

BEFORE THE PRESIDING OFFICER /MEMBER MACT:.....NALBARI.**MAC No.310/2005.*****Parties:-***

1. Sri Shymal Singha.

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

1. Sri Kamal Ch. Das.

2. Sri Dhananjoy Kalita.

3. 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 Mrs. G. Bujarbaruah.

For the Op. No.1and 2:

None has appeared.

For the Op. No.3:

Ld. Advocate Mr. D.K. Barman.

Date of evidence:

10-09-13 and 09-11-13.

Date of Argument:

13-11-14.

Date of Judgment:

03-12-14.

(J U D G M E N T)

- 1.** The claimant Sri Shymal Singha son of Lt. Kusum Singha, residence of:-Khanapara, Guwahati under Dispur police station (in short PS) in the district of Kamrup, P/A: M/S Samrat, Baruah road, under Nalbari P.S. in the of District: 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.2,50,000/- for the injuries sustained by him due to vehicular accident which was occurred on 08-05-2005 at about 3:30 p.m., at Satdola Chowk.

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

On 08-05-2005 at about 3:30 p.m., while the claimant was travelling from Guwahati to Doulashal in the offending vehicle having registration No.AS-15/4089 under (ASTC bus), the said bus due to rash and negligent driving of the driver suddenly fell down on the road at Satdola Chowk under Hajo P.S. For the said accident, the claimant got injuries on his person and he was shifted to Hajo PHC by some local people. Thereafter, doctors advised him to take better treatment at Guwahati

Medical College and Hospital (in short GMCH). For that accident police was informed and a case was registered Vide Hajo P.S. G.D. entry No.195/2005 dtd., 08-05-2005. It is also the case of the claimant that the offending vehicle having registration No.AS-15/4089 was duly insured with the opposite party No.3 i.e. the National Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.2,50,000/- 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 opposite party No.3 the insurance company i.e. the insurer of the offending vehicle.


4. Inspite of receipt of notices from this Tribunal neither the owner nor the driver of the offending vehicle appeared before this Tribunal, therefore, the case proceeded ex- parte against them.

5. However, the opposite party No.3 i.e. the National Insurance Company Ltd., the insurer of the offending vehicle appeared before this Tribunal and submitted their respective written statement (in short WS).

6. The opposite party No.3 in its WS disowing all the allegations made by the claimant and asked the claimant to prove his case by giving cogent and reliable evidence. According to opposite party No.3 the claim made by the claimant is so excessive that he is not entitled to get any compensation as prayed by him.

7. The claimant in support of his claim examined himself as CW 1. He was duly cross-examined by the Ld. Counsel of the opposite party No.3. The opposite party No.3 did not examine any witness in support of its WS.

8. Upon hearing both sides and gone through the claim application filed by the claimant as well as WS filed by the opposite party No.3, this Tribunal framed the following issues for just and proper adjudication of the case. The issues are:-

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

(Issue No.1)

11. The claimant in his claim petition as well as in his evidence as CW 1 clearly and categorically stated that on 08-05-2005 at about 3:30 p.m., while he was going from Guwahati to Doulashal side by the alleged offending vehicle having registration No.AS-15/4089 under (ASTC bus) as a passenger, the said bus due to rash and negligent driving of the driver slipped out from the road and fell down on the ground. As a result of the accident he got injuries on his person. According to him, he was immediately shifted to Hajo PHC but the doctor referred him to GMCH. He further testified that he took treatment at GMCH for several days. Thought the claimant was duly cross- examined by the Ld. Counsel of the opposite party No.3 but failed to discredit his evidence. In course of his evidence he exhibited and proved Exhibit 1 accident information report, Exhibit- 2 medical certificate issued by Hajo PHC as well as Exhibit-3 medical certificate issued by GMCH. Exhibit- 3 shows that the claimant was undergoing treatment at GMCH from 20-05-2005 to 01-06-2005 i.e. for eleven days.

12. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1, 2 and 3 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 injury on his person and there is no reason to disbelieve the said fact.

13. We know that when 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 he is entitled to get compensation under the Motor Vehicles Act. In the present case, as noted here in before, the claimant got injuries 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.

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

The claimant in course of his evidence exhibited and proved several vouchers along with prescriptions. The vouchers exhibited and proved by the claimant showed that he expended Rs.42,347/- towards his medical treatment. But this Tribunal raised doubt about the authenticity of some documents because it is humanly impossible to take such a huge quantity of medicine in every alternative day. Therefore, amount shown in Exhibit-2 (8) amounting to Rs.3098/-, Exhibit-2(10) amounting to Rs.3140/-, Exhibit-2(14) amounting to Rs.2857/-, Exhibit-2(16) amounting to Rs.2608/-, Exhibit-2(19) amounting to Rs.2415/-, Exhibit-2(25) amounting to Rs.3292/-, Exhibit-2(31) amounting to Rs.3138/- and Exhibit-2(35) amounting to Rs.817/- had been rejected. Thus, after deducting Rs.21,365/- from the above mention amount of Rs.42,347/- the amount comes to Rs.20,982/-, therefore, this Tribunal came to the conclusion that the claimant had expended Rs.20,982/- towards his medical treatment for that accident. Accordingly, the claimant is entitled to get the same amount



towards his medical treatment. There is no evident at all to show that the claimant got grievous injuries due to said accident. Exhibit-3 nowhere stated that the claimant got grievous injuries though he has undergoing treatment for eleven days in GMCH. Therefore, it is clear that the claimant got simple injuries on his person. Due to pain and suffering as a result of simple injury, the claimant is entitled to get Rs.2000/- . The claimant has stated that he was a businessman by profession and was earning Rs.5000/- per month. Though, he failed to prove any documents or examine any witness to prove that he is a businessman by profession and earning Rs.5000/- per month but we know that a person at the age of 20 years can easily earn Rs.3000/- per month by doing any type of business in the year of 2005. From Exhibit- 3 it shows that the claimant was undergoing treatment at GMCH from 20-05-2005 to 01-06-2005 i.e. for eleven days. As the claimant was undergoing treatment for about 11 days, therefore, his loss of income during his treatment would be Rs.1100/- . As stated above, this Tribunal awarded an amount of Rs.20,982/- to the claimant towards his medical treatment. 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. Thus, the total amount of compensation the claimant is entitled to on different heads as under:-

1. For pain and suffering due to simply injury:- Rs.2000/-
2. For loss of earning
during the period of disablement:- Rs.1100/-
3. For medical expenses:- Rs.20,982/-

Total Compensation Rs.24,082/-.

Thus, the total amount of compensation comes to Rs.24,082/- (Rupees twenty four thousand eighty two only).

15. 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 i.e. the owner and the opposite party No.2 i.e. the driver of the offending vehicle did not appeared before this Tribunal inspite of receipt of notices from this Tribunal, therefore, the case proceeded ex-parte against them. However, the opposite party No.3 appeared before this Tribunal and contested the case. The opposite party No.3 i.e. the National Insurance Company Ltd., did not produce any document to show that in fact at the time of accident the offending vehicle was not insured with them and that vehicle had no insurance coverage at the time of accident. 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)

- 16.** As discuss in issue No.1 the claimant is entitled to get compensation as per order.
This issue is decided accordingly.

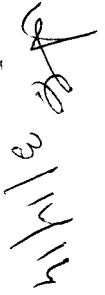
(O R D E R)

17. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.24,082/- (Rupees twenty four thousand eighty two only) which is rounded to Rs.24,080/- (Rupees twenty four thousand eighty rupees only) as calculated on different heads is awarded to the claimant. The opposite party No.3 i.e. the National Insurance 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 today on the awarded amount until realization.

18. Let a copy of the judgment be furnished to the opposite party No.3 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.

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

20. Judgment prepared, signed and pronounced, today the 03rd Day of December 2014 in the open court.


Presiding Officer/ Member,

MACT, Nalbari.