

BEFORE THE PRESIDING OFFICER /MEMBER MACT:.....:NALBARI.**MAC No.262/2010.*****Parties:-***

1. Sri Jatindra Nath Kalita.

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

1. (i) Sri Naba Kumar Nath.

1. (ii) Sri Jatindra Nath Kalita.

2. (i) Sri Naba Kumar Nath.

2. (ii) Sri Jatindra Nath Kalita.

3.(i) The National Insurance Company Ltd.

3. (ii) The New India Assurance Company Ltd.

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

For the claimant:

Ld. Advocate Mrs. R. Lahkar.

For the Op. No.1(i) and 1(ii):

None has appeared.

For the Op. No.2(i) and 2 (ii):

None has appeared.

For the Op. No.3 (i):

Ld. Advocate Mr. M. Das.

For the Op. No.3(ii):

Ld. Advocate Mr. K. Bhattacharyya.

Dates of evidence:

16-11-13; 10-01-14 and 17-10-14.

Date of Argument:

03-12-2014.

Date of Judgment:

22-12-2014.

J U D G M E N T)

1. The claimant Sri Jatindra Nath Kalita, son of Lt. Chana Ram Kalita, resident of village:- Tilana under Nalbari 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.4,00,000/- for the injuries sustained by him due to vehicular accident which was occurred on 28-09-2010 at about 2:20 p.m., at Majdia, Hajo road, Nalbari.

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

On 28-09-2010 at about 2:20 p.m., while the claimant was returning towards his house at Tilana from Nalbari by his motor cycle having registration No.AS-14/A-6363 and when he reached Majdia suddenly, another motor cycle having registration No.AS-01/AL-3906 coming from opposite direction i.e. from Guwahati side towards Nalbari side riding by its rider in a rash and negligent manner dashed against his motor cycle. As a result of the accident, the claimant got severe injury on his person. His motor cycle was also badly damaged. He was immediately shifted to Dr. N.M.B. Baruah nursing Home, Nalbari. For that accident, police was informed and a case was registered vide Nalbari P.S. Case No.510/10 U/SS 279/338/428 IPC. It is also the case of the claimant that the offending motor cycle having registration No.AS-01/AL-3906 was duly insured with the opposite party No.3 (ii) i.e. the New India Assurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.4,00,000/- as compensation due to injuries sustained by him on account of the vehicular accident.

3. On receipt of the claim petition, notices were issued to the rider cum owner of both the motor cycles as well as both the insurance companies of both the vehicles.

4. Inspite of received of notices from this Tribunal neither the opposite party No.1(i), 1(ii) and the opposite party No.2(i) and 2(ii) of both the offending vehicles did not appear before this Tribunal, therefore the case proceeded ex- parte against them.

5. However, the opposite party No.3 (i) and 3(ii) i.e. the National Insurance Company Ltd., and New India Assurance Company Ltd., respectively appeared before this Tribunal and submitted their respective written statements (in short WS).

6. In its WS the opposite party No.3(i) i.e. the National Insurance Company Ltd., has denied the factum of accident. The opposite party No.3(i) further disowning all the allegations made by the claimant and asked the claimant to prove his case by adducing cogent and reliable evidence.

7. The opposite party No.3(ii) i.e. the New India Assurance Company Ltd., categorically stated that as the claimant being the owner of the motor cycle having registration No.AS-14/A-6363 therefore, he was not a 3rd party of the occurrence and he was not entitled to get any compensation from the opposite party No.3(ii). Further, the opposite party No.3(ii) disowning all the allegations made by the claimant and asked the claimant to prove his case by adducing cogent and reliable evidence.

8. 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.3(ii). The opposite party No.3(ii) also examined one witness namely Promod Kumar as DW1 who was not cross- examined by the Ld. Counsel of the claimant.

9. Upon hearing both sides and gone through the claim application filed by the claimant as well as WS filed by the insurance companies, 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?

10. Decision and reasons for decision:-

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

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 28-09-2010 at about 2:20 p.m., while he was returning towards his house at Tilana from Nalbari by his motor cycle having registration No.AS-14/A-6363 and when he reached Majdia suddenly, another motor cycle having registration No.AS-01/AL-3906 coming from opposite direction i.e. from Guwahati side towards Nalbari side riding by its rider in a rash and negligent manner dashed against his motor cycle. As a result of the accident, the claimant got severe injury on his person. His motor cycle was also badly damaged. The claimant in course of his evidence exhibited and proved several documents including Exhibit 1 admission and discharge slip issued by Dr.N.M.B. Baruah Nursing Home, Nalbari. Exhibit-6 accident information report, Exhibit-7 MVI report along with other several vouchers and prescriptions. Though the claimant was duly cross- examined by the Ld. Counsel of the opposite party No. 3(ii) but failed to discredit his evidence. In cross- examination the claimant reiterated the said fact what he has stated in examination in chief.

14. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 to Exhibit-6 make the position clear that on the relevant date, time and place there had been an accident due to rash and negligent riding by the rider of the offending motor cycle having registration No.AS-01/AL-3906 as well as riding the motor cycle having registration No.AS-14/A-6363 by the claimant himself and there is no reason to disbelieve the said fact.

15. Though the Ld. Counsel of the opposite party No.3(ii) in course of his argument vehemently submitted that the accident took place due to due to rash and negligent driving of the driver of the offending motor cycle having registration No.AS-01/AL-3906 but also due to rash and negligent driving of the claimant who has driven his motor cycle having registration No.AS-14/A-6363 at the time of accident. As the claimant himself was involved in the said accident therefore, he is equally liable for that said accident..

16. 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 head due to vehicular accident as a result of rash and negligent driving by the rider of the offending motor cycle as well as riding of his own motor cycle and as a result of that accident he was undergoing treatment at Dr. N.M.B. Baruah nursing home Nalbari thereafter, at GNRC, Guwahati, so, he is entitled to get compensation for the injuries sustained by him.

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

The claimant in his evidence clearly stated that he had expended Rs.65,000/- for his treatment due to his injuries and he claimed Rs.4 lakhs as compensation. Medical vouchers exhibited and proved by the claimant shows that he expended Rs.73,550/- for his treatment. So, the said amount is awarded to the claimant as compensation towards his medical treatment. Amount shown in exhibit 5 (5) is rejected because the said amount is shown in Exhibit-5(3). As per Exhibit-1 the claimant got fracture injury on his head.

18. 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.10,000/-.

19. The claimant stated that he was earning Rs.5000/- per month by doing service in DTO, Nalbari. There is no pay slip or any certificate from the DTO, Nalbari showing that the claimant is earning Rs.5000/- per month. What ever it may be, as he was working in DTO, Nalbari therefore, he is not entitled to get any compensation for his loss of income during the period of his treatment because he got salary during the period of his leave. There is no evidence at all to show that the claimant needs future treatment for the injuries sustained by him in that 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.10,000/-
4. For medical expenses:-	Rs.73,550/-

Total compensation:- Rs.,88,550/-

Thus, the total amount of compensation comes to Rs.88,550/- (Rupees eighty eight thousand five hundred fifty only).

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

It is not disputed that at the time of accident, the claimant is riding his motor cycle having registration No.AS-14/A-6363. It is also not disputed that the another motor cycle having registration No.AS-01/AL-3906 ridden by the opposite party No.2(i). From the evidence of the claimant it is crystal clear that both the vehicles met with the accident when the claimant proceeded from Nalbari to Titlan and the other motor cycle was proceeded from Guwahati side to Nalbari i.e. both the vehicles were coming from opposite direction. Though the Ld. Counsel of the opposite party No.3(ii) vehemently submitted that as the claimant himself ridden the motor cycle having registration No.AS-14/A-6363 therefore, he is not a third party, therefore, he is not entitled to get any compensation in the accident. This Tribunal cannot accept the submission of the Ld. Counsel of the opposite party No.3(ii) because though the claimant himself ridden the motor cycle having registration No.AS-14/A-6363 but he was hit by another motor cycle having registration No.AS-01/AL-3906, therefore, in the eye of law he is not 3rd party to the occurrence because two vehicles were involved in the accident.

21. From Exhibit-A,B and C it is clear that Naba Kumar Nath the rider of the offending motor cycle having registration AS-01/AL-3906 was charge sheeted by the police. The said motor cycle was insured by the opposite party No.3(ii) i.e. the New India Assurance Company Ltd. It is submitted that the vehicle ridden by the claimant was not negligent in the said accident but no sketch map was produced by the claimant or he has not examine any witness to show that infact his motor cycle was not at all responsible for that accident. Therefore, to the opinion of this Tribunal, both the motor cycles are responsible for that accident. Due absence of cogent evidence this Tribunal has no option but to determine the negligence of both the vehicles @ 50:50. Therefore, 50% of Rs.88,550/- = Rs.44,275/- is entitled by the claimant as compensation. The claimant is entitled to get the said amount of compensation from the opposite party No.3 (ii) i.e. the New India Assurance Company Ltd.

Hence, this issue is decided accordingly.

(Issue No.2)

22. 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)

23. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs. 44,275/- (Rupees forty four thousand two hundred seventy five only)/- as calculated on different heads is awarded to the claimant. The opposite party No.3(ii) i.e. the New India Assurance 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 this order until realization.

24. Let a copy of the judgment be furnished to the opposite party No.3 (ii) i.e. the New India Assurance Company Ltd., within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act.

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

26. Judgment prepared, signed and pronounced, today the 22th Day of December '2014 in the open court.


Presiding Officer/ Member,

MACT, Nalbari.