

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

MAC No.233/2009.

Parties:-

1. Sri Jitu Kalita.

- *Claimant.*

-VERSUS-

1. Sri Bhaben Chandra Deka.

2. The National Insurance Company Ltd.

- *Opp. Parties.*

Present: Mr. A.K. Sarmah. LL.M, AJS.

Presiding Officer/ Member

MACT, Nalbari.

Appearance:-

For the claimant:

Ld. Advocate Mr. M. Haque.

For the Op. No.1and 2:

None has appeared.

For the Op. No.3:

None has appeared.

Date of evidence:

03-12-2014.

Date of Argument:

03-12-2014.

Date of Judgment:

15-12-2014.

(J U D G M E N T)

1. The claimant Sri Jitu Kalita son of Sri Prafulla Kalita, resident of village:-Sutarkuchi 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.1,61,000/- for the injuries sustained by him due to vehicular accident which was occurred on 19-02-2008 at Ghoga of Hajo-Mukalmua PWD road under Mukalmua P.S. at about 9:30 a.m.

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

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On 19-02-2008 the claimant Sri Jitu Kalita was proceeding towards Mukalmua from his house by the offending vehicle having registration No.AS-14/A-9584 but the said bus met with an accident at Ghoga of Hajo- Mukalmua PWD road under Mukalmua police station. As a result of rash and negligent driving by the driver Sri Bhaben Chandra Deka i.e. the opposite party No.1. As a result of the accident, the claimant sustained serious injuries on different parts of his body and he was immediately shifted to Mukalmua hospital. For that accident, police was informed and a case was registered Vide Mukalmua P.S. G.D. entry No.480 dtd., on 19-02-2008. It is also the case of the claimant that the offending vehicle was duly insured with the National Insurance Company Ltd., and it had valid insurance coverage at the time

of accident. The claimant for the above premises claimed Rs.1,61,000/- 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 driver of the offending vehicle having registration No.AS-14/A-9584 as well as the insurance company i.e. the opposite party No.2 the insurer of the offending vehicle.
4. Inspite of received of notices from this Tribunal neither the owner cum driver nor the insurance company i.e. the insurer of the offending vehicle appeared before this Tribunal, therefore the case proceeded ex- parte against them.
5. After gone through the claim petition submitted by the claimant, 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?

6. Decision and reasons for decision:-

7. I have heard argument from the claimant. I also perused the evidence on record carefully.

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

(Issue No.1)

9. The claimant in his claim petition as well as in his evidence as CW 1 clearly and categorically stated that on 19-02-2008 he was coming from Adabari Chowk in a tempo vehicle having registration No.AS-14/A-9584 towards Mukalmua. The said tempo vehicle due to rash and negligent driving by the driver met with an accident at Ghoga of Hajo- Mukalmua PWD road at about 9:30 a.m. As a result of the accident, the claimant got injuries on his person. According to him, his right leg was broken and he also got injuries on different parts of his body as well as a tooth was also broken. In course of his evidence, he exhibited and proved several documents including Exhibit-1 accident information report, Exhibit-2 (1) to Exhibit-2(3) the prescriptions, Exhibit-3 (1) to Exhibit- 3 (7) the cash memos and Exhibit-4 medical certificate. As none of the opposite parties are present, therefore, the evidence rendered by the claimant is remains un- challenged.

10. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 to Exhibit 4 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 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.

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11. We know that if a person got injury due to vehicular accident on public road as a result of rash and negligent driving of the offending vehicle by its driver, 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 as a result of rash and negligent driving by its driver on the public road and as a result of that accident, he was undergoing treatment at Mukalmua hospital, so, he is entitled to get compensation for the injuries sustained by him.

12. 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 stated that he expended Rs.50,000/- for his medical treatment therefore, he claimed Rs.1,61,000/- as compensation. Medical vouchers exhibited and proved by the claimant showed that he expended Rs.20,542/- for his treatment. So, the said amount is awarded to the claimant as compensation towards his medical treatment. From exhibit 4 issued by Dr. K.N. Boro of Mukalmua PHC shows that the claimant got fracture injury on his person due to the accident. 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 compensation for his future treatment.

13. 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.2000/-. 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.2000/- |
| 3. For medical expenses:- | Rs.20,542/- |

Total compensation:- Rs.,27,542/-

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Thus, the total amount of compensation comes to Rs.27,542/- (Rupees twenty seven thousand five hundred forty two only).

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

As all the opposite parties inspite of received of notices from this Tribunal did not appear before this Tribunal and as the claimant in his evidence stated that the offending vehicle was duly insured with the opposite party No.2 and it had valid insurance coverage at the time of accident 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 accordingly.

[Issue No.2]

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

This issue is decided in the affirmative.

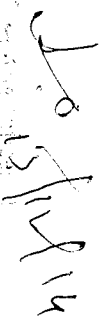
[O R D E R]

16. In the result, the claim petition is allowed. The total amount of compensation to the tune of 27,542/- (Rupees twenty seven thousand five hundred forty two only)/- which is rounded to Rs.27,540/- (Rupees twenty seven thousand five hundred forty only)/- as calculated on different heads is awarded to the claimant. The opposite party No.2 i.e., the National Insurance Company Ltd., the insurer of the offending vehicle 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 today on the awarded amount until realization.

17. 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.

18. This MAC Case is disposed of accordingly.

19. Judgment prepared, signed and pronounced, today the 15th Day of December '2014 in the open court.


Presiding Officer/Member

MACT, Nalbari.