

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

MAC No.733/03.

Parties:-

1. Sri Prasanna Kr. Medhi.

- *Claimant.*

-VERSUS-

1. Sri Rajendra Ch. Das.

2. Sri Jogen Das.

3. The National Insurance Company Ltd.

- *Opp. Parties.*

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

Presiding Officer/ Member

MACT, Nalbari.

Appearance:-

For the claimant:

Ld. Advocate Mr. M. Haque.

For the Op. No.1

None has appeared.

For the Op. No. 2:

Ld. Advocate Mr. N. Islam.

For the Op. No.3:

Ld. Advocate Mr. D.K. Barman.

Date of evidence:

03-09-14 and 03-11-14.

Date of Argument:

03-11-14.

Date of Judgment:

13-11-14.

J U D G M E N T)

1. The claimant Sri Prasanna Kr. Medhi son of Lt. Paniram Medhi, residence of village:-Hidilartari under Mukalmua 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.1,80,000/- for the injuries sustained by him due to vehicular accident which was occurred on 03-10-2003 at about 11:45 a.m., at Barpeta- Hajo PWD road near Sarthebari.

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

On 03-10-2003 the claimant was travelling in the bus having registration No.AS-01/E-4817 through Barpeta, Hajo road. The said bus met with an accident near Sarthebari at about 11:45 a.m., due to rash and negligent driving of the driver of the offending bus. Sri Jogen Das opposite party No.2 was the driver of the said bus who drove the vehicle in rash and negligent manner . As a result of the accident, the claimant got grievous injuries on his person. For that accident, police was informed and a case was registered Vide Sarthebari P.S. Case No.133/03 U/SS 279/337/338/304 (A) IPC. It is also

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M. A. K. T. Barman
 Presiding Officer / Member
 MACT, Nalbari

the case of the claimant that the offending vehicle was duly insured with the opposite party No.3 i.e. the National Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.1,80,000/- 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 of the offending vehicle, the opposite party No.2 the driver of the offending vehicle as well as the opposite party No.3 the insurance company i.e. the insurer of the offending vehicle.

4. Despite receipt of notices, the opposite party No.1 Sri Rajendra Ch. Das the owner of the offending bus did not appear before this Tribunal, therefore, the case proceeded ex- parte against him.

5. However, the opposite party No.2 Sri Jogen Das, the driver of the offending vehicle and the opposite party No.3 i.e. the insurer of the offending vehicle appeared before this Tribunal and submitted their respective written statement (in short WS).

6. The opposite party No.2 in its WS denied the rash and negligent driving of the bus by him. According to him he had valid driving license at the time of accident and the vehicle was duly insured with the opposite party No.3 i.e. the National Insurance Company Ltd., therefore he prayed this Tribunal to exonerate him from paying any compensation to the claimant.

7. The opposite party No.3 in its WS denied the factum of accident as well as the insurance coverage of the offending vehicle at the time of accident and asked the claimant to prove his case by adducing cogent evidence.

8. 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.3.

9. 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 and 3, this Tribunal framed the following issues for just and proper adjudication of the case. The issues are:-

(i) Whether the claimant got injuries on 03-10-2003 at Barpeta- Hajo PWD road under Sarthebari at about 11:45 a.m., due to rash and negligent driving of the driver of the offending vehicle having registration No.AS-01/E-4817 ?

(ii) Whether the claimant is entitled to get any compensation as prayed for and if so, to what extent and from whom?

(iii) To what other relief or reliefs the claimant is entitled to?

10. **Decision and reasons for decision:-**

11. 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)

12. The claimant in his claim petition as well as in his evidence as CW 1 clearly and categorically stated that on 03-10-2003 while he was travelling in the offending bus having registration No.AS-01/E-4817 through Barpeta- Hajo PWD road and when the vehicle reached near Sarthebari at about 11:45 a.m., the said bus met with an accident. As a result of the accident, he sustained fatal injuries. His left elbow got dislocated. He also suffered chest pain. There was bleeding from his nostril. He also got injuries on his eyes and other parts of his body. The claimant in his evidence as CW 1 has reiterated the said fact. The claimant was duly cross-examined by the Ld. Counsel of the opposite party No.3 but failed to discredit his evidence. During cross- examination the claimant fully supported his claim petition. According to the claimant, he was undergoing treatment at Mukalmua hospital where he was staying for one night. In course of his evidence the claimant exhibited and proved Exhibit 1 medical certificate and Exhibit 4 police report along with other prescriptions and bills vide Exhibit 3 and Exhibit 4.

13. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 to Exhibit 4 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 different parts of his body and there is no reason to disbelieve the said fact.

14. We know that a person getting injury due to vehicular accident on public road as a result of rash and negligent driving by 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 different parts of his body as a result of rash and negligent driving of the offending bus by its driver and he was undergoing treatment at Mukalmua hospital therefore, he is entitled to get compensation under M.V. Act.

According to the issue is decided in the affirmative.

(Issue No.2)

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

The claimant in his claim petition clearly stated that he expended Rs.30,000/- for his treatment though he claimed Rs.1,80,000/- as compensation. In his evidence as CW1 he re-iterated the said fact. In his cross- examination the claimant stated that he expended Rs.18,000/- to Rs.20,000/- for his treatment. From exhibited and proved documents it is clear that the claimant expended Rs.15,766/- towards his medical treatment, therefore, the said amount is awarded to the

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claimant towards his medical expenses. From Exhibit 1 i.e. the medical certificate, it appears that the claimant got two numbers of grievous injuries and three numbers of simple injuries on his person. As the claimant got grievous injuries so, he is entitled to get Rs.5000/- for his grievous injuries. Towards pain and suffering the claimant is also entitled to get Rs.2000/- accordingly, the same is awarded to the claimant. Though, the claimant in his evidence stated that he was undergoing treatment at Mukalmua hospital as an indoor patient for a day but there is no documentary evidence to support his said version. So, loss of income of the claimant did not arise during 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. 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.2000/-
4. For medical expenses :-	Rs.15,766/-
Total Compensation	Rs.22,766/-.

Thus, the total amount of compensation comes to Rs.22,766/- (Rupees twenty two thousand seven hundred sixty six only).

16. 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 did not appear before this Tribunal to contest the case despite received of notices from this Tribunal. However, the opposite party No.2 the driver of the offending vehicle appeared before this Tribunal and submitted his WS. In his WS he stated that he drove his vehicle not negligently and the vehicle had valid insurance coverage at the time of accident. Though, the insurance company denied 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.3 is liable to pay the said amount of compensation to the claimant.

So, this issue is decided accordingly.

(Issue No.3)

17. As discuss in issue No.1 the claimant is entitled to get compensation as per order.

This issue is decided accordingly.

M. A. S. P. Bahadri
Resolving Officer/Member

(O . R D E R)

- 18.** In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.22,766/- (Rupees twenty two thousand seven hundred sixty six only) which is rounded to Rs. 22,770/- (Rupees twenty two thousand seven hundred seventy only) as calculated on different heads is awarded to the claimant. The opposite party No.3 i.e. the National 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.
- 19.** Let a copy of the judgment be furnished to the opposite party No.3 i.e. the National Insurance Company Ltd., within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act.
- 20.** This MAC Case is disposed of accordingly, on contest.
- 21.** Judgment prepared, signed and pronounced, today the 13th Day of November '2014 in the open court.

Presiding Officer/ Member

MACT, Nalbari.

J. G. 13/11/14