

**BEFORE THE PRESIDING OFFICER /MEMBER MACT:.....NALBARI.****MAC No.728/2003.*****Parties:-***

1. Sri Pratul Sarma.

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

1. Sri Dhireswar Deka.

2. Sri Chakradhar Barman.

2. 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 Mrs. G. Bujarbaruah.

For the Op. No.1and 2.

None has appeared.

For the Op. No.3:

Ld. Advocate Mrs. K. Goswami.

Date of evidence:

11-09-2014 and 13-10-2014.

Date of Argument:

28-10-2014.

Date of Judgment:

10-11-2014.

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

**1.** The claimant Sri Pratul Sarma, S/O: Lt. Ratneswar Sarma, resident of village:-Patharuitola under Nalbari 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.5,00,000/- for the injuries sustained by him due to vehicular accident which was occurred on 24-11-2000 at about 10:30 a.m., at Amani under Belsor P.S.

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

On 24-11-2000 at about 10:30 a.m., while the claimant was coming from Sarthabari towards Nalbari for his some personal work, in the offending vehicle having registration No.AS-25/3804 (bus) as a passenger, the said bus due to rash and negligent driving of the driver, slipped out from the road at Amani under Belsor police station (in short PS). As a result of the accident, the claimant got grievous injuries on his person. At first, he was taken to Nalbari civil hospital but the doctors of Nalbari civil hospital referred him to Guwahati Medical College and Hospital (in short GMCH) after

noticing the seriousness of his injury. Accordingly, he was treated at GMCH. For that accident, police was informed and a case was registered vide Belsor P.S. case No.129/2000 U/SS 279/337/338 of IPC. It is also the case of the claimant that the offending vehicle was duly insured with 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.5,00,000/- as compensation due to injuries sustained by him in the vehicular accident.

3. On receipt of the claim petition, notices were issued to the owner, driver as well as the insurance company i.e. 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 United India Insurance 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 having any knowledge about that accident. According to the opposite party No.3 the claim made by the claimant is so excessive that he is not entitled to get such compensation. Therefore, the opposite party No.3 prayed this Tribunal to dismiss the claim petition of the claimant.

6. In order to prove his claim the claimant examined himself as CW1. He was duly cross-examined by the Ld. Counsel of the opposite party No.3. However, 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:-**

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 wanted to decide the case issuewise as follows:-

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**(Issue No.1)**

**11.** The claimant in his claim petition as well as in his evidence as CW1 clearly and categorically stated that on 24-11-2000 at about 10:30 a.m., while he was coming from Sarthabari towards Nalbari, in the offending vehicle having registration No.AS-25/3804 (bus) as a passenger, the said bus due to rash and negligent driving of the driver slipped out from the road at Amari under Belsor PS. As a result of the accident, the claimant got grievous injuries on his person. Immediately, he was taken to Nalbari civil hospital and thereafter to GMCH for better treatment. In support of his claim, the claimant exhibited and proved certain documents including accident information report as Exhibit 1, Exhibit 2 injury report issued by Nalbari civil hospital, Exhibit 3 discharge certificate issued by GMCH and other related documents. The claimant was duly cross- examined by the Ld. Counsel for the opposite party No.3 but failed to discredit his evidence. In his cross- examination, the claimant has re iterated the said facts what he has stated in his evidence in chief. In his cross- examination, he stated that so many passengers got injuries who were travelling in the said offending vehicle with him. He stated that he got injuries on his knee and X-ray was done but, he failed to produce the X-ray report before this Tribunal. According to him, he had expended Rs.40,000/- for his treatment.

**12.** From the oral evidence of CW1 together with documentary evidence of Exhibit 1 to Exhibit 3 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 bus and as a result of the said accident the claimant got injury on his 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 his person which is evident from Exhibit 2 and Exhibit 3 as a result of rash and negligent driving of the offending bus and he was undergoing treatment at Nalbari civil hospital and GMCH., 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 as well as in his evidence claimed Rs.5 lakhs as compensation. But in cross- examination he stated that he expended Rs.40,000/- for his treatment. From Exhibit 3 it appears that the claimant got fracture injury on his right knee joint.

We know that fracture is a grievous injury as defined U/S 320 of the Indian Penal Code therefore, a person getting fracture injury is entitled to get Rs.5000/- as compensation for sustaining grievous injury. So, the claimant is entitled to get Rs.5000/- for his grievous injury. The claimant is also entitled to get Rs.3,000/- for pain and suffering for his grievous injury. Medical vouchers produced and exhibited by the claimant showed that the claimant expended Rs.14,193/- towards his

medical treatment. There is no evidence on record to show that the claimant needs money for future treatment so, no compensation is awarded 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.3,000/-
3. For medical expenses :-	Rs.14,193/-

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Total Compensation= Rs.22,193/-

Thus, the total amount of compensation comes to Rs.22,193/- (Rupees twenty two thousand one hundred ninety three only),

**15.** 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 i.e. the owner and driver of the offending vehicle inspite of receipt of notices did not appear before this Tribunal therefore, the case proceeding ex-parte against them. However, the opposite party No.3 appeared before this Tribunal and submitted its WS but did not adduce any evidence in support of their WS. The opposite party No.3 nowhere in its WS stated that the offending vehicle did not have insured with them and it had no valid insurance coverage at the time of accident. Hence, to the opinion of this Tribunal, the opposite party No.3 is liable to pay the said amount of compensation to the claimant.

So, 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 )**

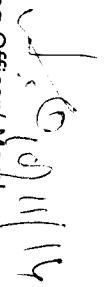

**17.** In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.22,193/- (Rupees twenty two thousand one hundred ninety three only) which is rounded to Rs.22,190/- (Rupees twenty two thousand one hundred ninety only) as calculated on different heads is awarded 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 clamant 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 United India Insurance 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 10<sup>th</sup> Day of November '2014 in the open court.

  
Presiding Officer/Member  
  
MACT, Nalbari.