

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

MAC No.61/2013.

Parties:-

1. Sri Chandan Talukdar.

- Claimant.

-VERSUS-

1. The United India Insurance Company Ltd.

- Opp. Parties.

2. Md. Safikul Alam.

Present: Mr. A.K. Sarmah, LLM, AJS.

Presiding Officer / Member

MACT, Nalbari.

Appearance:-

For the claimant:

Ld. Advocate Mr. R. K. Sarma.

For the Op. No.1:

Ld. Advocate Mr. P.K. Sarma.

For the Op. No.2:

None has appeared.

Date of evidence:

28-01-2014 and 22-10-2014.

Date of Argument:

22-10-2014.

Date of Judgment:

03-11-2014.

J U D G M E N T

1. The claimant Sri Chandan Talukdar son of Sri Gopi Talukdar, resident of village:- Sondheili under Belsor 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.7,50,000/- for the injuries sustained by him due to vehicular accident which was occurred on 30-01-2013 at about 3 p.m., at Banekuchi on the National Highway No.31 (in short NH 31).

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

On 30-01-2013 at about 3 p.m., while the claimant was proceeding from Nalbari towards Barama by riding his bicycle and when he reached at Banekuchi, the offending motor cycle having registration No.AS-01/AP-9959 (Bajaj Discover) riding by its rider in a rash and negligent manner coming from the same direction hit the claimant on his hand from back side. As a result of hitting, the claimant fell down on the ground and sustained grievous injuries on his chest, face, lips and other parts of his body. According to the claimant his right shoulder was dislocated and he got severe head injury and there was a fracture of his nose. He was taken with the help of 108 service

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to Nalbari civil hospital and on the advice of doctor he was shifted to Guwahati Medical College and Hospital (in short GMCH) for better treatment. It is the case of the claimant that for that accident police was informed and a case was registered Vide Nalbari P.S. Case No.143/13 U/SS 279,338 and 427 IPC. It is also the case of the claimant that the offending vehicle was duly insured with the opposite party No.1 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.7,50,000/- as compensation for the injuries sustained by him due to vehicular accident.

3. On receipt of the claim petition, notices were issued to the opposite party No.1 i.e. the United insurance company Ltd., the insurer of the offending motor cycle as well as to the opposite party No.2 Safikul Alam the owner cum rider of the offending motor cycle.

4. Inspite of received of notices the opposite party No.2 i.e. the owner cum rider of the offending vehicle did not appear before this Tribunal, therefore the case proceeded ex- parte against him.

5. However, the opposite party No.1 i.e. the United India Insurance Company Ltd., appeared before this Tribunal and submitted its written statement (in short WS). In its WS the opposite party No.1 denied the allegations made by the claimant in his claim petition and asked the claimant to prove his case by giving cogent and reliable evidence. The opposite party No.1 further denied the injuries sustained by the claimant in this accident. Therefore, the opposite party No.1 prayed this Tribunal to reject the claim petition filed by the claimant.

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

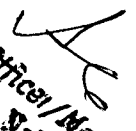
7. Upon hearing both sides and gone through the claim application filed by the claimant as well as WS filed by the insurance company, this Tribunal framed the following issues for just and proper adjudication of the case. The issues are:-

(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. 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.


Presiding Officer/Member
M. P. G. C. Saha

(Issue No.1)


10. The claimant in his claim petition as well as in his evidence as CW 1 clearly and categorically stated that on 30-01-2013 at about 3 p.m., while he was proceeding from Nalbari towards Barama by riding his bicycle and when he reached Banekuchi, the offending motor cycle having registration No.AS-01/AP-9959 (Bajaj Discover) riding by its rider in a rash and negligent manner coming from the same direction hit the claimant on his hand from back side. As a result of hitting, the claimant fell down on the ground and sustained grievous injuries on his chest, face, lips and other parts of his body. According to claimant, his right shoulder was dislocated, he got severe head injury and there was a fracture of his nose. With the help of 108 ambulance service he was taken to Nalbari civil hospital and on the advice of doctor he was shifted to Guwahati Medical College and Hospital (in short GMCH) for better treatment. In his cross- examination he denied the suggestion made by the Ld. Counsel of the opposite party No.1 that there was no accident and he was not hit by the offending motor cycle.

11. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 accident information report, Exhibit 2 discharge certificate issued by Nalbari civil hospital 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 nose, his right shoulder joint was dislocated, nasal bone got fracture, dislocation of his right knee and injuries on other parts of his body and there is no reason to disbelieve the said fact.

12. We know that if a person got injury due to vehicular accident on public road 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 Nalbari civil hospital therefore, he is entitled to get compensation for the injuries sustained by him due to vehicular accident.

13. 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.7,50,000/- as compensation for the injuries sustained by him in that accident. According to him, he was a businessman by profession and was earning Rs.10,000/- per month. But in his cross- examination he admitted that he had not mentioned in his claim petition what type of business he was doing. He also admitted that he has not produced any income certificate to show his income that he was earning Rs.10,000/- per month. According to him, he cannot say when he filed this case. He also admitted that he cannot say by which vehicle he was hit from back side. According to him, his maternal uncle shifted him to the hospital from the place of occurrence. He admitted that after


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noticing his injury by the doctor of Nalbari civil hospital he was not admitted in the hospital. His family members took him to GMCH. Further he stated that he had to spent Rs.50,000/- for his treatment. According to him X-ray was done but he has failed to produce the X-ray report before this Tribunal. Exhibit-2 medical certificate issued by S.D.M. & H.O., Nalbari civil hospital clearly proved that his nasal bone was fractured, dislocation of his right shoulder joint and dislocation of his right knee. But he admitted that no doctor was examined by him to prove the said fact. The claimant himself stated that he was not hospitalized for his injury. From exhibit 2 it appears that claimant got fracture injuries. 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.5000/-. From the exhibited and proved documents it appear that he expended Rs.38,356/- towards his medical treatment so, this Tribunal awarded the amount of Rs.38,356/- for 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. So, the claimant is not entitled to get any compensation for his future treatment. Thus, the total amount of compensation the claimant is entitled on different heads as under:-


1. For grievous injuries:-	Rs.5000/-
2. For pain and suffering:-	Rs.5000/-
3. For medical expenses:-	Rs.38,356/-

Total compensation	Rs.48,356/-
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Thus, the total amount of compensation comes to Rs.48,356/- (Rupees Forty eight thousand three hundred fifty six only).

14. 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.2 i.e. the owner cum rider of the offending motor cycle did not appear before this Tribunal despite of receiving notices from this Tribunal. The insurance company i.e. the opposite party No.1 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.1 has admitted that the offending vehicle was duly insured with the opposite party No.1 and it had valid insurance coverage at the time of accident. So, the opposite party No.1 is liable to indemnify the owner cum rider of the offending vehicle. Therefore, to the opinion of this Tribunal the opposite party No.1 is liable to pay the said amount of compensation to the claimant.


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Hence, this issue is decided in the affirmative.

[Issue No.2]

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

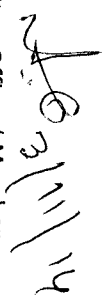
[O R D E R]

16. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.48,356/- (Rupees Forty eight thousand three hundred fifty six only)/- which is rounded to Rs.48,360/- (Rupees forty eight thousand three hundred sixty only) as calculated on different heads is awarded to the claimant. The opposite party No.1 i.e. the United India 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.

17. Let a copy of the judgment be furnished to the opposite party No.1 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.

18. This MAC Case is disposed of accordingly on contest.

19. Judgment prepared, signed and pronounced, today the 03rd Day of November '2014 in the open court.


Presiding Officer/ Member
~~Presiding Officer/Member~~
T. V. Nair
MACT, Nalbari.