

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. 584 of 1993

Date of argument- Dt. 17.10.14

Date of judgment- Dt. 28.10.14

Tusar Kanti Das, aged about 26 years
S/o Late Upendra Nath Das, At: Similipatna
PO/PS: Chandaka, Dist: Khurda

... Petitioner

Vrs.

1. The Managing Director, Amarendra Das
Suryo Udyog Limited, Plot No. A-68
Sahid Nagar, Bhubaneswar, Dist: Khurda
2. The Divisional Manager, United India Insurance Co. Ltd.
Sahid Nagar, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner

... Sri N.R. Swain, Advocate.

For the O.P. No.1

... None

For the O.P. No.2

... Sri B.R. Patnaik, Advocate

AWARD

The petitioner in this case is an injured in a motor vehicle accident on dtd. 11.10.93 on Khandagiri Chandaka road.

As per the claim petition, on the relevant day, the petitioner and his friend were standing at the side of the road and in the meantime, a tractor bearing Regd. No. OR 02 D 3626 came with high speed in a rash and negligent manner from Chandaka side and violently dashed with the petitioner in front of the forest office. Some friends of petitioner also sustained injuries and the tractor itself capsized at the side of the road. All the injured persons were shifted to Capital Hospital for

the treatment of their injuries. But, due to seriousness of the injuries to the petitioner, he was admitted as indoor patient from 11.10.93 to 15.10.93. As per the advise of the treating physician, the petitioner was again shifted to SCB Medical College, Cuttack for his treatment where he was admitted as indoor patient from 15.10.93 to 8.11.93. As the injuries were not completely healed up, the petitioner again went to private clinic and thereby sustained huge financial loss and bodily pain. Accordingly, the petitioner claimed compensation u/s 166 MV Act.

Although the case was filed in the year 1993, the petitioner did not take steps for a pretty long time for appearance of the opposite parties. Only in the year 2012, OP No.2 was noticed to appar in the case and thereafter, the case became ready for hearing.

2. OP No.1, the owner of the tractor did not participate in the hearing of the case. But, OP No.2 the insurer of the offending tractor contested the case after filing written statement. The insurance company objected that the driver of the tractor was not having valid DL and thereby the policy condition of the insurance company was violated by the owner for which OP No.2, the insurance company is not liable to pay the compensation.

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

1. Whether on dtd. 11.10.93 at about 9 AM, the petitioner Tusar Kanti Dash sustained injury due to motor vehicle accident involving vehicle No. OR 02 B 3626 (Tractor) ?

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 injured petitioner examined himself on 2.9.14 in the Tribunal by filing his affidavit evidence. He supported the averments of the claim petition that due to negligent driving of the tractor driver, the accident took place and he had to spent Rs.50,000/- towards his treatment. He also filed certified copy of

police papers in connection to Khandagiri PS case No. 283/93 which was initiated on the FIR regarding the accident. The certified copy of FIR discloses that one Abdul Hussain Khan reported before IIC, Khandagiri PS regarding the accident of the tractor. It is further mentioned in the FIR that 7 to 8 persons were sitting in the tractor who also sustained injuries due to the accident. Certified copy of seizure list and injury report discloses that the damaged tractor was seized by the police alongwith the documents. Police also submitted charge sheet u/s 279/337 IPC after completion of investigation. It appears Surya Udyog one farm was the owner of the tractor and the documents alongwith the tractor was leased in favour of one of the officer of the farm. The tractor was insured by OP No.2 and it was valid upto dtd. 12.8.94. The RC book, permit and fitness certificate was valid on the date of accident.

Issue No.1

5. As regards injury, certified copy of injury report issued by Capital Hospital discloses there was one swelling over the right thigh of the petitioner alongwith some abrasions. But, the discharge certificate filed by the petitioner shows that the petitioner sustained fracture of his right femur and there was surgery by nailing after removal of plaster. A xerox copy of discharge certificate is filed by the petitioner issued by a private hospital at Cuttack namely, Health line also shows that the petitioner was admitted in the said hospital for some days for his treatment. During cross examination of the petitioner, learned counsel for OP No.2 brought out from the mouth of the petitioner that he was working as windows operator at Allahabad bank. But, he categorically denied that he met with the accident while boarding the tractor on its trolley.

Issue Nos. 2 and 3

6. During course of argument, learned counsel for the insurance company argued that the case of the petitioner has been cooked up in order to get compensation that the accident took place while he was standing at the side of the road. But, the entire police investigation shows that the petitioner alongwith his friends were sitting on the trolley of the tractor when the accident took place. The tractor being a goods vehicle, carrying passengers is violation of policy conditions

for which the insurance company is not liable to pay the compensation. On the other hand, learned counsel for the petitioner submitted that while the petitioner has adduced substantive evidence before the Tribunal that the accident took place while he was standing on the road simple filing of FIR or charge sheet without any corroborative evidence from the side of OP will not discard the evidence of the petitioner. Admittedly, the tractor was having valid insurance as per the police investigation. Therefore, the insurance company will be liable to pay the compensation. After hearing the argument from the both the sides, I find the FIR has been exhibited from the side of the petitioner and no other evidence has been led excepting the petitioner himself to believe that the contention of the FIR were false rather it was fortified to be true during investigation of the case for which charge sheet is submitted against the accused driver. Hon'ble Apex Court of India in a decision reported in **2004 (1) TAC 366, SC between National Insurance Co. Ltd vrs. Baljeet Kaur and others**. Hon'ble Apex Court after examining the amended provision u/s 147 of MV Act held that any person travelling in a goods vehicle are gratuitous passenger is to be compensated by the owner of the vehicle, but at the first instance the insurance company is liable to pay the compensation to the victim which is to be realized from the owner in due course of law.

7. Learned counsel for insurance company submitted that although the case is of the year 1993, the insurance company appeared in the case in the year 2012 due to the laches of the petitioner and therefore, insurance company is not liable to pay interest over the compensation amount from the year 1993 to 2012. I find sufficient force in the contention of the learned counsel for OP No.2. Taking into consideration that the accident took place in the year 1993 and petitioner was admitted as indoor patient for undertaking surgery for his fractured femur, the total expenses as appears from the case record will not be less than Rs.45,000/-. Hence, I feel if the injured is awarded compensation of Rs.45,000/- towards medical expenses for his injuries, loss of income for his admission as indoor patient at different phases and pain and sufferings, it will meet the ends of justice. He is also entitled to get interest @ 7% from 7.1.12 till the date of payment of compensation amount.

AWARD

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

The total compensation amount is determined at Rs. 45,000/- (Rupees Forty Five Thousand) only which shall carry simple interest at the rate of 7% from 7.1.12 till the date of payment. The insurance company 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.

This award is pronounced in the open court to-day the 28th day of October, 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:- Tusar Kanti Das

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 charge sheet
Ext.3: Certified copy of seizure list
Ext.4: Certified copy of zimanama
Ext.5: Certified copy of injury report

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

Member
3rd MACT, Bhubaneswar

