



insured with the opposite party No.2 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.3 lakhs 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 the owner cum rider of the offending vehicle, as well as the opposite party No.2 the insurance company i.e. the insurer of the offending vehicle.

4. Despite receipt of notices, the opposite party No.1 i.e. the owner cum rider of the offending scooter did not appear before this Tribunal, therefore, the case proceeded ex- parte against him.

5. However, the opposite party No.2 i.e. the New India Assurance Company Ltd., appeared before this Tribunal and filed its written statement (in short WS). In its WS the opposite party No.2 i.e. the New India Assurance Company Ltd., denied the factum of accident as well as the insurance coverage of the offending vehicle. According to opposite party No.2 the accident occurred due to negligence of the injured and not negligence on the part of the rider of the scooter. Further, the opposite party No.2 asked the claimant to prove his case by giving cogent and reliable evidence.

6. The claimant in support of his claim examined himself as CW 1. He was duly cross-examined by the Ld. Counsel of the opposite party No.2.

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.2, 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:-**

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.

**(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 18-08-2002 while he was coming to his house from market by his bicycle and when he reached Khajara, at that time, the offending scooter having registration

*AG*  
*Presiding Officer/Memor*  
*M.P. T. N.M.C.*

No.AS-01/B-8131 driven by its rider in a very rash and negligent manner hit him from the front side. As a result of the accident, he got severe injury so, he was immediately shifted to Nalbari civil hospital and he was treated there upto 26-08-2002. The claimant was duly cross-examined by the Ld. Counsel of the opposite party No.2 but failed to discredit his evidence. In course of his evidence the claimant exhibited and proved Exhibit 1 accident information report, Exhibit 2 discharge certificate of Nalbari civil hospital, Exhibit 3 certificate issued by Dr. Bolen Deka and several other vouchers.

**11.** From the oral evidence of CW 1 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 riding by the rider of the offending scooter 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.

**12.** We know that a person getting injury due to vehicular accident on public road as a result of rash and negligent riding of the rider 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 body as a result of rash and negligent riding of the offending scooter by its rider and he was undergoing treatment at Nalbari civil hospital therefore, he is entitled to get compensation under M.V. Act.

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

The claimant in his claim petition claimed Rs.3 lakhs as compensation. In his evidence he re-iterated the said fact. In his claim petition as well as in his evidence he stated that he was earning Rs.4000/- per month from his business. But he did not produce any documents or examine any independent witness to prove that he was a businessman by profession and he was earning Rs.4000/- per month. From Exhibit 3 it appears that the claimant got simple as well as fracture injuries on his person.

We know that fracture is a grievous injury as defined U/S 320 of the Indian Penal Code.

A person getting fracture injury is entitled to get Rs.5000/- for his grievous/fracture injury. From Exhibit 2 it shows the claimant was undergoing treatment as an indoor patient at Nalbari civil hospital from 18-08-2002 to 25-08-2002 and he was discharged from the hospital on 26-08-2002 i.e. he was undergoing treatment for 7 days. Though, he stated that he was earning Rs.4000/- per month from his business but the claimant failed to prove his income by producing income certificate. However, we know in the year 2002 a man at the age of 52 years can easily earn Rs.2000/- per month from his business. As the claimant was undergoing treatment for about 7

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A person getting fracture injury is entitled to get Rs.5000/- for his grievous/fracture injury. From Exhibit 2 it shows the claimant was undergoing treatment as an indoor patient at Nalbari civil hospital from 18-08-2002 to 25-08-2002 and he was discharged from the hospital on 26-08-2002 i.e. he was undergoing treatment for 7 days. Though, he stated that he was earning Rs.4000/- per month from his business but the claimant failed to prove his income by producing income certificate. However, we know in the year 2002 a man at the age of 52 years can easily earn Rs.2000/- per month from his business. As the claimant was undergoing treatment for about 7

days, therefore, his loss of income during his treatment would be Rs.466/-. Exhibited documents produced and proved by him showed that he spent Rs.22,953/- Therefore, this Tribunal awarded the said amount to the claimant towards his medical treatment. Rs.466/- is also awarded for his loss of income for seven days. As the claimant got grievous injury, so, he is also entitled to get Rs.5000/-. Towards pain and suffering Rs.5000/- is awarded to the claimant. 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.5000/-
2. For pain and suffering:-	Rs.5000/-
3. For loss of earning during the period of disablement:-	Rs.466/-
4. For medical expenses :-	Rs.22,953/-

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Total Compensation = Rs.33,419/-.

Thus, the total amount of compensation comes to Rs.33,419/- (Rupees thirty three thousand four hundred nineteen only).

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

Though in its WS the opposite party No.2 i.e. the New India Assurance Company Ltd., denied the factum of accident as well as the insurance coverage of the offending vehicle but failed to prove the same by giving cogent and reliable evidence. Therefore, to the opinion of this Tribunal the opposite party No.2 is liable to pay the said amount of compensation to the claimant.

So, 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.33,419/- (Rupees thirty three thousand four hundred nineteen only) which is rounded to Rs.33,420/- (Rupees thirty three thousand four hundred twenty only) as calculated on different heads is awarded to the claimant. The opposite party No.2 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.
- 17.** Let a copy of the judgment be furnished to the opposite party No.2 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.
- 18.** This MAC Case is disposed of accordingly on contest.
- 19.** Judgment prepared, signed and pronounced, today the 11<sup>th</sup> Day of November 2014 in the open court.



Presiding Officer/Member  
**M.A.T. Nathani**  
MACT, Nalbari.