

On 21-12-2011 at about 4:30 p.m., while the claimant was coming from Nalbari towards Kendukchi by his bicycle, a Maruti Alto vehicle having registration No.AS-01/AW-3914 coming from opposite direction in a zig zag manner dashed against the claimant. As a result of the accident the claimant got grievous injuries on his person. It is the case of the claimant that for that accident police was informed and a case was registered vide Nalbari P.S. Case No.759/11 U/Ss 279/338/427 IPC. It is also the case of the claimant that at the time of accident the offending vehicle was duly insured with the opposite party No.1 the National Insurance Company Ltd., and it had valid insurance coverage at the time of the accident. The claimant for the above premises claimed Rs.11,86,000/- as compensation for the injuries sustained by him due to vehicular accident.

3. On receipt of the claim petition, notices were issued to the owner, driver as well as the insurance company, the insurer of the offending vehicle.
4. On receipt of the notices, the opposite party No.1 i.e. the National Insurance Company Ltd., the opposite party No.2 Md. Abu Alfarid Amin the owner of the offending vehicle and the opposite party No.3 Sri Rahul Boro the driver of the offending vehicle appeared before this Tribunal and submitted their respective written statement (in short WS).
5. The opposite party No.1 in its WS denied all the allegations made by the claimant and asked the claimant to prove his case by adducing cogent and reliable evidence. Further the opposite party No.1 in its WS stated that claim made by the claimant is so excessive and he is not entitled to get such relief.
6. The opposite party No.2 and No.3 i.e. the owner and driver of the offending vehicle in their respective WS categorically stated that the offending vehicle was duly insured with the opposite party No.1 and it had valid insurance coverage at the time of accident. The opposite party No.3 further in his WS stated that the accident took place while the claimant tried to cross the road and fell down on the road and sustained injuries. According to him no accident took place as claimed by the claimant. Therefore, the opposite party No.2 and 3 prayed this Tribunal to dismiss the claim of the claimant.

Yes

7. In order to prove his case the claimant examined himself as CW1. He also examined Moharath Deka as CW 2, one Pawan Kumar Jain as CW 3 and Dr. Trailokya Haloi as CW4.

All the CWs were duly cross- examined by the Ld. Counsel of the opposite party No.1 i.e. the National Insurance Company Ltd.,

8. I have perused the claim petition, WS filed by the opposite party No.1, 2 and 3 very carefully. After gone through the claim petition as well as WS filed by the opposite parties, 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?

9. **Decision and reasons for decision :-**

10. I have heard arguments from both sides.

11. Let me first of all discuss the evidence on record to decide the issue No.1.

(Issue No.1)

The claimant in his claim petition as well as in his evidence categorically stated that on 21-12-2011 at about 4:30 p.m., while he was coming from Nalbari towards Kendukchi by his bicycle, a Maruti Alto vehicle having registration No.AS-01/AW-3914 coming from opposite direction dashed against him. As a result, he fell down on the ground and got injuries. The said accident took place at Sandha on NH-31 under Nalbari P.S. The claimant in his evidence categorically admitted the said fact. According to him after the accident, he was immediately shifted to Nalbari civil hospital and thereafter due to his critical condition he was referred to Guwahati Medical College and Hospital (in short GMCH) where he got admitted as indoor patient. An operation was also done on 22-12-2011. According to claimant due to his injuries he got permanent disability and was undergoing treatment as indoor patient for several days and thereafter he got treatment as outdoor patient in GMCH. In cross-examination he stated the offending vehicle hit him from the front side. According to him he got serious injuries on his right hand. He denied that he got injuries due to fall down on the road. His witness CW 2 Moharath Deka has supported his version. According to him, when the claimant was going to his home from Nalbari side on his bicycle and when he reached at Sandha near post office a Maruti Alto vehicle having registration No.AS-01/AW-3914 dashed against the claimant. Immediately he was shifted to Nalbari

civil hospital and after getting first aid treatment therein the claimant was referred to G.M.C.H., where he was undergoing treatment for several days as indoor patient. In cross-examination he stated that he was less than 1/2 farlong distance away from the claimant at the time of accident. According to him his village is adjacent to the village of the claimant.

CW 3 stated that the injured was their employee. He got injuries on 21-12-2011 due to motor vehicular accident.

CW 4 Dr. Trailokya Haloi stated that on 21-12-2011 he examined the claimant who was suffering from an old road traffic accident. According to him the claimant was suffering from fracture of right anterior of dislocation of his right shoulder joint and type I compound fracture of head injury. According to him the claimant was under his treatment from 07-06-2012. He further stated that the claimant got partial disability to the extent of 45%.

12. The claimant in support of his claim exhibited and proved Exhibit 1 accident informant report, Exhibit 2 medical certificate and Exhibit 3 disability certificate issued by GMCH and other several exhibited vouchers and documents.

13. From the oral evidence of CW 1 to CW 4 as well as documentary evidence i.e. Exhibit 1, Exhibit 2 and Exhibit 3 make the position clear that on the relevant date, time and place there had been an accident and as a result of the said accident the claimant got grievous injuries on his person and he was undergoing treatment as indoor patient at GMCH and there is no reason to disbelieve the said fact.

14. We know that in a road traffic accident which occurred on a public road the injured or relative of the deceased of the death person is entitled to get compensation. In the case in hand as the claimant got grievous injury on his person due to road traffic accident so, he is entitled to get compensation U/S MV Act.

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

The claimant in his claim petition claimed Rs.11,86,000/- for the injuries sustained by him due to vehicular accident. In his evidence as CW1 and from the exhibited and proved vouchers available in the case record, it appears that the claimant expended Rs.53,386/-. Though the claimant examined CW 4 to prove his disability certificate but as per the Government Circular a doctor of a civil hospital cannot issue disability certificate without any approval of a Board of doctors. In fact disability certificate shall be issued by

the Social Welfare Department after getting approval from a Board of doctors for a particular person. But in this case that was not happened. Though CW 4 stated that the claimant suffering 45% disability but in his evidence he stated that the earning capacity of the injured may be extend more than 45%. The claimant was treated in the GMCH but GMCH did not issue any disability certificate in favour of the claimant where he was getting treatment from 22-12-2011 to 04-01-2012 i.e. 12 days as indoor patient. From exhibit 3 it appears that claimant got fracture injury. Though Exhibit 3 mentioned that the claimant got head injury but the claimant himself admitted that he got injury on his right hand he nowhere stated that he got head injury.

16. Fracture is a grievous injury as defined under section 320 of the IPC. Therefore, a person getting grievous injury is entitled to get Rs.5000 for fracture injury. From exhibit 6 (14) it appears that the claimant getting treatment as outdoor patient in GMCH up to 11-04-2012. From Exhibit 3 to Exhibit 6 (14), it appears that the claimant got treatment at GMCH and Nalbari civil hospital from 22-12-2011 to 11-04-2012 that means almost three and half months. Due to his treatment the claimant is not able to work in his Ahenshia Chemical Ltd. According CW 3 the claimant is getting Rs.6290/- per month as salary. Therefore, he is entitled to get $\text{Rs.6290} \times 3 = 18870 + 3145 = 22015/-$ towards his loss of earning during the period of his treatment. There is no evidence at all to show that the claimant needs money for future treatment for the injuries sustained by him in the accident. Therefore, the claimant is not entitled to get any compensation for his future treatment. As noted herein before the claimant got grievous injuries so he is also entitled to get Rs.5000/-. The claimant is also entitled to get Rs.20,000/- for pain and suffering. The claimant is also entitled to get compensation towards convenience and diet during the period of his treatment. Therefore, a lum sum amount of Rs.10,000/- is also awarded for his convenience and diet. Thus the total amount of compensation the claimant is entitled to on different heads as under:-



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|--|-------------|
| 1. For grievous injuries:- | Rs.5,000/- |
| 2. For pain and suffering:- | Rs.20,000/- |
| 3. For loss of earning during the period of disablement:- | Rs.22015/- |
| 4. For convenience and diet:- | Rs.10,000/- |

5. For medical expenses:-

Rs.53,386/-

Total compensation of Rs.=1,10,401/-

Thus, the total amount of compensation comes to Rs.1,10,401/- (Rupees one lakh ten thousands four hundred one only).

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

After receiving the notices from this Tribunal the opposite party No.2 and 3 i.e. the owner and the driver of the offending vehicle respectively appeared before it and submitted their WS. In their WS they categorically stated that the offending vehicle was duly insured with the opposite party No.1 and it had valid insurance coverage at the time of accident. The insurance company i.e. the opposite party No.1 also appeared before this Tribunal and filed its WS but they did not deny the said fact rather the Ld. Counsel of the opposite party No.1 admitted that the offending vehicle was duly insured with the opposite party No.1 and it had valid insurance coverage at the time of accident. So the opposite party No.1 is liable to indemnify the owner and driver of the offending vehicle. Therefore, to the opinion of this Tribunal the opposite party No.1 is liable to pay the said amount of compensation to the claimant.

Hence, this issue is decided accordingly.

(Issue No.2)

18. 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)

19. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.1,10,401/- (Rupees one lakh ten thousands four hundred one only) which is rounded to Rs.1,10,400/- (Rupees one lakh ten thousands four hundred only) as calculated on different heads is awarded to the claimant. The opposite party No.1 i.e. the National Insurance Company Ltd., is directed to pay the said amount of compensation to the claimant within 60 days from today failing which an interest @ 6% be calculated from today on the awarded amount until realization.

- 20.** Let a copy of the judgment be furnished to the opposite party No.1 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.
- 21.** This MAC Case is disposed of accordingly on contest.
- 22.** Judgment prepared, signed and pronounced, today the 15th Day of October 2014 in the open court.



Presiding Officer/ Member,

MACT, Nalbari.