

On 14-12-2002, the claimant along with his family came to Nalbari from Guwahati through the National Highway No.31 (In short NH) in the offending Maruti car having registration No.AS-01/E-0008 and when the car reached Jaigaru Ganesh Mandir under North Guwahati out post the car was facing in a huge traffic jam. At that time, another maruti car bearing registration No.AS-15/7848 was also coming from the same direction and knocked down the offending maruti care from behind. At that moment an unknown truck hit the maruti car in which the claimant and his family members were travelling from back side. As a result of the accident, four inmates of the offending vehicle including the claimant got serious injuries on their person. They were immediately shifted to Rangia civil hospital from where the doctors referred them to Guwahati Medical College and Hospital (in short GMCH) for their better treatment. It is the case of the claimant that for that accident police was informed and police of North Guwahati out post made GD entry No.214 dtd., 14-12-2002 for the said accident. It is also the case of the claimant that the accident took place due to rash and negligent driving of the driver of the offending maruti car bearing registration No.AS-01/E-0008. It is also the case of the claimant that the offending maruti car was duly insured with 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.4,50,000/- as compensation for the injuries sustained by him due to vehicular accident.

3. On receipt of the claim petition, notices were issued to the owner of the offending maruti car bearing registration No.AS-01/E-0008 namely Ashin Roy the op. No.1, the driver of the offending maruti car namely Paresb Baishya the opposite party No.2 as well as the New India Assurance Company Ltd., the insurer of the offending maruti vehicle i.e. Op. No.3.
4. Inspite of received of the notices the opposite party No.1 and 2 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., appeared before this Tribunal and submitted its written statement (in short WS). In its WS the opposite party No.3 clearly and categorically stated that three vehicles were involved in the accident one was the offending maruti car, another was a maruti car bearing registration No.AS-15/7848 and another an unknown truck. In its WS, the opposite party No.3 clearly admitted the factum of accident but stated that as all the three vehicles were involved in the accident therefore, the opposite party No.3 is liable to pay at the rate of 33'33% on the awarded amount.

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. He also produced and exhibited certain documents including Exhibit 1 police report and Exhibit 2 medical certificate.

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?

8. Decision and reasons for decision:-

9. The Ld. Counsel for the claimant vehemently submitted that the accident took place due to negligence driving of the driver of the offending maruti car bearing registration No.AS-01/E-0008 in which the claimant with his family members were travelling. In the said accident the claimant got severe injuries on his person and he was undergoing treatment at different hospitals therefore, he contended that adequate compensation should be awarded to the claimant.

Per contra the Ld. Counsel for the opposite party No.3 vehemently submitted that though he admitted that the accident took place but three vehicles were involved in the said accident. According to him the claimant in his claim petition stated that an unknown truck and one maruti car bearing registration No.AS-15/7848 as well as the offending maruti car bearing registration No.AS-01/E-0008 were involved in the accident. He further submitted that the owner, driver and the insurance company of the unknown truck and the maruti car bearing registration No.AS-15/7848 were not made party in this case hence, he contended that if this Tribunal passed any order for paying compensation to the claimant, the opposite party No.3 should not be ordered to give more than 33'33% of the awarded compensation.

10. I have heard argument from both sides. I also perused the evidence on record carefully. I also given my thoughtful consideration on the argumentation put forwarded by the Ld. Counsel of the claimant as well as Ld. Counsel of the opposite party No.3.

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 14-12-2002 when he was returning from Guwahati to Nalbari by the offending vehicle having registration No.AS-01/E-0008 and when he reached at Jaigaru Ganesh Mandir under North Guwahati out post their vehicle faced on a huge traffic jam. In the said traffic jam, an unknown truck dashed against the maruti car bearing registration No.AS-15/7848 and the said maruti car dashed against the offending maruti car in which the he and his family members were travelling. The claimant in his evidence as CW1 categorically admitted the said fact. The claimant further stated that the

accident took place due to rash and negligent driving of the driver of the offending maruti car bearing registration No.AS-01/E-0008. Though the claimant was duly cross- examined by the Ld. Counsel of the opposite party No.3 but failed to dis credit the said fact. The claimant in course of his evidence exhibited and proved several documents including Exhibit 1 accident information report, Exhibit 2 discharge certificate.

12. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 accident information report, Exhibit 2 discharge certificate issued by GMCH 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 rider of the offending vehicle and as a result of the said accident the claimant got fracture injury on his person and there is no reason to disbelieve the said fact.

13. We know that if a person got injury as a result of vehicular accident on public road due to 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 due to vehicular accident on the NH-31 and as a result of that accident he was undergoing treatment at GMCH and there is no reason to disbelieve the said fact. Therefore, he is entitled to get compensation for the injuries sustained by him due to vehicular accident.

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

The claimant in his claim petition as well as in his evidence claimed Rs.4,50,000/- as compensation for the injuries sustained by him in that accident. From Exhibit 1 it is clear that the claimant got fracture injury on his right hand and he also got head injury. Though he was treated at GMCH but he was not undergoing treatment in GMCH as indoor patient. The claimant got fracture injury as per Exhibit-2. 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. From exhibited documents it appears that the claimant expended Rs.42,389/- towards his medical treatment so, this Tribunal awarded the said amount of Rs.42,389/- for his medical treatment. The claimant is also entitled to get compensation for pain and suffering therefore, a lump sum amount of Rs.5000/- is awarded to the claimant for pain and suffering for his grievous injury. 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.5000/-
3. For medical expenses:-	Rs.42,389/-

Total compensation	Rs.52,389/-
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Thus, the total amount of compensation comes to Rs.52,389/- (Rupees Fifty two thousand three hundred eighty nine only).

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

Inspite of received of notices from this Tribunal, the opposite party No.1 and 2 owner and driver of the offending maruti car having registration No.AS-01/E-0008 did not appear before this Tribunal as such the case proceeded ex-parte against them. However, the opposite party No.3 i.e. the New India Assurance Company Ltd., appeared before this Tribunal and filed its WS but failed to examine any witness to prove their WS, rather, the Ld. Counsel of the opposite party No.3 has admitted that the offending vehicle was duly insured with the opposite party No.3 and it had valid insurance coverage at the time of accident. So, the opposite party No.1 is liable to indemnify the owner and driver of the offending vehicle. It is to be noted that three vehicles were involved in the accident and all the three drivers were negligent in the driving therefore, 1/3rd of the awarded amount is liable to pay by the opposite party No.3 to the claimant. Hence, to the opinion of this Tribunal the opposite party No.3 is liable to pay 1/3rd amount of the said compensation to the claimant.

Hence, this issue is decided in the affirmative.

(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 1/3rd of the total amount of compensation as calculated above which comes to the tune of Rs.17,469/- (Rupees seventeen thousand four hundred sixty nine only) 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 Rs.17,469/- which is rounded to Rs.17,470/- (Rupees seventeen thousand four hundred seventy only) as 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.

- 18.** 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.
- 19.** This MAC Case is disposed of accordingly on contest.
- 20.** Judgment prepared, signed and pronounced, today the 05th Day of November '2014 in the open court.


Presiding Officer/ Member,

MACT, Nalbari.