BEFORE THE DISTRICT JUDGE-CUM- FIRST MOTOR ACCIDENT CLAIMS TRIBUNAL, JAGATSINGHPUR.

P R E S E N T. **Sri A.C.Behera,LL.B**
District Judge-cum- Ist M.A.C.T,
Jagatsinghpur.

MOTOR ACCIDENT CLAIM CASE No.464/2015.
(Arising out of Salipur P.S case No.46/2015).

Akdus Hussian Khan,aged about 30 years,
S/o Hazi hussain Khan, of vill-Padmapur,
P.S-Salipur, Dist-Cuttack,
At present- Biridi, Jagatsinghpur.

. ... Petitioner.

V e r s u s

1. Santosh Kumar Satapathy,
S/o Late Sachidananda Satapathy,
At-Mohanty Pada, P.O-Chandinchouk,
P.S-Lalbag, Dist- Cuttack.
2. Bajaj Allianz General Insurance Co.Ltd,
Rep.through its Divisional Manager,
At-4th Floor, North East Plaza, Erramanjil Circle.
Besides BMW Show Room, Khairatbad,
Hyderabad, 500082(A.P),

... Opp.Parties.

Appearance:-
Counsel for the petitioner**.** Sri R.K.Biswal,Advocate**,**
Counsel for the O.P No.1 None(Exparte)
Counsel for the O.P No.2. Sri Sayed Asif AlliAdvocate.
Date of conclusion of Argument: 20.08.2019.
Date of Award: 09.09.2019.

AWARD

This is a claim application U/s 166 of the M.V Act, 1988, which has been filed by the injured petitioner against the O.Ps claiming compensation of Rs.5,00,000/-(Rupees five lakhs) for his injuries suffered in a motor vehicular accident.

2. The case of the petitioner, in nutshell as per the averments made in his claim application is that, on dtd.14.3.2015 at about 8 P.M, while he (petitioner) was going towards Salipur from his house in his motor cycle bearing registration No.OD-05J-1168, in the extreme left side of the road and had reached near Sisua bazar under the jurusdiction of Salipur P.S, at that time one Maruti car bearing registration No.OD-02H-2889 (here-in-after to be referred as "offending Maruti car") suddenly came from his front side with a very high speed in a rash & negligent manner and dashed against the

motor cycle of the petitioner. By the result of such motor vehicular accident, he (petitioner) fell down on the pitch from his motor cycle with heavy force and sustained multiple fracture injuries on his right leg,left leg and other injuries all over his body. Soon after such accident, he (injured-petitioner) was shifted to Ultra Hospital,Jagatpur for his treatment and was treated there as an Indoor patient. Despite the treatment of the petitioner there, he was not cured fully and was disabled permanently. For such motor vehicular accident of the petitioner, a case vide Salipur P.S case No.46/2015 U/s 279/337/338 of the IPC was registered against the driver of the said offending Maruti car and the investigation was started and on completion of investigation, police submitted charge sheet against the driver of the said offending Maruti car namely Kali Prasad Kar U/s 279/337/338 of the IPC.

It is the further case of the petitioner that, due to fracture of his bone in both the legs, fracture of right hand, injury on head along with other multiple injuries all over his body including on his head, major operations were conducted and still then he is undergoing treatment and he is not in a position to do any work, because he is unable to stand and walk without help of others and he is also not able to attend his call of nature properly. For the treatment of his injuries, he(petitioner) has spent more than Rs.2 lakhs and at present, he(petitioner) has become a burden on his family members and is depending upon their mercy.

It is also the case of the petitioner that, by the time of accident, he(petitioner) was a healthy and energetic man of 30 years and he was a driver by profession and from such driving profession, he was earning of Rs.8,000/- per month and from such income, he was maintaining to his family, because he was the only earning member of his family and after the accident, he (petitioner) is unable to earn a single pie, for which, his family members are suffering a lot.

It is the further case of the petitioner that the O.P No.1 is the owner of the offending Maruti car and at the time of causing accident, the said offending Maruti car was duly insured before the O.P No.2, the Insurance Company and the said Insurance Company had taken away all the accidental liabilities of that offending Maruti car through a valid Insurance Policy.

As the said motor vehicular accident of the petitioner is for no other reason but only due to the rash and negligent driving of the driver of the offending Maruti car of the O.P No.1 and as the O.P No.2 is the insurer of that car and as the petitioner had no contribution at all for such accident, and as the petitioner has sustained losses in various angle for his above motor vehicular accidental injuries, for which, he (petitioner) has filed this claim application against the O.Ps claiming compensation of Rs.5 lakhs for his aforesaid motor vehicular accidental injuries making both the O.Ps jointly and severally liable for the same.

3. Having been noticed from this Tribunal, out of both the O.Ps, only the O.P No.2(Insurance company) has contested the case of the petitioner by filing its written statement, but the O.P No.1 has been set-exparte. .

4. As per the written statement of the O.P No.2, the said O.P No.2 has fully denied to the happening of the alleged incident of the petitioner through the offending Maruti car of O.P No.1 and the alternative plea of the O.P No.2 in its W.S in para Nos.7 to 10 is that, the alleged accident of the petitioner had taken place only due to his own rash and negligent driving to his motor cycle but not for any rash and negligent driving of the driver of the said Maruti car. That apart, driver of the alleged offending Maruti car had no valid and effective D.L to drive the same and accordingly at the time of alleged incident, the offending Maruti car of O.P No.1 was plying on the road by violating the Insurance policy conditions thereof, for which, no accidental liability of the petitioner can be fastened on the said O.P No.2. For which, the claim application of the petitioner is liable to be dismissed against the O.P No.2.

5. Basing upon the aforesaid matters in controversies between the parties as per their pleadings, altogether four number of issues have been framed and the said issues are:

<u>I S S U E S</u>.

1. Whether the case is maintainable ?
2. Whether due to the said accident, the petitioner sustain injuries ?
3. Whether the petitioner is entitled to compensation, if so, what would be it's quantum ?
4. To what other relief or reliefs,if any, the petitioner is entitled to ?

6. In order to substantiate the case of the petitioner against the O.Ps, the petitioner has examined altogether three witnesses on his behalf including himself as P.W.1 and has relied upon series of documents from his side starting from Exts. 1 to 5.But on the contrary, the O.P No.2 has examined one witness on its behalf i.e O.P.W.1, who is the legal Executive of O.P No.2,Insurance company and has also relied upon seven numbers of documents from his side vide Exts.A to G.

FINDINGS.

7. Issue Nos.1 & 2.

The evidence adduced on behalf of the petitioner through P.Ws 1 to 3 corroborating his pleadings supported through the documentary evidence relied upon by the parties vide Exts.1 to 5 and Exts.B,C & D is clearly and unambiguously going to show that on dtd.14.3.2015, while the petitioner was going towards Salipur from his residence through his motor cycle bearing registration No.OD-05J-1168 and had reached near Sisua,Bazar under jurisdiction of Salipur P.S, at about 8 P.M, the offending vehicle i.e the Maruti car bearing registration No.OD-02H-2889 of O.P No.1 suddenly dashed against him(petitioner) by coming in a very high speed on being driven by its driver Kali Prasad Kar in a rash and negligent manner and by the result of such motor vehicular accident, he (petitioner) sustained multiple injuries all over his body as per the injury report vide Ext.5. By the time of such accident to the petitioner through the offending Maruti Car of O.P No.1, the same was duly insured before the O.P No.2, the Insurance Company and accordingly the O.P No.2, (the Insurance Company) had taken away all the accidental liabilies of the offending Maruti car of the O.P No.1. For which, it cannot at all be said that the claim application filed by the petitioner against the O.Ps claiming compensation for his motor vehicular accidental injuries is not maintainable under law. As such, in other words, it is held that, the claim application filed by the injured-petitioner against the O.Ps is well maintainable under law. Hence, the issue Nos.1 & 2 are answered in favour of the petitioner and against the O.Ps.

8. Issues Nos.3 & 4.

As per the discussions & observations made above, when it has already been held that, the petitioner has sustained multiple injuries all over his body, as per injury report vide Ext.5 for the motor vehicular accident caused through the offending Maruti car of O.P

No.1 only for the rash and negligent driving of its driver Kali Prasad Kar, then at this juncture, it is safely concluded that, the petitioner is entitled for compensation for his injuries suffered in the above motor vehicular accident.

9. Now the question arises from whom the petitioner is entitled to get the compensation. It is forth coming from the oral and documentary evidence adduced by both the sides that, at the time of accident to the petitioner through the offending Maruti car of O.P No.1 as stated above, the said offending Maruti car of O.P No.1 was duly insured before the O.P No.2, the Insurance Company. Accordingly, the O.P No.2, the Insurance Company had taken away all the accidental liabilities of the offending Maruti car of O.P No.1 at the time of causing accident to the injured/petitioner.

The police papers vide Exts.1 to 5 proved on behalf of the petitioner are going to show that, at the time of causing accident to the petitioner through the offending Maruti car of O.P No.1, the said offending Maruti car of O.P No.1 was plying on the road without violating any of the Insurance policy conditions thereof, for which, it is held that, out of both the O.Ps, the O.P No.2 is liable to pay compensation to the petitioner for his all losses suffered by in the aforesaid motor vehicular accident.

10. Now the question arises, what should be the just compensation, to which, the petitioner is entitled for from the O.P No.2. The exhibited and un-exhibited medical papers those have been referred by the petitioner(P.W.1) in his evidence during enquiry is going to show that, soon after the accident of the petitioner on dtd.14.3.2015, he was taken to Ultra Hospital, Jagatpur, wherein he had undergone treatment as an Indoor patient up to 24.3.2015 and during his treatment there, his fractured right leg was operated and thereafter he had under gone treatment at Shreema Hospital for his said accidental injuries by staying in the hospital bed since 2.11.2015 to 8.11.2015.

The law for referring the un-exhibited medical papers like this case at hand, has already been clarified in the ratio of the following decisions;

2018(4) C.C.C-page-524-S.C- Vimal Devi and others (v) New India Insurance Ltd (decided on 16.1.2013).

" M.V Act,1988- Non exhibit of documents only a procedural lapse. The claimant cannot be denied on

that ground, because the said documents were referred at the time of recording evidence, but the said documents were not exhibited. Still then, the Court can refer the said unexhibited of the documents in the judgment and cannot deny to refer the same, because non-exhibit of the documents i.e medical papers is only a procedural lapse".

2018(69) OCR-Page-466 (at para-8)- Birsingh Munda(v) State of Orissa;

"Even if the medical examination report is not exhibited, still then, the Court can peruse and refer the same in the judgment, if the same is available in the record.

11. Here in this case at hand, when the petitioner (P.W.1) adduced evidence in the Court during inquiry by referring to the un-exhibited medical papers & medical bills of Ultra Hospital, Jagatpur & Shreeram Hospital, then in view of the propositions of law enunciated in the ratio of the above decisions of the Apex Court and the Hon'ble Courts,it can easily be held by referring to the discharge summary certificate and medical certificates of Ultra Hospital,Jagatpur and Shreema Hospital along with Ext.5 that, due to the aforesaid motor vehicular accident, both the legs of the petitioner were fractured i.e fracture of Tibia and Fibula of his right leg and fracture of his left leg and for such injuries, he (petitioner) had undergone treatment at Ultra Hospital from 14.3.2015 to 24.3.2015 and thereafter at Shreema Hospital from 2.11.2015 to 8.11.2015 and for his such treatment, he(petitioner) has incurred expenditures. But,though the petitioner has filed bills showing expenditures to the tune of Rs.98,325/-,but the said medicine bills have not been duly proved as per law, which itself does not mean that, the injured petitioner has not incurred any expenditures for his treatment. So, a reasonable amount can be awarded on the head of incurring expenditure for his treatment.

12. Therefore, by taking the aforesaid nature of fracture injuries of the petitioner in his both legs in to account, it is held that, the practical functional disability of the petitioner for fracture of his both legs is to the extent of 10% even in absence of disability certificate, because due to such fractures of his both legs, he(petitioner) will not be able to do the physical works with same

strength and force as before (which was doing prior to the accident) for the rest period of his life.

Though, the petitioner has specifically stated in his petition that, at the time of accident, he was earning Rs.8,000/- per month by doing his profession as driver,but no documentary support has been given by the petitioner to establish the said income of the petitioner. Therefore, due to lack of proper documentary evidence, about the so called profession as well as income of the petitioner as stated in the claim application, it is held that, by the time of the accident of the petitioner, he was an unskilled labourer.

Here in this case at hand, the motor vehicular accident of petitioner was happened on 14.3.2015. As per the Government Notification, the minimum wage of an unskilled labour in the year 2015 was Rs.200/-. So on that basis, his monthly income from his daily wage was Rs.6,000/- at the time of his accident and accordingly his yearly income was Rs.72,000/-

13. As per the ratio of the decision of the Apex Court reported in (**2010)-46-OCR-(S.C)-783 -Sri B.T.Krishnappa vrs The Divisional Manager United India Insurance Co.Ltd another(decided on 30.4.2010).**

> **"M.V Act,1988- Section -166- Injuries Effects on the expectation of future life. Long expectation of life is connected with earning capacity. If earning capacity is reduced, that impacts life expectancy as well ".**

14. Therefore, taking the aforesaid factors into account, the entitlement of the petitioner as his just compensation from the O.P No.2 for the injuries sustained in the above motor vehicular accident under different heads as per the guidelines framed by the Apex Court in the ratio of the decision reported in **2018(2) OLR-S.C-page-521- Arta(v) Pratap(decided on 21.8.2018)** is calculated as follows;

Sl No.	Heads	Amount (Rs.)
1.	Rs.72,000/- (yearly income of the petitioner), 10% thereof comes to Rs.7,200/- (yearly loss of income) x 16(multiplier, as the age of the petitioner at the time of accident was 35 years,as per summary discharge certificate of Ultra Hospital relied upon by him= Rs.1,15,200/-(i.e loss of income of the petitioner for his future life due to 10% practical and functional disability for the fracture of his both the legs).	1,15,200/-
2	Loss of actual income of the petitioner during the period of treatment at least for a period of six months having Rs. 6000/- per month.	36,000/-
3	Expenditures incurred towards the Hospital charges, medicine charges, operation charges etc tentatively as bills have not been duly proved.	30,000/-
4.	Conveyance charges i.e transport charges.	10,000/-
5.	Attendance charges	20,000/-
6.	Expenses for Special diet & nutrition.	10,000/-
7.	Loss of comfort & amenities for his future life due to the effect of the injuries in his both legs.	25,000/-
8.	Pain and suffering for whole period of life	25,000/-
9.	Loss of beauty due to the injuries	25,000/-
10.	Loss of expectation of life.	25,000/-
11.	Cost of litigation	5,000/-
	Total	3,26,200/-

15. Therefore, on the basis of the calculation of compensation under different heads as stated above, the petitioner is entitled for **Rs,3,26,200/- (Rupees three lakhs twenty six thousand and two hundred)**only in total as his just compensation for the injuries suffered in the above motor vehicular accident.

Hence, the issues Nos.3 & 4 are answered accordingly in favour of the petitioner and against the O.Ps.

So, on the basis of the findings and observations made above, in issues wise, the claim of the petitioner will succeed in part. Hence order.

ORDER.

16. The claim application, be and the same, filed by the petitioner is allowed in part on contest. The petitioner is here with awarded with a compensation of **Rs,3,26,200/- (Rupees three lakhs twenty six thousand and two hundred)** only subject to the adjustment of the payments if any from the same mode to the petitioner earlier U/s 140 of the M.V Act,1988 and the O.P No.2-Insurance Company is herewith directed to pay such compensation to him along with a simple interest @ 7% per annum on the aforesaid awarded amount, as per section 171 of the M.V Act,1988, from the date of filing of the claim application i.e 28.12.2015, till the full satisfaction, in the shape of crossed account payee cheque to be filled before this Tribunal within two months hence, failing which, he(petitioner) is at liberty to realize the same from the O.P No.2 through the process of law. In case of non-compliance of this order within the above stipulated period, the awarded amount shall be realized from the O.P No.2 along with an enhanced simple interest @ 9% per annum for the default period.

17. As this is an injury case and as the injured petitioner is a young man aged about 35 years, for which, out of the awarded amount of **Rs,3,26,200/- (Rupees three lakhs twenty six thousand and two hundred)** along with accrued interest thereon as stated above, **Rs.1,76,200/-(Rupees one lakh seventy six thousand and two hundred)** along with its accrued interest on the entire awarded amount of **Rs.3,26,200/-** shall be paid in cash to him(petitioner) and the rest amount of **Rs,1,50,000/-** shall be invested in his name in a Nationalized Bank under fixed deposit for the period of five years, without allowing him for its premature liquidation without the order of this Tribunal.

While receiving the compensation amount, the petitioner is directed to pay the required court fees, if not , paid earlier and any of other compensation, if at all, has been received by him for the self-same motor vehicular accident from the O.Ps, then the same shall be deducted from the awarded amount.

Ist M.A.C.T,
Jagatsinghpur.

The judgment is transcribed to my dictation, corrected and pronounced by me in the open Court this the 9th day of Septeber,2019 given under my hand and seal of this Court.

Ist M.A.C.T,
Jagatsinghpur.

List of witness examined on behalf of the pettitioner.
P.W.1. Akdus Hussain Khan,
P.W.2. Sk.Matuillah,
P.W.3. Hadi Hussain Khan,

List of witness examined on behalf of the O.Ps
O.P.W.1. Pratik Srichandan,

List of Exts.marked on behalf of the petitioner.

Ext.1. C.C of FIR.
Ext.2. C.C of Final Form,
Ext.3. C.C of seizure list,
Ext.3/a. C.C of seizure list,
Ext.4. C.C of Zimanama,
Ext.4/a. C.C of zimanama,
Ext.5. C.C of Injury report.

List of Exts.marked on behalf of the O.Ps

Ext.A. Authorization letter,
Ext.B. True copy of policy paper of the vehicle,
Ext. C. C.C of FIR.
Ext.D. C.C of seizure list,
Ext.E. Letter of commissioner of police,BBSR.
Ext.F. Letter address to O.Ps.
Ext.G. Motor Insurance Claim form.

Ist M.A.C.T,
Jagatsinghpur.