

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. 50 of 1999

Date of argument- Dt. 11.11.14

Date of judgment- Dt. 18.11.14

Mirja FiroJ Baig @ Firoj, aged about 27 years
S/o Mirja Gafar Baig, of Vill: Singipania
PO: Nayahat, Dist: Puri, A/p: C/o: Fatma Bibi
Plot No. 1217, Vill: Satyanagar, PS: Khandagiri
Bhubaneswar, Dist: Khurda

... Petitioner

Vrs.

1. Abdul Karim Khan, At: Barahal,
PO: Palasahi, Via: Rench, PS: Balipatna
Dist: Khurda
2. The Divisional Manager, New India Assurance Co. Ltd.
94, Janpath, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri A.K. Nayak, Advocate.
For the O.P. No.1	...	None
For the O.P. No.2	...	Sri K.P. Das, Advocate

AWARD

- 1) The claimant is an injured in a motor vehicle accident on dtd. 21.9.97. On the same day at about 6.30 AM, the petitioner was working as helper in the offending Mini Truck bearing Regd. No. OR 02 E 2353 and while the offending truck was proceeding towards Bhubaneswar in high speed, in between Kulasikharpatna-Mangalpur, the said truck was dashed against a road side tree for

which the truck was dragging to the road side. Due to the accident, the petitioner had sustained serious injury on his person. Soon after the accident, the petitioner was shifted to Capital Hospital for treatment. The matter having been reported at Pipili PS, police registered PS case No. 165/97 for the offence u/s 279/337/338 IPC against the driver of the offending truck and arrested the accused driver. It is the case of the petitioner that he was maintaining his family by working in the said truck due to such injury, he is unable to perform his duty and that apart, he spent about Rs.1 lakhs towards his treatment.

2. The insurance company filed his written statement disowning his liability to pay compensation as the driver was having no valid DL and the vehicle was not validly insured with OP No.2. That apart, the amount of compensation has also been objected on the ground that it is an exaggerated amount.

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

1. Whether the petitioner Mirja Firoj Baig sustained injury due to motor vehicle accident involving vehicle No. OR 02 E 2353 (Mini Truck) ?

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. The petitioner filed affidavit evidence that on 21.9.97 he met with the accident while travelling in the offending Mini Truck. The truck was with high speed and dashed with a tree for which he sustained fracture on his right leg. He was shifted from the spot by the local police to Mangalpur hospital and thereafter he was referred to Capital Hospital, Bhubaneswar. He was admitted in the Orthopedic ward till 6.12.97 and spent Rs.10,000/- towards his treatment. He further mentioned in the affidavit that he is undergoing treatment till now at Hi-Tech hospital, Bhubaneswar and the doctor advised him for amputation of his leg. As helper of the truck, his monthly salary was Rs.15,000/- and on the report to

police, PS case No. 165/97 was registered and investigated. He also filed the police paper and some medical document during his examination. While cross examined by OP No.2, the witness further stated that he cannot say when he was referred to hospital and when he was discharged. He said his injury was operated on his right leg. The document issued by Hi-Tech Hospital vide Ext.7 is no way related to this case and his monthly salary was Rs.600/- as helper of the Mini Truck. On perusal of the police papers, it appears that on 21.9.97 FIR was lodged before IIC, Pipili PS about the accident and the petitioner sustained head injury and leg injury due to the accident. The IO after completing investigation mentioned that no injury requisition was issued as the helper got his treatment locally. However, charge sheet was submitted u/s 279/337 IPC. One discharge certificate has been exhibited as Ext.5 showing that the petitioner was admitted at capital hospital from 21.9.97 to 6.12.97 which does not show any grievous injury or fracture. But, another discharge certificate is filed marked as Ext.6 with illegible handwriting that the petitioner was admitted again at Capital Hospital on 10.3.(year not mentioned) and was discharged on 12.3 when a plate was removed from tibia, fibula due to fracture. As stated above, discharge certificate obtained from Hi-Tech Hospital shows that the injury was caused only 15 days back from 4.3.14 which is no way related with this case.

5. As regards liability to pay the compensation, it is the owner (OP No.1) who is liable to pay the compensation to the victim of the accident for any negligence on the part of the driver and when the vehicle is insured with the insurance company, the insurance company is to shoulder the responsibility of paying the compensation. A xerox copy of insurance certificate of the offending truck bearing Regd. No. OR 02 E 2353 is filed showing that the truck in question was insured by OP No.2 which was valid on the date of accident. The DL of the driver seized by the IO was also valid till 21.9.98. Accordingly, the insurance company is liable to pay the compensation.

6. Learned counsel for OP No.2 has argued that the petitioner claimed Rs.1 lakhs towards compensation in his claim petition, but in his evidence he stated that he spent Rs.10,000/- only towards medical expenses for the injury. Ext.5 and

6 are just contradictory to each other. Ext.7 is no way related to the case which is admitted in the mouth of the petitioner. The accident took place in the year 1997. Even if any operation was taken up, it was in the Government hospital. There is no evidence in the mouth of the petitioner regarding any operation or fracture in his body. However, taking into consideration the material available on record, I feel if compensation of Rs.15,000/- is awarded to the petitioner 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. 15,000/- (Rupees Fifteen 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. 6.3.99 till the date of payment. The O.P. No.2 is directed to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 18th 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:- Mirja Firoj Baig @ Firoj

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 seizure list

Ext.4:- Certified copy of seizure list

Ext.5: Discharge certificate

Ext.6: Discharge certificate

Ext.7: Discharge record of Hi-Tech Hospital

List of Exhibits marked for O.P. No.2

Nil

Member
3rd MACT, Bhubaneswar