

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

**MAC No.51/2009.**

***Parties:-***

1. Smti. Tulika Dey.

- *Claimant.*

***-VERSUS-***

1. Md. Mobarak Ali.

2. Ranjan Ali.

3. The New India Assurance Company Ltd.

- *Opp. Parties.*

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

**Presiding Officer / Member**

**MACT, Nalbari.**

***Appearance:-***

For the claimant:

Ld. Advocate Mr. N. Islam.

For the Op. No.1 and 2.

None has appeared.

For the Op. No.3:

Ld. Advocate Mr. K. Bhattacharyya.

Dates of evidence:

29-01-14 and 29-10-14.

Date of Argument:

28-11-2014.

Date of Judgment:

17-12-2014.

**(J U D G M E N T)**

**1.** The claimant Smti. Tulika Dey, W/O: Sri Ashish Dey, resident of village:-Babupara, Bongaigaon Ward No.11. under Bongaigaon police station (in short PS) in the district of Bongaigaon presently resides at: Malkuchi under Nalbari P.S. 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 her due to vehicular accident which was occurred on 07-02-2007 at about 4:50 a.m., at Barpeta Road Railway Yard.

**2.** The facts as disclosed in the claim petition filed by the claimant can be stated as under:-

On 07-02-2007 while the claimant was travelling on the offending vehicle having registration No.AS-19/4696 (Tata bus) from Bongaigaon to Nimua with a marriage party, t.e said bus due to rash and negligent driving of the driver met with an accident at Barpeta Road Railway Yard at about 4:50 a.m. As a result of the accident, the claimant got grievous injuries on her person. The claimant was

immediately shifted to Barpeta FRU hospital thereafter, she was treated by a registered medical practitioner. For that accident, police was informed and a case was registered by Ranglia GRPS Vide Ranglia GRPS Case No.05/07 U/Ss 279/337/338/304 (A)/427 IPC. It is also the case of the claimant that the offending vehicle was duly insured with the opposite party No.3 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.2,50,000/- as compensation due to grievous injuries sustained by her in the vehicular accident.

3. On receipt of the claim petition, notices were issued to the opposite party No.1 i.e. the owner of the offending vehicle, to the opposite party No.2 i.e. the driver of the offending vehicle as well as to the opposite party No.3 i.e. the New India Assurance Company Ltd., the insurer of the offending vehicle.

4. In spite of receipt of notices, the owner and the driver of the offending vehicle did not appear before this Tribunal, therefore, the case proceeded ex- parte against them.

5. However, the opposite party No.3 i.e. the New India Assurance Company Ltd., after getting notices from this Tribunal appeared before it and submitted its written statement (in short WS). In its WS the opposite party No.3 denied the factum of accident and stated that the claimant filed this case due to un lawful gain. According to opposite party No.3 no accident took place as claimed by the claimant but the claimant filed this claim case only to abuse due process of law. The opposite party No.3 further disowning all the allegations made by the claimant and asked the claimant to prove her case by adducing cogent and reliable evidence.

6. The claimant in support of her case examined herself as CW1. She 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.

7. 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:-

- (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?

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

Road traffic accident now a days is a menace of the society. So many lives have been loss due to accident. It is a human tragedy. Road traffic accident normally occurred due to none taking due care and caution by the drivers who driver the vehicle. Due to rash and negligent driving of the

drivers, due to road conditions and traffic of the road as well as many other factors are the real cause for road traffic accident. It is a great tragedy. We have loss a lot of young man and woman due to road traffic accident.

9. I have heard argument from both sides. I also perused the evidence on record very carefully.
10. After hearing both sides, gone through the evidence on record this Tribunal is going to decide the case issue wise as follows:-

**(Issue No.1)**

11. The claimant in her claim petition as well as in her evidence as CW1 clearly and categorically stated that on 07-02-2007 while she was travelling with her daughter with a marriage party from Bongaigaon to Nimua in the offending vehicle having registration No.AS-19/4696 (bus) the said bus met with an accident at Barpeta Road Railway Yard at about 4:50 a.m. due to rash and negligent driving of the driver. According to claimant, in the said accident her minor daughter loss her life and she also got grievous injuries on her person. She further testified that she spent Rs.30,000/- for her treatment. In course of her evidence, the claimant exhibited and proved Exhibit-1 accident information report, Exhibit-2 medical certificate, Exhibit-3 and 4 X-ray report to substantiate her claim.

Though CW1 was duly cross- examined by the Ld. Counsel of the opposite party No.3 but failed to discredit her evidence. In her cross- examination, the claimant specifically stated that due to rash and negligent driving of the driver of the bus the said bus fell down on the ground as a result her daughter loss her life and she loss two teeth and got fracture injury on her person.

12. From the oral evidence of CW1 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 grievous injury on her person and there is no reason to disbelieve the said fact.

13. 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 injuries on her person as a result of rash and negligent driving of the offending vehicle therefore, she is entitled to get compensation.

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

The claimant in her claim petition as well as in her evidence stated that she had expended Rs. 20,000/- to Rs.30,000/- for her treatment due to injuries sustained by her in that accident. In her evidence she stated that she loss two teeth of her upper jaw due to the accident. Her said evidence is

*X/c*

supported by the doctor. Exhibit-2 prove the said fact. Exhibit-3 also shows that the claimant got fracture injuries on her left ulna. The opposite party No.3 neither challenged the findings of the doctors regarding the injuries sustained by the claimant which clearly proved in Exhibit-2 and 3 nor adduced any evidence to dis-credit the said fact. From the exhibited vouchers, it appears that the claimant had expended Rs.11,834/- for her treatment due to injuries sustained by her in the accident. So, this Tribunal awarded the said amount towards her medical treatment. As the claimant got fracture injury on her left ulna and her two teeth of her upper jaw were broken therefore, she got grievous injuries.

**15.** We know that fracture is a grievous injury as defined U/S 302 of the IPC. As noted herein before as the claimant got grievous injuries due to the vehicular accident, therefore, the claimant is entitled to get Rs.5000/- for grievous injury. This Tribunal is also awarded a lum sum amount of Rs.2000/- towards pain and suffering for her grievous injuries. There is no evidence on record to show that claimant needs money for future treatment so, no compensation is awarded for her future treatment.

Thus, the total amount of compensation the claimant is entitled to on different heads as under:-

- |                             |             |
|-----------------------------|-------------|
| 1. For grievous injury:-    | Rs.5000/-.  |
| 2. For pain and suffering:- | Rs.2000/-.  |
| 3. For medical expenses :-  | Rs.11,834/- |

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Total Compensation = Rs.18,834/-

Thus, the total amount of compensation comes to Rs.18,834/- (Rupees eighteen thousand eight hundred thirty four 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 did not appear before this Tribunal therefore, the case proceeded ex-parte against them. However, the opposite party No.3 appeared before this Tribunal and submitted its WS but failed to examine any witness to prove its WS. Therefore, the submission of opposite party No.3 i.e. the New India Assurance Company Ltd., that the offending vehicle was not insured with it and it had not insurance coverage at the relevant time of accident is no leg to stand. So, to the opinion of this Tribunal the opposite party No.3 is required to pay the said amount of compensation to the claimant.



Therefore, this issue is decided in the affirmative.

**[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.18,834/- (Rupees eighteen thousand eight hundred thirty four only)/- which is rounded to Rs.18,835/- (Rupees eighteen thousand eight hundred thirty five only) as calculated on different heads is awarded to the claimant. The opposite party No.3 i.e. the New India Assurance 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 New India Assurance 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 17<sup>th</sup> Day of December '2014 in the open court.

  
Presiding Officer/ Member,

MACT, Nalbari.