapatna, PS: Bolagarh, Dist: Khurda
A/p: Plot No. 154, SBI Colony, Soubhagyanagar
Siripur, PS: Khandagiri, Bhubaneswar

... Petitioner

Vrs.

1. Bijayananda Mohanty, S/o: Late U.N. Mohanty
At: Duttatota, PO/PS: Puri Town, Dist: Puri
2. The Divisional Manager, New India Assurance Co. Ltd.
Lewis Road, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri P. Mohanty, Advocate.
For the O.P. No.1	...	None
For the O.P. No.2	...	Sri B.R. Mishra, Advocate

AWARD

1) This is a claim application filed by the petitioner u/s 166 of MV Act praying for compensation due to injury on his body while facing a motor vehicle accident on dtd. 7.1.2000.

The petition reveals that on 7.1.2000 at about 3.30 PM, the petitioner was going in a bus bearing Regd. No. OR 13 4797 and was going from Bhubaneswar to Puri. The petitioner being a legal practitioner was proceeding in connection to

case matter at Puri Court and the driver of the bus was driving the vehicle with high speed in a careless manner. At Tulasichaura Chawk, the bus dashed with a big tree at the left side of the road resulting to death of some passengers and serious injury to other passengers including the petitioner. He was immediately shifted to DHH,Puri in unconscious condition with multiple bleeding injury and due to seriousness of his condition he was again shifted to Capital Hospital, Bhubaneswar for better treatment. Ultimately, the petitioner came to Kalinga Hospital, Bhubaneswar on 8.1.2000 and was admitted there. Due to the accident, his right forearm was fractured and humerus of left arm was also fractured. After two days, he was again shifted to General Nursing Home, Mangalabag for better treatment. The injuries were operated in a nursing home by nailing of both the bones of right arm and bone grafting was made on his waist and left arm. On 25.1.2000 he was discharged, but till now he is under supervision of the doctor with regular treatment. It is further stated that there is no chance of reunion of the fractured bones making him permanently disabled. On the basis of one FIR at Chandanpur PS, PS case No. 2/2000 for the offence u/s 279/337/338/304A IPC was registered against the driver of the offending bus. By the time of accident, the petitioner was unmarried, aged about 33 years and out of his profession as an advocate, his monthly income was Rs.4000/-. On the basis of such averments in claim petition, the petitioner claimed Rs.5 lakhs towards compensation from OP No.2, the insurance company, the insurer of the offending bus.

2. OP No.1, the owner of the bus did not contest the case. However, OP No.2, the insurance company filed its written statement challenging the contention of the petitioner. OP No.2, disowned his liability to pay compensation as the required documents were not filed by the petitioner.

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

1. Whether the claimant Mohammad Habibur Rehman sustained injury due to motor vehicle accident involving vehicle No. OR 13 4797 (Bus) ?

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 to what extent and from which O.Ps. ?

4. During the course of hearing, the petitioner examined himself before the Tribunal by filing his affidavit evidence. In his affidavit, he supported the averments in the claim petition regarding his medical expenditure at different hospitals. He also filed certified copy of FIR in Chandanpur PS case No. 2/2000, charge sheet , medical requisition of the police alongwith the injury report issued by medical officer, DHH, Puri, the accident report prepared by MVI, Puri, insurance certificate in respect of the offending bus issued by OP No.2 and certified copy of driving license of the accused driver Surendra Naik. In addition to such police papers, the petitioner also filed discharge certificate issued by DHH, Puri and General Nursing Home, Cuttack. During cross examination by OP No.2, the petitioner said that the offending bus was 50 seater bus namely "Kalia". Although, he lost his sense just after the accident, he recovered at Puri District Headquarters Hospital and found fracture injury on his lower forearm of his right hand and humerus of left arm. He also claimed that he is an income tax assessee. No other witness has been examined in this case either from the side of the petitioner or from the side of OP. However, OP filed the driving license No. 2053/91 of the offending driver marked as Ext.A.

Issue Nos. 1 and 2

5. During course of argument, learned counsel for the petitioner submitted that the oral evidence of the petitioner supported with police papers are sufficient to establish that the accident took place on the alleged date where the petitioner was seriously injured. The cause of accident is the negligent driving of the driver of the offending bus is also well made out as the police submitted charge sheet against the accused driver for the offence u/s 279/337/338/304 A IPC after completion of investigation. The accident took place on the public road NH No. 203 near Senapatia tank at Pokhari Chawk. That apart, the injury requisition marked as Ext.3 shows that police forwarded the injured to the hospital from the

spot and the doctor after examining the injured submitted a report that the petitioner was having fracture on his right forearm and left forearm. No rebuttal evidence has been adduced from the side of OP to discredit the evidence of P.W.1. Hence, it is believed that the alleged accident took place causing injury to the petitioner and the cause of accident being negligent driving of the driver of the bus, the petitioner is entitled for compensation u/s 166 of MV Act. Accordingly, issue nos. 1 and 2 are decided in favor of the petitioner.

Issue No.3

6. As regards issue No.3, learned counsel for OP No.2 argued and fairly admitted that the offending bus was insured by OP No.2 at the relevant time but the driver of the bus was not having a valid DL for driving the bus on the public road. In support of such contention, he produced the copy of DL. On perusal of Ext.A, it appears that the driver was only permitted to drive the transport vehicles from 12.12.2001 to 12.12.2004. The driver was also permitted to drive the vehicle upto dtd. 3.3.91 as per the license issued by LA, Calcutta. Admittedly, the accident took place on dtd. 7.1.2000. Therefore, it can be said that on the date of accident, the driver was not having a valid DL which is a breach of condition of the insurance policy. Accordingly, it is argued that OP No.2 is not liable to pay the compensation. It is already settled that although in such cases, the owner of the vehicle is liable to pay the compensation, the injured should not be left at the mercy of the owner and therefore, covering the risk, it being the prime duty of the insurance company, the insurance company is to pay the compensation at first and thereafter, shall recover the amount from the owner of the bus. Hon'ble High Court of Orissa in a decision reported in **2008 (1) IAC 437 between Oriental Insurance Co. Ltd vrs. Mrs Ukia Guru and another**, the above principle has been accepted and therefore, OP No.2 is liable to pay the compensation in the instant case. On the other hand, learned counsel for OP No.2 relied on another decision reported in **FMAT 856 of 2011 with CAN 9018 of 2013 (amendment) between Santi Hazra vrs. The New India Assurance Company Limited and another**. In the said decision, Hon'ble High Court of Calcutta observed that directing the insurance company to pay the compensation and to realize the same

from the owner of the offending vehicle is within the jurisdiction of Hon'ble Supreme Court of India. On the other hand, learned counsel for the petitioner submitted that in view of direction of our own Hon'ble High Court, the view of Hon'ble Calcutta High Court is not acceptable. Taking into consideration the fact and law as available, I feel in the instant case the observation of our own Hon'ble High Court is to be accepted.

7. As regards quantum of compensation, petitioner filed number of medical papers towards the treatment of his injuries. No permanent disabled certificate has been filed to show that the petitioner is unable to perform his duty as an advocate after the accident or he sustained any permanent physical disability which could not be cured by the treatment. However, taking into consideration that he sustained two fractures and was under treatment at different hospitals for about one year, I feel the medical expenses and loss of income will not be less than Rs.1 lakhs. That apart, the petitioner is also entitled for compensation towards pain and suffering and in this respect if another Rs.10,000/- is awarded under this head, it will meet the ends of justice.

A W A R D

The claim petition is accordingly allowed on contest against O.P. No 2 ad ex parte against O.P. No.1 and the amount of compensation is to be paid by O.P. No.2 to the petitioner.

The total compensation amount is determined at Rs. 1,10,000/- (Rupees One Lakhs Ten 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. 29.11.2000 till the date of payment. Out of the compensation amount payable to the petitioner, 60% be kept in fixed deposit in any Nationalized Bank for five years and the rest 40% together with interest be paid in cash by Opp. Party No.2. The O.P. No.2 is directed 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 19th day of November, 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:- Md. Habibur Rehman

List of witness examined for the O.P. No.2
None

List exhibits marked for the petitioner
Ext.1:- Certified copy of FIR
Ext.2:- Certified copy of final form
Ext.3: Certified copy of injury report
Ext.4: Certified copy of MVI report
Ext.5: Certified copy of insurance policy
Ext.6: Certified copy of DL
Ext.7: Discharge certificate
Ext.8: Discharge certificate

List of Exhibits marked for O.P. No.2
Ext.A: Attested copy of DL

Member
3rd MACT, Bhubaneswar

