

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

MAC No.224/2003.

Parties:-

1. Md. Sahadat Ali.

- Claimant.

-VERSUS-

1. Smti. Probhati Mazumdar.

2. Sri Mahes Das.

3. The United India Insurance Company Ltd.

- Opp. Parties.

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

Presiding Officer/ Member

MACT, Nalbari.

Appearance:-

For the claimant:

Ld. Advocate Mr. K. Ali.

For the Op. No.1

Ld. Advocate Mr. L. Talukdar.

For the Op. No. 2:

None has appeared.

For the Op. No.3:

Ld. Advocate Smti. P. Haloi, Talukdar.

Date of evidence:

17-09-14.

Date of Argument:

13-11-14.

Date of Judgment:

29-11-14.

J U D G M E N T

1. The claimant Md. Sahadat Ali son of Md. Sattar Ali, resident of village:-Pachim Bhangnamari under Mukalmua police station (in short PS) in the district of Nalbari filed this application U/S 166 of the Motor Vehicles Act 1988 (in short M.V. Act) praying compensation to the tune of Rs.15 lakhs for the injuries sustained by him due to vehicular accident which was occurred on 04-02-2003 at about 10:30 a.m., near Bortola Chowk under Mukalmua P.S.

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

On 04-02-2003 the claimant Md. Sahadat Ali was going on foot by his own side towards Mukalmua from Kaplabari on account of his business purpose but suddenly the offending bus (Manisha) having registration No.AS-25/5633 knocked him down. The bus was running in a very rash and negligent manner without blowing horn. As a result of the accident, the claimant sustained serious injuries and he was immediately shifted to Bortola PHC in an unconscious state. Thereafter, he

was shifted to Guwahati Medical College and Hospital (in short GMCH). For that accident police was informed and a case was registered Vide Mukalmua P.S. Case No.09/2003 U/Ss 279/338 IPC. It is also the case of the claimant that the offending bus having registration No.AS-25/5633 was duly insured with the opposite party No.3 i.e. the United India Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.15 lakhs 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 the owner of the offending vehicle, the opposite party No.2 the driver of the offending vehicle as well as the opposite party No.3 the insurance company i.e. the insurer of the offending vehicle.

4. On receipt of notices from this Tribunal, the opposite party No.1 i.e. the owner of the offending bus appeared before this Tribunal and submitted her written statement (in short WS). The opposite party No.3 i.e. the United India Insurance Company Ltd., also appeared before this Tribunal and submitted its written statement.

5. However, inspite of received of notices from this Tribunal, the opposite party No.2 i.e. the driver of the offending vehicle did not appear before this Tribunal therefore, the case proceeded ex-parte against him.

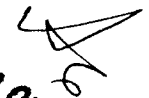
6. The opposite party No.1 Smti. Probhati Mazumdar in her WS clearly admitted the factum of accident but stated that the accident took place not due to fault of the driver but due to fault of the claimant himself. She further stated that her vehicle was duly insured with the opposite party No.3 i.e. the United India Insurance Company Ltd., and it had valid insurance coverage at the time of accident. Therefore, she prayed this Tribunal to exonerate her to pay any compensation to the claimant.

7. The opposite party No.3 i.e. the United India Insurance Company Ltd., too in its WS though not denied the factum of accident but stated that the accident took place due to negligent of the claimant. The opposite party No.3 further stated that the claimant must prove his case by adducing cogent and reliable evidence.

The claimant in support of his claim examined himself as CW 1. The opposite parties have failed to cross-examine him. Therefore, the evidence rendered by CW1 remain unchallenged before this Tribunal.

9. What ever it may be, after hearing both sides and gone through the claim application filed by the claimant as well as WS filed by the opposite party No.1 and 3, 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?


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

10. Decision and reasons for decision:-

11. I have heard argument from both sides. I also perused the evidence on record carefully. Now let me, first of all, discuss the evidence on record to decide the issue No.1.

(Issue No.1)

12. The claimant in his claim petition as well as in his evidence as CW 1 clearly and categorically stated that on 04-02-2003 at about 10:30 a.m., when he was going from Kaplabari side towards Mukalmua side on foot, at that time, the offending vehicle having registration No.AS-25/5633 knocked him down on the road. As a result of the accident, he got grievous injury on his person and he was shifted to Bortola PHC and thereafter he was referred to GMCH for treatment. In his evidence the claimant re-iterated the said fact. The claimant also exhibited and proved several documents including Exhibit-1 medical report, Exhibit-4 medical certificate issued by GMCH and Exhibit-10 accident information report.

13. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1, 4 and 10 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 driver of the offending bus and as a result of the said accident the claimant got grievous injury on his person and there is no reason to disbelieve the said fact.

14. We know that a person getting injury due to vehicular accident on public road as a result of rash and negligent driving of the driver of the offending vehicle is entitled to get compensation under the Motor Vehicles Act. In the present case, as noted here in before, the claimant got grievous injury on his person as a result of rash and negligent driving of the offending bus by its driver and he was undergoing treatment at GMCH therefore, he is entitled to get compensation under M.V. Act.

15. 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 claimed Rs.15 lakhs as compensation due to injuries sustained by him. Medical vouchers produced by the claimant showed that the claimant expended Rs.9813/- towards his medical treatment on account of the accident. Therefore, this Tribunal awarded the said amount as compensation towards his medical treatment. As per Exhibit-3 (i) the claimant got fracture injuries on his person. We know that fracture is a grievous injury as defined U/S 320 of the Indian Penal Code. A person getting fracture injury is entitled to get Rs.5000/- for his fracture injury. As the claimant got fracture injury so he is entitled to get Rs.5000/-, according the same is awarded to the claimant. Towards pain and suffering the claimant is also entitled to get Rs.3000/-. There is no evidence at all to show that the claimant needs future treatment for the injuries sustained by him in the accident. Therefore, the claimant is not entitled to get any

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compensation for his future treatment. There is no oral or documentary evidence to show that the claimant was undergoing several days for his treatment. So, there is no question of loss of income during his treatment. Therefore, the claimant is not entitled to get any compensation towards his loss of income. 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.3000/-. |
| 4. For medical expenses :- | Rs.9813/-. |

Total Compensation	Rs.17,813/-.
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Thus, the total amount of compensation comes to Rs.17,813/- (Rupees seventeen thousand eight hundred thirteen only).

16. 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 in her WS clearly stated that the offending vehicle was duly insured with the opposite party No.3 and it had valid insurance coverage at the time of accident. The opposite party No.3 i.e. the United India Insurance Company Ltd., did not deny the said fact. Therefore, to the opinion of this Tribunal the opposite party No.3 is liable to pay the said amount of compensation to the claimant.

So, this issue is decided accordingly.

(Issue No.2)

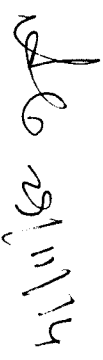
17. As discuss in issue No.1 the claimant is entitled to get compensation as per order.

This issue is decided accordingly.

(O R D E R)

18. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs. 17,813/- (Rupees seventeen thousand eight hundred thirteen only) which is rounded to Rs.17,810/- (Rupees seventeen thousand eight hundred ten only) as calculated on different heads is awarded to the claimant. The opposite party No.3 i.e. the United India 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% per annum be calculated from today on the awarded amount until realization.

- 19.** Let a copy of the judgment be furnished to the opposite party No.3 i.e. the United India Insurance Company Ltd., within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act.
- 20.** This MAC Case is disposed of accordingly, on contest.
- 21.** Judgment prepared, signed and pronounced, today the 29th Day of November '2014 in the open court.



Presiding Officer/ Member
MACT, Nalbari.