

BEFORE THE PRESIDING OFFICER /MEMBER MACT:.....NALBARI.

MAC No.138/2013.

Parties:-

1. Sri Dhiraj Das.

- *Claimant.*

-VERSUS-

1. Sri Chiltaranjan Mazumdar.

2. The National Insurance Company Ltd.

- *Opp. Parties.*

Present: Mr. A.K. Sarmah. LLM, AJS.

Presiding Officer / Member

MACT, Nalbari.

Appearance:-

For the claimant:

Ld. Advocate Mr. G. Barpujari.

For the Op. No.1:

None has appeared.

For the Op. No.2:

Ld. Advocate Mr. D.K. Barman.

Date of evidence:

22-11-2013 and 26-08-2014.

Date of Argument:

03-11-2014.

Date of Judgment:

14-11-2014.

(J U D G M E N T)

1. The claimant Sri Dhiraj Das son of Lt. Radhika Das, resident of village:- Kochpara (Mirza) under Mirza police station (in short PS) in the district of Kamrup filed this application U/S 166 of the Motor Vehicles Act 1988 (in short M.V. Act) praying compensation to the tune of Rs.10,00,000/- for the injuries sustained by him due to vehicular accident which was occurred on 08-09-2012 at about 11:20 a.m., at Barama, Pub-Chowk on the National Highway No.31 (in short NH 31).

2. The brief facts leading to the filing of this application can be stated as under:-

On 08-09-2012 while the claimant was standing on the left side of the road at Barama Pub-Chowk at that time, the offending motor cycle having registration No.AS-01/AM-1044 riding by its rider in a very rash and negligent manner knocked him down on the road. As a result of the accident, the claimant sustained head injury as well as injuries on different parts of his body. He was immediately shifted to G.N.R.C. Hospital, Guwahati where he was undergoing treatment from

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08-09-2012 to 19-09-2012 for ten days. It is the case of the claimant that for that accident, police was informed and a case was registered Vide Barama P.S. G.D. Entry No.220 dtd., on 09-09-2012. It is also the case of the claimant that the offending vehicle was duly insured with the opposite party No.2 i.e. the National Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.10,00,000/- as compensation for the injuries sustained by him due to vehicular accident.

3. On receipt of the claim petition, notices were issued to the opposite party No.1 i.e. the owner cum rider of the offending motor cycle as well as the opposite party No.2 i.e. the National insurance company Ltd., the insurer of the offending motor cycle.

4. In spite of received of notices the opposite party No.1 i.e. the owner cum rider of the offending vehicle did not appear before this Tribunal, therefore the case proceeded ex- parte against him.

5. However, the opposite party No.2 i.e. the National Insurance Company Ltd., appeared before this Tribunal and submitted its written statement (in short WS). In its WS the opposite party No.2 denied the factum of accident and asked the claimant to prove his case by adducing oral and documentary evidence.

6. The claimant in support of his claim examined himself as CW1. He was duly cross-examined by the Ld. Counsel of the opposite party No.2. He also exhibited and proved certain documents including Exhibit 1 accident information report, Exhibit 2 discharge certificate issued by GNRC hospital and several cash memos and vouchers.

7. Upon hearing both sides and gone through the claim application filed by the claimant as well as WS filed by the insurance company, this Tribunal framed the following issues for just and proper adjudication of the case. The issues are:-


(i) Whether the claimant is entitled to get any compensation as prayed for and if so, to what extent and from whom?

(ii) To what other relief or reliefs the claimant is entitled to?

8. Decision and reasons for decision:-

I have heard argument from both sides. I also perused the evidence on record carefully.

10. The Ld. Counsel of the claimant vehemently submitted that as the accident took place on NH-31 as a result of rash and negligent riding of the rider of the offending motor cycle and as the claimant was standing on the extreme left side of the road therefore, the claimant is entitled to get compensation as claimed by him. He also contended that as the claimant is a young boy of 22


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years and he was earning Rs.10,000/- per month by doing business so, adequate compensation shall be awarded to him.

11. Per contra the Ld. Counsel of the opposite party No.2 did not denied the factum of accident as well as insurance coverage of the offending vehicle at the time of accident. However, he contended that the claimant is not entitled to get that compensation which he claimed in his claim petition.

12. Now, let me first of all, discuss the evidence on record to decide the issue No.1.

(Issue No.1)

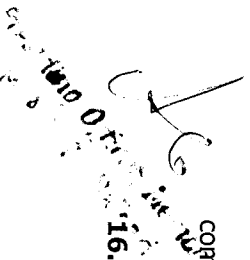
13. The claimant in his claim petition as well as in his evidence as CW 1 clearly and categorically stated that on 08-09-2012 while he was standing on the extreme left side of the road at Barama Pub- Chowk at about 11:20 a.m., at that time the offending motor cycle having registration No.AS-01/AM-1044 riding by its rider i.e. the opposite party No.1 in a very rash and negligent manner hit him. As a result of accident, he fell down on the ground and got grievous injuries on his head and he also suffered injuries on different parts of his body. He was immediately shifted to G.N.R.C. Hospital, Guwahati where he was undergoing treatment from 08-09-2012 to 19-09-2012 i.e. ten days. In his cross- examination he re-iterated the said fact. He denied the suggestion made by the opposite party No.2 that he suddenly cross the road by running as a result, the accident took place.

14. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 and Exhibit 2 make the position clear that on the relevant date, time and place there had been an accident due to rash and negligent driving by the rider of the offending vehicle and as a result of the said accident the claimant got fracture injuries on his person and there is no reason to disbelieve the said fact.

15. We know that if a person got injury due to vehicular accident on public road he is entitled to get compensation under the Motor Vehicles Act. In the present case, as noted here in before, the claimant got fracture injuries on his person due to vehicular accident on the NH-31 and as a result of that accident he was undergoing treatment at GNRC, Guwahati, so, he is entitled to get compensation for the injuries sustained by him due to vehicular accident.

16. Now the question is what amount of compensation the claimant is entitled to?

The claimant in his claim petition as well as in his evidence as CW 1 claimed Rs.10,00,000/- as compensation. According to him, he was a businessman by profession and was earning Rs.10,000/- per month but the claimant has failed to prove any document in support of his

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income. He also failed to examine any witness to prove his version. What ever it may be, we know that a person of 22 years of age can easily earn Rs.3000/- per month by doing any kind of business at the relevant time. As per exhibit 2 the claimant was admitted in the GNRC hospital Guwahati on 08-09-2012 and he was discharged from the hospital on 20-09-2014 therefore, he was undergoing treatment in the said hospital for ten days. So, he lost his business for ten days accordingly, he is entitled to get Rs.1,000/- towards his loss of earning during the period of his treatment. From exhibit 2 it appears that claimant got fracture injury on his right parietal bone with underlying subacute epidural hematoma of 22 mm thickness causing mass effect, right fronto-temporal contusion. Small subdural hematoma in right parietal convexity. Therefore, it is clear from the Exhibit-2 that the claimant got fracture injury on his person due to the said accident.

17. We know that fracture is a grievous injury as defined U/S 320 of the Indian Penal Code. Therefore as the claimant got grievous injury so, he is entitled to get Rs.5000/- for his grievous injury. Due to pain and suffering for his grievous injuries, the claimant is also entitled to get Rs.5000/- . From the exhibited and proved documents it appear that he expended Rs.1,44,113/- towards his medical treatment so, this Tribunal awarded the amount of Rs.1,44,113/- for his medical treatment. There is no evidence at all to show that the claimant needs future treatment for the injuries sustained by him in the accident. So, the claimant is not entitled to get any compensation for his future treatment. Thus, the total amount of compensation the claimant is entitled to on different heads as under:-

1. For grievous injuries:-	Rs.5000/-
2. For pain and suffering:-	Rs.5000/-
3. For the loss of income during his medical treatment:-	Rs.1000/-
4. For medical expenses:-	Rs.1,44,113/-

Total compensation:- Rs.1,55,113/-

Thus, the total amount of compensation comes to Rs.1,55,113/- (Rupees one lakh fifty five thousand one hundred thirteen only).

18. Now another point to be decided by whom the above amount of compensation is liable to be paid to the claimant?

The opposite party No.1 i.e. the owner cum rider of the offending motor cycle did not appear before this Tribunal despite of receiving notices from this Tribunal. The insurance company i.e. the opposite party No.2 appeared before this Tribunal and filed its WS but failed to examine

any witness to prove their WS, rather, the Ld. Counsel of the opposite party No.2 has admitted that the offending vehicle was duly insured with the opposite party No.2 and it had valid insurance coverage at the time of accident. So, the opposite party No.2 is liable to indemnify the owner cum rider of the offending vehicle. Therefore, to the opinion of this Tribunal the opposite party No.2 is liable to pay the said amount of compensation to the claimant.

Hence, this issue is decided in the affirmative.

(Issue No.2)

19. As discuss in issue No.1 the claimant is entitled to get compensation as per order.

This issue is decided accordingly.

(O R D E R)

20. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.1,55,113/- (Rupees one lakh fifty five thousand one hundred thirteen only)/- which is rounded to Rs.1,55,110/- (Rupees one lakh fifty five thousand one hundred ten only) as calculated on different heads is awarded to the claimant. The opposite party No.2 i.e. the National Insurance Company Ltd., is directed to pay the said amount of compensation to the clamant within 60 days from today failing which an interest @ 6% per annum be calculated from the date of filing of the claim application on the awarded amount until realization.

21. Let a copy of the judgment be furnished to the opposite party No.2 i.e. the National Insurance Company Ltd., within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act.

22. This MAC Case is disposed of accordingly, on contest.

23. Judgment prepared, signed and pronounced, today the 14th Day of November 2014 in the open court.

Presiding Officer/Member

MACT, Nalbari.