

BEFORE THE PRESIDING OFFICER /MEMBER MACT:.....:NALBARI.**MAC No.342/2005.****Parties:-**

1. Sri Ajay Deka.

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

1. Sri Udhab Das.

2. Sri Udhab Das.

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:

Advocate's name is not eligible.

Dates of evidence:

18-09-14 and 30-10-14.

Date of Argument:

08-12-2014.

Date of Judgment:

20-12-2014.

J U D G M E N T

1. The claimant Sri Ajay Deka son of Sri Mrinal Deka resident of village:-Khanapara under Dispur police station (in short PS) in the District of Kamrup presently residing at Vill: Barkura, under Nalbari P.S. 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.3,00,000/- for the injuries sustained by him due to vehicular accident which was occurred on 23-08-04 near Madhab Mandir, Hajo at about 10 a.m.

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

On 23-08-2004 at about 10 a.m., the claimant was coming from Hajo side towards Madhab Mandir, Hajo for his some personal work in the offending vehicle having registration No.AS-01/L-2710 as a passenger with his friends. The said vehicle due to rash and negligent driving of the driver knocked down a pedestrian and fell down on the road near Madhab mandir at Hajo. As a result of the accident, the claimant sustained grievous injuries on his person. He was first treated at Hajo PHC, thereafter, he

was referred to Guwahati Medical College and Hospital (in short GMCH). It is the case of the claimant that for that accident, police was informed and a case was registered Vide Hajo P.S. GD entry No.543 dtd., 24-08-2004. 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.3,00,000/- 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 and 2 the owner cum 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. In spite of received of notices from this Tribunal the opposite party No.1 and 2 i.e. the owner and driver of the offending vehicle did not appear before this Tribunal, therefore the case proceeded ex-parte against him.

5. However, the opposite party No.3 i.e. the National Insurance Company Ltd., appeared before this Tribunal and submitted its written statement (in short WS). In its WS the opposite party No.3 denied the factum of accident as well as involvement of the offending vehicle in the said accident. The opposite party No.3 further dis-owning all the allegations made by the claimant and asked the claimant to prove his case by adducing cogent and reliable evidence.

6. 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.

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

Yr

8. **Decision and reasons for decision:-**

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

10. 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 23-08-2004 at about 10 a.m., while he was coming from Hajo side towards Madhab

● Mandir, Hajo in the offending vehicle having registration No.AS-01/L-2710 as a passenger with his friends, the said vehicle due to rash and negligent driving of the driver met with an accident near Madhab mandir at Hajo. As a result of the accident, the claimant sustained grievous injuries on his person. According to the claimant he was immediately shifted to Hajo PHC for medical treatment thereafter, he was referred to GMCH for better treatment. He further testified that due to injuries he spend Rs.75,000/- for medical treatment. The claimant in his cross-examination reiterated the said fact. According to him the vehicle was driven by its driver in a rash and negligent manner with high speed as a result the accident took place. He further stated that after treating himself at Hajo PHC, he also got treatment at Baruah nursing Home from there he was referred to GMCH and expended Rs.75,000/- for his treatment. In course of his evidence he exhibited and proved several documents including Exhibit 1 accident information report, Exhibit 2 medical certificate issued by GMCH and other relevant documents and vouchers.

12. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 and Exhibit 2 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.

13. 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 and as a result of that accident he was undergoing treatment at GMCH, Guwahati, so, he is entitled to get compensation for the injuries sustained by him.

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

The claimant in his evidence as CW 1 stated that he expended Rs.75,000/- for his treatment. Medical vouchers exhibited and proved by the claimant showed that he expended Rs.25,000/- for his treatment. So, the said amount is awarded to the claimant as compensation towards his medical treatment. From Exhibit-2 it shows that the claimant was admitted in GMCH on 09-09-2004 and he was discharged on 15-09-2004 i.e. he was undergoing treatment for six days. The claimant in his claim petition stated that he was a businessman by profession at the time of accident and was earning Rs.5,000/- per month but there was no documentary evidence to prove his income. Whatever it may be, we know that a person like the claimant at the age of 28 years can easily earn Rs.2000/- per month by doing any kinds of business/ work at the time of accident. As the claimant was undergoing treatment in GMCH for six days therefore, during that period he cannot earn anything. So, his loss of income would be Rs.400/- . Accordingly, he is entitled to get Rs.400/- towards his loss of earning during the period of his treatment. From exhibit 2 it appears that claimant got grievous injury on his person.

15. 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.3000/-. 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.3000/-
3. For the loss of income during his medical treatment:-	Rs.400/-
4. For medical expenses:-	Rs.25,000/-

Total compensation:- Rs.33,400/-

Thus, the total amount of compensation comes to Rs.33,400/- (Rupees thirty three thousand four hundred 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 and 2 inspite of received of notices from this Tribunal did not appear before this Tribunal therefore the case proceeded ex-parte against him. However, the opposite party No.3 i.e. the National Insurance Company Ltd., appeared before this Tribunal and submitted its WS but no evidence was given by the opposite party No.3 to prove its WS to show that the offending vehicle was not insured with it and there was no valid insurance coverage at the time of accident, therefore, to the opinion of this Tribunal the opposite party No.3 i.e. the National Insurance Company Ltd., is liable to pay the said amount of compensation to the claimant.

Hence, 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 in the affirmative.

(O R D E R)

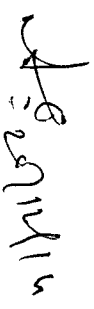
18. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs. 33,400/- (Rupees thirty three thousand four hundred only)/- as calculated on different heads is awarded

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 the date of passing of this order until realization.

19. 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.

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

21. Judgment prepared, signed and pronounced, today the 20th Day of December '2014 in the open court.



Presiding Officer/ Member,

MACT, Nalbari.