

BEFORE THE PRESIDING OFFICER /MEMBER MACT :.....NALBARI.**MAC No.161/2009.*****Parties:-***

1. Sri Khiroda Bezbaruah.

*-Claimant.****- VERSUS -***

1. Sri Bhubaneswar Sarma.

2. Sri Kamaleswar Majumdar.

3. The National Insurance Company Ltd.

*- Opp. Parties.***Present: Mr. A.K. Sarma. LLM, AJS.****Presiding Officer / Member****MACT, Nalbari.*****Appearance:-***

For the claimant:

Ld. Advocate Mrs. B. Baishya.

For the Op. No.1 and 2.

Name of the Advocates not eligible.

For the Op. No.3:

None has appeared.

Date of evidence:

29-11-2013.

Date of Argument:

16-11-2014.

Date of Judgment:

11-12-2014.

(J U D G M E N T)

1. Smti. Khiroda Bezbaruah W/O: Sri Dhareswar Bezbaruah, resident of village: Pub-Kalakuchi under Mukalmua Police Station (in short P.S.) in District of Nalbari filed this application U/S 166 of the Motor Vehicles Act 1988 (in short M.V. Act) claiming compensation to the tune of Rs.1,00,000/- due to injuries sustained by her on account of vehicular accident that occurred on 26-06-2009 at about 2:30 p.m., at Amayapur Bomafuta chowk.

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

On 26-06-2009 the claimant Smti., Khiroda Bezbaruah was proceeding from Nalbari town towards Pub- Kalakuchi as a passenger in the offending vehicle having registration No.AS-14/C-0209 Auto Rickshaw (Tempo) and when the offending vehicle reached Bamundi Chowk near Hajo, the opposite party No.2 the driver of the offending vehicle drove the

vehicle in rash and negligent manner and loss control over it as a result the vehicle fell down on the ground. As a result, the claimant and other passengers sustained grievous injuries on their person. For that accident, police was informed and a case was registered Vide Nalbari P.S. Case No.378/09 dated 26-06-2009.

3. On receipt of the claim petition, notices were issued to the opposite party No.1 i.e. the owner of the offending vehicle, the opposite party No.2 i.e. the driver of the offending vehicle and the opposite party No.3 i.e. the National Insurance Company Ltd., the insurer of the offending vehicle.

4. On receipt of notices the opposite party No.1 and 2 i.e. the owner and driver respectively of the offending vehicle appeared before this Tribunal and submitted their respective written statement (in short WS).

5. However, the opposite party No.3 i.e. the National Insurance Company Ltd., inspite of getting of notices did not appear before this Tribunal, therefore, the case proceeded ex-parte against them.

6. The opposite party No.1 and 2 in their respective WS admitted the factum of accident. Both the opposite party No.1 and 2 further stated in their respective WS that their vehicle was duly insured with the opposite party No.3 and it had valid insurance coverage at the time of accident.

7. After filing their respective WSS the opposite party No.1 and 2 the owner and driver respectively of the offending vehicle did not appear before this Tribunal and also failed to adduce any evidence.

8. After gone through the claim petition submitted by the claimant and the WS submitted by the opposite party No.1 and 2, 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 argument from both sides. I also perused the evidence on record very carefully.

11. After hearing both sides, gone through the evidence on record this Tribunal is going to decide the case issue wise as follows:-

(Issue No.1)

12. The claimant in her claim petition though stated that on 26-06-2009 while she was travelling towards Pub Kalakuchi from Nalbari town as a passenger in the offending vehicle having registration No.AS-14/C-0209 Auto Rickshaw (Tempo) the said vehicle due to rash and negligent driving of its driver met with an accident at Amayapur Bomafuta chowk at about 2:30 p.m., under Nalbari P.S. but in her evidence the claimant stated that the accident took place at Bamundi Chowk near Hajo. In the first Para (beginning) of her claim petition the claimant stated that her daughter was injured for which she filed this claim case claiming compensation but immediately she stated that she got injuries for which she filed this claim case. In affidavit supporting her claim petition the claimant stated that she filed the claim case due to injuries sustained by her daughter as a result of the accident at Amayapur Bomafuta chowk.

Now the question is whether the claimant herself was injured or her daughter was injured in the accident ?

The claimant in her claim petition in one hand stated that she got the injuries and in the other hand she stated that her daughter got the injuries in the said accident. So, it is not clear whether the claimant or her daughter got the injuries in the said accident. Most interestingly the place of occurrence mentioned by the claimant is in two different places. Firstly she stated that the offending vehicle met with an accident at Amayapur Bomafuta Chowk under Nalbari P.S. and immediately thereafter, she stated that the offending vehicle met with an accident at Bamundi Chowk near Hajo. Therefore, this Tribunal is not in a position to know the actual place of occurrence. In her evidence as noted here in before, the claimant stated that the place of occurrence was at Bamundi Chowk near Hajo. Therefore, this Tribunal cannot accept the claim of the claimant that she got the injuries due to accident or her daughter got the injuries in the said accident.

Under that circumstances, this Tribunal has no option but to reject the claim of the claimant. Therefore, this Tribunal is of the opinion that the claimant is not entitled to get any compensation.


Therefore, this issue is decided accordingly.

(Issue No.2)

- 13.** As discuss in issue No.1 the claimant is not entitled to get any compensation.
This issue is decided accordingly.

(O R D E R)

- 14.** In the result the claim petition is dismissed. The claimant is not entitled to get any compensation from the opposite parties.
- 16.** This MAC Case is disposed of accordingly, on contest.
- 17.** Judgment prepared, signed and pronounced, today the 11th Day of December 2014 in the open court.


Presiding Officer/ Member,

MACT, Nalbari.