

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. 98/390 of 2001-2000

Date of argument- Dt. 22.10.14

Date of judgment- Dt. 01.11.14

Sk. Neyaz Ahmed, aged about 36 years
S/o Sk. Abdul Kayun, resident of : Gujidarada
PS/Dist: Bhadrak, A/p: Plot No. 1774/3740
Sabarsahi Lane, PS: Laxmisagar, Bhubaneswar
Dist: Khurda

... Petitioner

Vrs.

1. Sudhansu Kumar Dakhinray, S/o: Udayanath Dakhinray
Resident of Vill: Orali, PS: Nandipada, Dist: Keonjhar
2. The Divisional Manager, National Insurance Co. Ltd.
Master Canteen, Bhubaneswar, Dist: Khurda

... Opp. Parties.

Counsels

For the petitioner	...	Sri S.K. Rath, Advocate.
For the O.P. No.1	...	None
For the O.P. No.2	...	Sri B.D. Panda, Advocate

AWARD

- 1) Petitioner is the injured in a motor vehicle accident and claimed compensation u/s 166 of MV Act for the damage sustained by him. He was a businessman dealing with business of aluminum utensils and was a distributor of Pan Masala products at Bhadrak. On 18.9.99 at about 2.30 PM, the petitioner alongwith another were proceeding towards Keonjhar from Bhadrak in a Moped, on the way the moped showed some mechanical problem for which the petitioner was checking

the vehicle at the extreme left side of the road. In the meantime, a passenger bus namely, "Nila Madhav" bearing Regd. No. OAU 2783 came from Anandapur side with high speed and while overtaking another vehicle dashed with the petitioner and his moped. As a result the petitioner sustained multiple bleeding injuries and lost sense. Immediately, he was shifted to SCB Medical College, Cuttack and was admitted in Orthopedic department. His compound fracture of right leg was operated by nailing with steel rod and he was discharged on 2.10.99. Still then, the petitioner is facing problem and unable to walk properly. He also failed to continue his business due to his physical inability putting all the family members into financial stringency. The offending bus was insured by OP No.2 and the driver of the bus was having a valid DL. It is further submitted that the petitioner spent Rs.40,000/- towards his medical treatment and another Rs.20,000/- is required for second operation for removal of the rod from his leg.

2. OP No.1, the owner of the offending bus has been set ex parte, but O.P. No.2, the insurer of the bus filed separate written statement and contested the case. OP No.2 took evasive denial to the averments in the claim petition and submitted to dismiss the case.

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

1. Whether the injured Sk. Neyaz Ahmed sustained injury due to motor vehicle accident involving vehicle No. OAU 2783 (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, petitioner has examined himself by filing affidavit evidence as P.W.1 and also examined another witness as P.W.2. In his affidavit he supported the averments of the claim petition and attributed the negligence to the driver of the bus for causing the accident. He also filed certified copy of police papers in Anandapur PS case no. 87/99 in support of the accident. In his cross examination he admitted that the pillion rider in the moped was his brother,

but he did not sustain any injury. He was admitted in the hospital for 13 days and again in the year 2010, he removed the steel rod by second operation. He claims that his monthly income from the business was Rs.5000/- and therefore, claimed Rs.2 lakhs towards compensation. P.W.2 corroborated the evidence of P.W.1 and said the injured was his neighbour. While returning on the way, he saw the accident when the bus dashed with the petitioner causing multiple injuries on his body. He also supported that the petitioner was a businessman having income of Rs.5000/- per month. One discharge certificate issued by SCB Medical College, Cuttack marked as Ext.5 discloses that the petitioner was admitted in the hospital on 21.11.2000 and was discharged on 27.11.2000 for removal of the wire and cylinder slab. During investigation of the accident case, police arrested the driver of the bus, examined the papers and ultimately, after completion of investigation submitted charge sheet against the accused driver for the offence u/s 279/337/338 IPC. Seizure list discloses that the damaged moped of the petitioner alongwith the offending bus were seized. The insurance policy was issued by OP No.2 in respect of the bus which was valid from 30.3.99 to 29.3.2000. The DL of the driver was also valid upto 22.9.2000. In addition to such documents, some medical papers are also filed showing different treatment given to the petitioner. No witness has been examined from the side of O.P.

Issue No.1

5. During the course of argument, learned counsel for the petitioner argued that by adducing oral evidence and by submitting the police papers and other medical papers, the petitioner has well proved about the accident and the injuries sustained by him. It is also established that the offending bus was negligent which resulted the accident and the said bus being insured by OP No.2, OP No.2 is liable to pay the compensation.

Issue Nos. 2 and 3

6. As regards quantum of compensation, the record reveals that the petitioner operated his leg two times at SCB Medical College & Hospital, Cuttack. But, another certificate has been filed issued by a doctor that the petitioner was suffering from 30% functional disability. The said medical certificate has not been proved by

examining the doctor even if the petitioner himself has not deposed regarding such certificate. Admittedly, the petitioner in his evidence admitted that he spent Rs.40,000/- towards medical expenses, food, conveyance for his treatment. As there is no evidence regarding permanent disability, the petitioner is only entitled for the medical expenses. He filed some medicine bills amounting to Rs.5000/- and taking into consideration that both the operations were made in the Government hospital, I feel if Rs.30,000/- will be awarded towards compensation it will meet the ends of justice.

7. During the course of argument, learned counsel for OP No.2 argued that the claim case was filed in the year 2000 and just thereafter, OP No.2 filed written statement in the year 2001. But, the case was dragged till 2009 for examination of witnesses on behalf of the petitioner. Again the petitioner filed affidavit evidence of P.W.2 in the year 2009, but he was produced in the Court for cross examination in the year 2014. thus, the petitioner has intentionally delayed the matter only to get interest and therefore, minimum percentage of interest should be granted without causing prejudice to the insurance company. Hence, I am inclined to grant interest @ 5% per annum over the awarded amount.

A W A R D

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

The total compensation amount is determined at Rs. 30, 000/- (Rupees Thirty Thousand) only which shall carry simple interest at the rate of 5% both pendente lite and future from the date of filing of the claim petition i.e. 9.11.2000 till the date of payment. The insurance company is directed to pay the compensation amount within two months hence.

This award is pronounced in the open court to-day the 1st 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:- Sk. Neyaz Ahmed

P.W.2:- Bahauddin Khan

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 seizure list

Ext.5: Discharge Certificate

Ext.6:- Discharge Certificate

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

Nil

Member
3rd MACT, Bhubaneswar