

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. 556 of 2004

Date of argument- Dt. 14.11.14

Date of judgment- Dt. 24.11.14

Prasana Kumar Satpathy, aged about 45 years
S/o: Sadasiv Satpathy, At/PO: Gangadharpur Sasan
PS: Banpur, Dist: Khurda

... Petitioner

Vrs.

1. Sameer Kumar Mishra, S/o: Tarini Charan Mishra
At: Gajapati Nagar, 9th Lane, Berhampur, Dist: Ganjam
2. The Divisional Manager, Oriental Insurance Co. Ltd
Lewis Road, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri P.K. Nanda, Advocate
For the OP No.1	None
For the O.P.	...	Sri B.B. Das, Advocate

AWARD

- 1) The petitioner met with motor vehicle accident on dtd. 24.8.04 on NH No.5 in between Khalikote and Berhampur while boarding a bus bearing No. OR 07 D 0057 and sustained multiple injuries for which filed the case claiming compensation u/s 166 of MV Act. At the time of accident, he was only 44 years old and was working as a Government servant under Director, Ayurvedic, Bhubaneswar, Orissa. As appears from the claim petition, the driver of the offending bus was driving the bus in high speed in a careless manner and dashed the bus with a tree for which number of passengers sustained injuries. The petitioner was immediately shifted to Khalikote PHC for first aid treatment and thereafter, he was referred to MKCG Medical College, Berhampur. He was

admitted in the hospital as an indoor patient for about 2 months and was discharged on 20.9.04. Operation was made two times on his body and inspite of such treatment, the petitioner has not been cured and is also attending private doctors. The bus was insured by OP No.2 and therefore, it is claimed that OP No.2 is liable to pay compensation of Rs.2.5 lakhs towards the damage to the petitioner. He sustained about 10 nos. of serious injuries including fracture on 5 rib bones on the chest, compound fracture of pelvic bone and hip joint. Two number of teeth were broken. In addition to it he also sustained lacerated injury on material part of his body. The driver of the bus was having valid driving license and the bus was validly insured with OP No.2 at the time of accident.

2. O.P. No.1, the owner of the offending bus has been set ex parte as he did not contest the case and OP No.2 filed its written statement denying its liability to pay the compensation.

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

1. Whether the petitioner Prasana Kumar Satpathy sustained injury due to motor vehicle accident involving vehicle No. OR 07 B 0057 (Mini 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, as to what extent and from which O.Ps. ?

4. During the course of hearing, while the petitioner examined himself and another eye witness, OP did not examine any witness to rebut the evidence adduced by the petitioner. In his affidavit evidence, the petitioner supported the averments of the claim petition and exhibited the police papers in connection to Khalikote PS case No. 85/04 wherein police submitted charge sheet against the accused driver for the offence u/s 279/337/338 IPC. In his cross examination, the petitioner said that by the time of accident, his monthly salary was Rs.7000/-. Due to accident, his testifies was subject to operation for passing urine. His waist bone was also fractured. After joining his office, he received salary for the leave period. But,

the medical expenses has not been reimbursed by his office. P.W.2 claimed to be the eye witness to the accident. But, he claimed that he was also a passenger in the said bus and also sustained some injuries. On perusal of the police papers, it appears that during investigation of the case, police seized the damaged bus alongwith all the documents. The insurance certificate shows that the bus was insured by OP No.2 which was valid till dtd. 21.6.05. The driving license of the driver was also valid till 21.12.2006. The injury requisition obtained from MKCG Medical College, Berhampur also shows that one punctured wound on the lower limb and two abrasions on the legs alongwith one grievous injury on chest due to breaking of the rib bones and another fracture of pelvis bone were detected. The discharge certificate discloses that the injured was admitted in the hospital on 24.8.04 and was discharged on 20.9.04. In addition to such medical papers the entire treatment given to the injured is also available on the bed head ticket. He also spent considerable amount of money for the purpose of investigation of the injuries at Nidan Diagnostic and Research Centre. Although, he was discharged on 20.9.04, the treatment continued for another one month as appears from the medical paper.

5. Learned counsel for the petitioner argued that the accident is the result of negligent driving on the part of bus driver has been well established through the evidence of two witnesses examined in the Court supported with police investigation. Therefore, the petitioner is entitled for compensation under the provision of Sec. 166 of MV Act.

6. As regards liability to pay the compensation, the driver being the agent of the owner, the owner is vicariously liable to pay the compensation. But, on perusal of the papers as I am satisfied that OP No.2, the insurance company insured the bus and the insurance certificate and driving license of the driver were valid on the date of accident, OP No.2 is liable to pay the compensation. Accordingly, issue Nos. 1 and 2 are answered in favour of the petitioner.

7. As regards quantum of compensation, learned counsel for the petitioner submitted that as five ribs of the chest and pelvic bone are fractured, the petitioner is completely unable to do any work. But,unfortunately, no permanent disability

certificate has been procured by the petitioner. Due to fracture in pelvic bone, the petitioner is also not comfortable even to stand. A bunch of medical bills are filed in support of expenses towards medicine. The medical papers shows that the treatment continued for about 3 months while the petitioner was admitted as an indoor patient for one month. Two operations were conducted in respect of the pelvic bone. Taking into consideration the number of fracture and other injuries, period of treatment, I believe the petitioner might have spent Rs.2 lakhs towards medical expenses. In addition to such medical expenses, the petitioner is also entitled for compensation towards pain and suffering. Hence, OP No.2 is directed to pay Rs.10,000/- under this head.

A W A R D

The claim petition is accordingly allowed on contest against O.P. No.2 and without contest against OP 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. 2,10,000/- (Rupees Two Lakhs Ten Thousand) only which shall carry simple interest at the rate of 7% both pendente lite and future from the date of filing of the claim petition i.e. 24.11.04 till the date of payment. Out of the compensation amount payable to the petitioners, 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 O.P. No.2. 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 24th 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:- Prasana Kumar Satpathy

P.W.2:- Kanhu Charan Martha

List of witness examined for the O.Ps.

None

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 injury report

Ext.5:- Certified copy of injury report

Ext.6:- Discharge certificate

Member, 3rd MACT, Bhubaneswar