

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

MAC No.548/2002.

Parties:-

1. Sri Ranjit Das.

- *Claimant.*

-VERSUS-

1. Sri Rakesh Choudhury.

2. Sri Surjeet Singh.

3. The United India 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:

Ld. Advocate Mr. M. Das.

Date of evidence:

11-09-2014.

Date of Argument:

09-12-2014.

Date of Judgment:

22-12-2014.

(J U D G M E N T)

1. The claimant Sri Ranjit Das, S/O Lt. Dandi Ram Das, resident of village:- Haldhibari under Tihu 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.12 lakhs on account of injuries sustained by him due to vehicular accident which occurred on 26-07-2002 at Karenumura, on the National Highway No.31 (in short NH-31) at about 5:30 a.m.

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

On 26-07-2002 at about 5:30 a.m., the offending vehicle having registration No.MP-09/KC-3323 (truck) coming without blowing horn towards Barpeta side in a very rash and negligent manner driven by its driver i.e. the opposite party No.2 and knocked down the claimant from the front side at Karenumura. As a result of the accident, the claimant got grievous injuries on different parts of his body. He was immediately admitted at Tihu PHC but Tihu PHC referred him to Nalbari civil hospital. Thereafter, the claimant went to Patna for treatment. For that accident police was informed and a

case was registered Vide Tihu P.S. Case No.43/02 U/Ss 279/427/338 IPC. It is also the case of the claimant that at the time of accident the offending vehicle was duly insured with the opposite party No.3 i.e. the United India Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.12 lakhs as compensation for the injuries sustained by him on account of that vehicular accident.

3. On receipt of the claim petition, notices were issued to the owner, driver as well as the Insurance Company Ltd., i.e. the insurer of the offending vehicle having registration No.MP-09/KC-3323.

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 them.

5. However, the opposite party No.3 i.e. the United India Insurance Company Ltd., appeared before this Tribunal and submitted its written statement (in short WS). In its WS has the opposite party No.3 denied the factum of accident as well as insured the offending vehicle with it and insurance coverage of the offending vehicle at the time of accident. The opposite party No.3 further disowning 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. But he was not cross-examined by the Ld. Counsel of the opposite party No.3 due to his absent.

7. Upon hearing both sides and gone through the claim application filed by the claimant as well as WSs 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:-**

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 clearly and categorically stated that on 26-07-2002 at about 5:30 a.m., while he was on the left side of the road then the offending

vehicle having registration No.MP-09/KC-3323 (truck) knocked down him at Karemura on the NH-31. As a result of the accident, he got serious injuries on different parts of his body. He was immediately admitted at Tihu PHC and thereafter at Nalbari civil hospital, where he was undergoing treatment from 26-07-2002 to 31-07-2002. Thereafter, he went to Popular Nursing Home, Patna for further treatment. He was staying at Popular Nursing Home from 11-08-2002 to 30-08-2002. The claimant in course of his evidence exhibited and proved several documents including Exhibit-1 (1) and 1(2) discharge slip and advise slips issued by Nalbari civil hospital. Exhibit 2(1) to 2(2) discharge slip issued by Popular Nursing Home, Patna along with some cash memos and vouchers. The claimant was not cross-examined by the Ld. Counsel of the opposite party No.3 therefore, his evidence in chief remain un-challenged.

12. From the oral evidence of CW1 together with documentary evidence of Exhibit-1,2 and 7, it is 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. As a result of the said accident, the claimant got grievous injuries on his person and for that injuries, he availed medical treatment at different hospitals. So, 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 his person as a result of rash and negligent driving of the driver of the offending vehicle and he was undergoing treatment at Nalbari civil hospital as well as Popular Nursing Home, Patna, therefore, he is entitled to get compensation.

14. Now the question is what amount of compensation the claimant is entitled to?
The claimant in his claim petition claimed Rs.12 lakhs as compensation. The exhibited and proved vouchers by the claimant showed that he had expended Rs.39,000/- towards his medical treatment. So, this Tribunal awarded the said amount of Rs.39,000/- towards his medical treatment. The amount shown in Exhibit-4(5), 4(7), 4(11), 4(13), 4(14), 4(18), 4(21), 4(22), 4 (25), 4(26) and 4(30) are rejected because the name of the doctor and his address is not found in the cash memos.

15. The claimant stated that he was a driver cum businessman by profession and he was earning Rs.6000/- per month but no documents has been submitted by the claimant to prove that he was a driver/ businessman by profession and earning Rs.6000/- per month. What ever it may be, a person like claimant aged about 27 years can easily earn Rs.3000/- per month by doing any kinds of business. The claimant was undergoing operation at Popular Nursing Home, Patna on 14-08-2002. Exhibit 5(2) proves the said fact. Therefore, due to operation, the claimant had to spent some money

in the hospital, so, a lum sum amount of Rs.10,000/- is awarded to the claimant for expenses due to his operation.

16. We know that the 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.5,000/- for his grievous injury. As the claimant was undergoing treatment and operation at Popular Nursing Home, Patna therefore, from the date of accident to the date of release from the said nursing home, he was earning nothing. The accident took place on 26-07-2002 and operation was done at Popular Nursing Home, Patna and he was discharged from the hospital on 03-08-2002 i.e. he was undergoing treatment in different hospitals for more than one month, therefore, his loss income during the period of his treatment would be Rs.3400/-. So, this said amount is awarded to the claimant towards his loss of income. This Tribunal awarded a lum sum amount of Rs.5,000/- for pain and suffering as well as travelling expenses to the claimant to go from Guwahati to Patna and vice-versa. This Tribunal also awarded Rs.2000/- for his special diet as he was undergoing operation at the Popular Nursing Home, Patna for his injuries. 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 grievous injuries:-	Rs.5,000/-
2. Loss of income during the period of his medical treatment:-	Rs.3,400/-
3. Pain and suffering as well as travelling expenses:-	Rs.5,000/-
4. For special diet :-	Rs.2000/-
5. For medical expenses:-	Rs.39,000/-
6. For expenses towards operation:-	Rs.10,000/-
Total compensation	Rs.64,400/-.

Thus, the total amount of compensation comes to Rs.64,400/- (Rupees sixty four thousand four hundred only).

17. 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. The opposite party No.3 has failed to examine any witness and also cross-examined the claimant to prove that the offending vehicle was not insured with it and it and no insurance coverage at the time of accident. So, to the opinion of this Tribunal the opposite party No.3 is liable to pay the said amount of compensation to the claimant.

Therefore, this issue is decided in the affirmative.

(Issue No.2)

18. 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)

19. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.64,400/- (Rupees sixty four thousand four hundred only)/- as calculated on different heads is awarded to the claimant. The opposite party No.3 i.e. the United India Insurance 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 the date of passing of this order until realization.

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

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

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


Presiding Officer/ Member,

MACT, Nalbari.