

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE- CUM- 3RD
MOTOR ACCIDENT CLAIMS TRIBUNAL, JAGATSINGHPUR**

**PRESENT:- Ms. R. Mohapatra, LL.M.,
Additional District Judge -cum- 3rd M.A.C.T.,
Jagatsinghpur.
(JO Code No.OD-00864)**

M. A. C. Case No. 113 of 2016

Sk. Mahammad Hufiz @ Hapic Akhtar,
aged about 26 years,
S/o. Sk. Yasin @ Mausam Mahammad,
Vill. Keutasahi Muslim Basti, Jail Road
P.O./P.S., Athagarh
Dist., Cuttack

.... ... Petitioner

-Versus-

1. Biswajit Swain, S/o. Rabindra Kumar Swain,
At: Sikharpur Nadikulasahi,
P.S., Chauliaganj, Dist., Cuttack

2. Divisional Manager,
M/s. New India Assurance Co. Limited,
At : Kathajodi Road, Badambadi,
Dist., Cuttack

... Opposite Parties.

Counsel for the Petitioner : Adv. D.K. Mohapatra

Counsel for O.P. No.1 : Adv. N.C. Barik

Counsel for O.P. No.2 : Adv. S.K. Das

Date of Argument : 11.07.2023

**[Sk. Mahammad Hufiz @ Hapic Akhtar -vrs. M/s.
New India Assurance Co. Limited & another in MAC
113/2016]**

Date of Judgment : 24.07.2023.

J U D G M E N T

Application U/s. 166 of Motor Vehicle Act 1988 was filed by the injured petitioner Sk. Mahammad Hufiz @ Hapic Akhtar claiming compensation of amount Rs. 15,00,000/- on account of accidental injury sustained by him due to motor accident caused on dated 29.02.2016 at 10.30 PM near Khandelpadia on Cuttack-Kendrapara pitch road by the offending truck bearing registration No. OR-05-N-4655.

2. The case of the petitioner is that on the above date, time and place, while he was travelling by his motor cycle bearing Regd. No. OR-05-AK-8900 in the extreme left side of the road in normal speed with his wife as pillion rider to Jagatpur, on the way near Khandel-Padia the offending truck bearing Regd. No. OR-05-N-4655 came in a very rash and negligent manner and dashed his motor cycle, as a result he fell down on the road and the wheel of the offending truck ran over his right leg. As a result of the accident, he got fracture injury of his right leg and dislocation of bone and muscles of his right leg and fracture in his left leg ankle along with multiple bodily injuries. Immediately he was shifted to S.C.B. Medical, Cuttack. Due to non-availability of proper accommodation, he was shifted to Ratan Hospital,

Kathagola sahi, Cuttack. He has spent Rs.2.50 lakhs towards his treatment.

In respect to the accident, Jagatpur P.S case No. 45/2016 was registered, corresponding to G.R. case No. 160/2016 in the file of J.M.F.C., Salipur.

It is in the petition that the accident occurred due to high speed, rash and negligent driving of the driver of the offending vehicle without any fault of injured petitioner. At the time of accident, the offending vehicle was having valid insurance under O.P. No.2 (the insurer) vide policy No. 55040131150100001170 valid upto 24.05.2016 and the accused-driver was having valid driving license.

It is in the petition that the injured was 26 years working as a truck driver under Kartik Chandra Pradhan of vill. Radhagovindapur and was getting Rs.15,000/- towards his salary. After accident he became permanently disable.

3. Initially the case was filed against O.P. No.1 Nalini Prava Sahoo and the O.P. No.2, the owner of the offending vehicle and O.P. No.3, the insurer of the offending vehicle. Later on, the O.P. No.1 has been deleted from the cause title by way of amendment vide order dated 07.07.2018 since she is a stranger and not the owner of the vehicle. Accordingly consolidated claim application has been filed on dt. 24.01.2019 making the original O.P. No. 2 as O.P. No.1 and original O.P. No.3 as O.P. No.2.

In this case the present O.P. No.1 has appeared

through his advocate N.C. Barik and filed his W.S, stating that the alleged offending vehicle having valid road permit and validly insured under present O.P. No.2 and the driver was having valid driving license.

4. On the other hand, the O.P. No.2 filed his W.S.and specifically denied all the averments made by the petitioner in his claim application parawise and specifically contended that there is non-compliance of Section 158 (6) and 34 (c) of MV Act and violation of terms and conditions of insurance policy and challenged the jurisdiction of filing of the claim application since the petitioner belongs to Cuttack district and the accident occurred in Cuttack District too, but the claim application has been filed in the District of Jagatsinghpur. Reserving all rights to contest U/s. 170 of MV Act the O.P. prayed for dismissal of the claim application.

5. Basing on the above pleadings of the parties the following issues are settled.

ISSUES

(i)Whether the M.A.C. case is maintainable or not ?

(ii)Whether on dated 29.02.2016 at about 10.30 pm near Khandel Padia in Cuttack- Kendrapara pitch road, due to rash and negligent driving by the errant driver of the offending truck bearing Regd. No. OR 05 N 4655 the accident took place due to which the petitioner sustained grievous fracture injuries along with other multiple bodily injuries ?

(iii)Whether the petitioner is entitled to get the compensation amount, if so from whom and to what extent ?

(iv)To what other relief if any the petitioner is

entitled?

6. In order to prove the case, the petitioner has examined four witnesses on his behalf. The petitioner examined himself as P.W 1 and has filed certified copies of FIR, final form, 2 sets of seizure list, 2 sets of zimanama in GR case No. 160/2016 corresponding Jagatpur PS case No. 45/2016 in the file of learned J.M.F.C., Salipur, medical examination report are marked as Ext.1 to Ext.5 and OPD ticket, cross match report, money receipt of blood bank, disability certificate are marked as Ext.6 to Ext. 9 and also filed medicine receipts amounting Rs.2,76,672/- along with salary certificate and statement of witnesses recorded U/s. 161 Cr.P.C. for perusal and reference. Also examined his wife Nahid Bibi as P.W.2 as an eye witness and one Dillip Kumar Pradhan as P.W.3 under whose father he was working as a driver and the salary certificate issued by the father of P.W.3 is marked as Ext.10 with objection and examined the Account Manager of Ratna Hospital, Cuttack as P.W.4 and also filed medical bills and other hospital related documents along with discharge certificate marked as Ext.12 to Ext.19/1 with objection.

On the other hand, the O.P. 2 has not adduced any oral evidence but the salary certificate of the petitioner brought through RTI application and salary information of the injured petitioner marked as Ext.A.

FINDINGS

ISSUE NO.(i) and (ii) :-

Both the above issues are taken up together for discussion as they are inter-linked and can be better discussed collectively:

7. P.W.1 corroborated all the material contention of his claim application in respect to his accidental injury. He has filed some treatment expenses, treatment papers, discharge summary issued by Ratna hospital and disability certificate of self. The oral and documentary evidence adduced on behalf of the petitioner through P.W. 1 to P.W.4 corroborating the averments made by him in his claim application coupled with police paper filed and proof of same on his behalf vide Ext.1 to Ext.5 establishes that due to the accident the petitioner has sustained grievous injury. He became disable due to the said accident which was occurred on the above mentioned date, time & place due to negligent driving of the errant driver of the offending vehicle bearing Regd. No. OR-05-N-4655 without any contribution on his part.

After due completion of investigation, the charge sheet was submitted in Jagatpur P.S. case No. 45/2016 and the said charge sheet was not challenged neither by O.P. No.1 and O.P. No.2 or the charge sheeted driver in any forum. The submission of charge sheet by the I.O against the driver of the offending vehicle and non-protest of the same by the O.Ps clearly reveals the involvement of the vehicle in the alleged accident. So, in absence of protest by O.Ps by applying the principle of law enunciated in

ratio of following decision.

- 1 **Lakhu Singh & others –vrs- Udi Singh & others 2007 (4) PLR 507 “ Section 166 and 168 M.V. Act , 1988 – the statement of the witnesses coupled with the fact of registration of FIR and trial of the accused in a criminal Court are sufficient to arrive at a conclusion that the accident was taken place.**
- 2 **Bhagwanti Devi –vrs- Krishnan Kumar Sani & others 1986 SCJ 331 (P&H) “Section 166 and 168 M.V. Act , 1988- When either the driver of the so called offending vehicle or the owner thereof has not filed any complaint to higher authority about the false implication of the driver in the criminal case, for which it can not be accepted that, the driver thereof has been falsely implicated in the case.”**

It can safely be concluded that the petitioner sustained injury due to the aforesaid accident.

8. The police paper shows that the offending vehicle was having insurance under O.P. No.2 vide policy No. 55040131150100001170 valid till 24.05.2016. and also having valid permit. The errant driver was having valid driving license as reveals from Ext.3/1 and Ext.4.

9. The medical requisition (Ext.5) and the other treatment papers and bills of Ratna hospital vide Exts.13, 13/1, 14, 14/1, 15, 15/1, 16, 16/1, 17,17/1 to 17/11, Ext.18, 18/1, 19 and Ext.19/1 reveals regarding the above injuries sustained by the petitioner was due to the road accident. Therefore, in view of the foregoing discussions, it is held that the accident in question took place due to the rash and negligent driving of the errant driver of the offending vehicle on the above mentioned place, date and time due to which the claimant sustained above injuries and is entitled to get compensation for loss caused to him.

The discharge summary of Ratna hospital shows

that the petitioner has undergone treatment from 29.02.2016 to 26.03.2016 for a period of 28 days and thereafter in the second phase in the same hospital from 29.07.2016 to 13.08.2016 for a period of 15 days. The disability certificate (Ext.9) shows that due to the said accident he became disable of 50% of loco motor category.

Accordingly, the above issues are answered in favour of the petitioner.

ISSUE NO. (iii) & (iv) :

Both the above issues are taken up together for discussion as they are inter-linked and can be better discussed collectively:

10. From the above discussion, it is crystal clear that the petitioner sustained the above mentioned injuries in his body due to the alleged date of accident. The petitioner has filed 2 sheets of bill of Ratna hospital through P.W.4 and discharge certificate and other treatment papers vide Ext. 12 to 19/1 which are marked as exhibits with objection. Ext.13 and 13/1 reveals that he had spent Rs.99,843/- and Rs.40,537/- towards his treatment in two phases being admitted as an indoor patient in Ratna hospital. The medicine bills filed by the petitioner has not been duly proved as per law. So, under such circumstances taking into account the injury report as well as the unexhibited and exhibited treatment papers and medicine bills and two discharge summary of Ratna hospital vide Ext. 13 and 13/1, it is concluded that some

good amount was spent for his treatment. Hence, a reasonable amount can be awarded tentatively on the head of expenditures incurred for the injured during his treatment. Ext.13 and 13/1 shows that he had undergone a treatment for 41 days in total in two phases as an indoor patient in Ratna hospital. Definitely he must have taken rest for two months after his treatment. Since the petitioner had sustained injuries due to the accident, he is entitled to get compensation under the provisions of M.V. Act.

Now the moot question is what should be the quantum of compensation in the present case and from whom it shall be recovered.

In **Raj Kumar -Vrs- Ajaya Kumar and another reported in [(2011) 1 SCC 343]** the Apex Court provided relevant guidelines for assessment of compensation in injury cases. As per the guidelines of Hon'ble Apex Court, the heads under which compensation is awarded in personal injury cases are as follows:

Pecuniary damages(Special damages)

- (i) Expense relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured comprising :
 - (a) Loss of earning during the period of treatment
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In the above Judgment Hon'ble Supreme Court have observed that in routine personal injury cases, compensation will be awarded only under heads (i),(ii) (a) & (iv) i.e, under the head of expenses relating to treatment, hospitalization etc, loss of earning during the period of treatment and damages for pain and suffering and trauma as a consequences of injuries. It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses , loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life”.

11. On the basis of oral and documentary evidence, it can be ascertained that the injured has sustained injuries due to the accident. Considering the documents have been filed by the petitioner to ascertain the expenditures made for his treatment as well as injury report (Ext.5) and discharge summary of Ratna hospital and in absence duly not proofing of those treatment papers as per law, a notional amount of Rs.1,80,000/- (one lakh eighty thousand only) is awarded to the petitioner under head No.(i) : i.e, (Expense relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure).

It is evidenced that, the injured had suffered from tremendous pain, suffering from mental trauma during

treatment of his accidental injury. Hence, the petitioner is entitled to get compensation under head no.(iv) i.e, (Damages for pain, suffering and trauma as a consequence of the injuries) a sum of Rs.30,000/- (thirty thousand) is awarded to the petitioner.

12. Further the claim petition reveals that the injured was working as a driver under Kartik Chandra Pradhan and was getting Rs.15,000/- per month towards salary. In order to prove his nature of job and income, the petitioner has examined Dillip Kumar Pradhan, the son of Kartik Chandra Pradhan as P.W.3 since Kartik Chandra Pradhan could not be examined due to his death. He has filed salary certificate issued by his father in respect of the petitioner which is marked as Ext.10 with objection and he has proved the signature of his father as Ext.10/1 and also filed the driving license of the petitioner. Ext.10 reveals that the petitioner was working as a truck driver under Kartik Chandra Pradhan from 25.02.2015 to 25.02.2016 and was getting Rs.15,000/- per month. During cross-examination that P.W.3 admitted that to drive a Transport vehicle a driver must have valid license for driving that kind of vehicle. P.W.3 was unable to say whether the petitioner was having that kind of driving license to drive the transport vehicle or not. On perusal of the Xerox copy of driving license of the petitioner, it shows that he had the driving license for non-transport category of vehicle class in MCWG and LMV valid till

11.07.2035. No driving license of petitioner for driving heavy transport vehicle has been proved from the side of the petitioner. Even Ext.10 does not reveals that he was working as a truck driver under the father of P.W.3 after 25.02.2016. The alleged accident took place on 29.02.2016. It shows that on the date of accident he was not working as a driver under the father of P.W.3 and getting Rs.15,000/- per month. Since the income and profession of the injured petitioner has not been duly proved. So, under such circumstances as per the decision reported in **Laxmi Devi –vrs- Baldev Singh 2008 (4) TAC – (Delhi) – 318** it has been held that –

“ Section 166 of M.V. Act – when there is no material in the record to prove the exact income of the deceased at the time of his motor vehicular accidental death and when the deceased was capable to earn prior to his death, then the minimum wage of an unskilled labourer as per the Notification of Government at the time of his death is to be taken as his daily wage for assessment of compensation.”

The accident of the petitioner had occurred on 29.02.2016, for which as per Notification of Government of Orissa, Labour and ESI Department No. 323 dt. 24.07.2015, the daily wage of an unskilled labourer is taken as Rs.200/- per day. So, his monthly income comes out $\text{Rs.200/-} \times 30 = \text{Rs.6,000/-}$. The petitioner has undergone treatment for a period of 41 days in total in two phases from 29.02.2016 to 26.03.2016 and from 29.07.2016 to 13.08.2016 at Ratna hospital as reveals from Ext.13 and 13/1. Thereafter he must have taken bed

rest for a period of two months and during that period he must have lost his income. Hence, the petitioner is entitled to get compensation under the head no.ii (a) i.e, Loss of earning during the period of treatment and thereafter, under that head he has been granted Rs.6,000/- x 4 = Rs.24,000/- (treatment period and rest period).

The petitioner in his examination in chief being examined as P.W.1 has deposed that due to the said accident he became disable. He has filed his disability certificate marked as Ext.9 issued by CDMO, Cuttack which shows that he was having 50% loco motor disability. The issuing authority of disability certificate of the petitioner has not been examined to opine in regard to the disability of the petitioner. His functional disability is taken as 40% as a result of the accident. As per the claim application the petitioner was 26 years at the time of accident. As per the principles laid in **Sarala Verma and others-vrs- Delhi Transport and another (2009) 6 SCC 129**, the multiplier '17' is to be applied considering the age of the injured petitioner in the age group of 26-30 so as to ascertain the loss of future income of the petitioner. It comes to Rs.6,000/- x 12 x 17x 40% = Rs.4,89,600/-.

Therefore, total compensation amount comes to :

	PECUNIARY DAMAGES (Special damages)	Amount awarded
1.	a) Expense relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure	1,80,000/-
2.	a) Non pecuniary damages (General	30,000/-

	damages) Damages for pain, suffering and trauma as a consequence of the injuries.	
	b) Loss of earning	24,000/-
	c) Loss of future earning on account of disability of 40 % (Rs.6,000/- x 12 x 17x 40% = Rs. 4,89,600	4,89,600/-
	Total	Rs.7,23,600/-

I hold that a sum of **Rs.7,23,600/-** (Rupees seven lakhs twenty three thousand six hundred only) the awarded compensation is just and proper as per the facts and circumstances of the case.

Hence, O.P. No.2 is directed to pay the amount of compensation as awarded to the petitioner.

Hence it is ordered:

ORDER

The claim application filed by the petitioner U/s 166 of the M.V. Act. is allowed on contest against O.P. No. 1 and O.P.2.

The O.P. No.2 insurance company is directed to pay the entire compensation awarded amount of **Rs.7,23,600/-** (Rupees seven lakhs twenty three thousand six hundred only) as compensation to the petitioner along with the simple interest @ 6% per annum from the date of filing of the claim application i.e. 03.08.2016 till the realization of the amount within a period two month from the date of

award, failing which an additional interest of 1% is to be paid to the petitioner and the claimant is at liberty to recover the same in due process of law.

Out of the total awarded amount **Rs.7,23,600/-** (Rupees seven lakhs twenty three thousand six hundred only), Rs.3,00,000/- (Rupees three lakh only) shall be kept in fixed deposit for a period of five year in any Nationalized bank and the rest amount along with the accrued interest thereon be disbursed to the petitioner in cash. Hence the O.P. No.2 is directed to issue A/c payee cheque accordingly in his favour which will be disbursed through the Tribunal.

The Court fee amount if not paid by the petitioner shall be realized from the petitioner at the time of disbursement of the payment.

3rd M.A.C.T,Jagatsinghpur

Pronounced the judgment in the open Court on this the **24th day of July of 2023.**

3rd M.A.C.T,Jagatsinghpur

Judgment is typed to my dictation and corrected by me under my signature and seal of the Tribunal.

3rd M.A.C.T,Jagatsinghpur

List of witnesses examined on behalf of petitioner:

P.W.1 : Sk. Mahammad Hufiz @ Hapic Akhtar

P.W.2 Nahid Bibi

P.W.3 Dillip Kumar Pradhan

P.W.4 Gyana Ranjan Das

List of witnesses examined on behalf of the O.P No.2 :

None.

List of Exts. marked on behalf of petitioner :

Ext.1 : Certified copy of FIR in Jagatpur P.S.
case No. 45 dt. 01.03.2016

Ext.2 : Certified copy of charge sheet

Ext.3 : Certified copy of seizure list

Ext.3/1: Certified copy of seizure list

Ext.4 : Certified copy of zimanama

Ext.4/1 : Certified copy of zimanama

Ext.5 : Medical examination report.

Ext.6 O.P.D. ticket

Ext.6/1 O.P.D. ticket

Ext.7 series Cross match reports

Ext.8 series Money receipt of Central Red

Cross Blood Bank

Ext.9 Disability certificate

Ext.10 Salary certificate of petitioner (with objection)

Ext.10/1 Signature of father of P.W.3 on Ext.10

Ext. 12 Authorization letter

Ext.13 Medicine bills of Rs.99,843/-

Ext.13/1 Medicine bills of Rs.40,537/-

Ext.14 Admission sheet dt. 29.02.2016

Ext.14/1 Admission sheet dt.29.07.2016

Ext.15 High Risk Bond

Ext.15/1 High Risk Bond

Ext.16 Operation Theaters Note

Ext.16/1 Operation Theaters Note

Ext.17 to 17/11 Bed charts

Ext.18 Bill of Rs.66,000/-

Ext.18/1 Bill of Rs.23,970/-

Ext.19 Discharge certificate dt. 13.08.2016

Ext.19/1 Discharge certificate dt. 28.03.2021

(Exts.12 to 19/1 are marked with objection)

N.B :- Inadvertently no document has been marked as Ext.11 and later on the documents are marked as Ext.12 to 19/1 chronologically. So, Ext.11 is treated as skipped.

List of Exts. marked on behalf of O.P.No.1 :

Nil.

List of Exts. marked on behalf of O.P.No.2 :

Ext.A RTI application and salary information of the injured petitioner

3rd M.A.C.T,Jagatsinghpur.