

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

MAC No.734/2003.

**Parties:-**

1. Sri Karuna Deka.

- *Claimant.*

**-VERSUS-**

1. Sri Rajendra Ch. Das.

2. Sri Jogen Das.

3. The National Insurance Company Ltd.

- *Opp. Parties.*

**Present: Mr. A.K. Sarma, LL.M, AJS.**

**Presiding Officer/ Member**

**MACT, Nalbari.**

**Appearance:-**

For the claimant:

Ld. Advocate Mr. M. Haque.

For the Op. No.1and 2:

None has appeared.

For the Op. No.3:

None has appeared.

Date of evidence:

12-09-2014.

Date of Argument:

04-12-2014.

Date of Judgment:

12-12-2014.

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

1. The claimant Sri Karuna Deka son of Lt. Jogendra Deka resident of village:- Kahalhapara under ~~Mukam~~ <sup>Mukam</sup> 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.2,50,000/- for the injuries sustained by him due to vehicular accident which was occurred on 03-10-2003 at Barpeta, Hajo PWD road under Sarthebari P.S. at about 11:45 a.m.

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

On 03-10-2003 while the claimant was travelling in a passenger bus having registration No.AS-01/E-4817 suddenly the said bus met with an accident at Barpeta, Hajo PWD road near Sarthebari at about 11:45 a.m., as a result of rash and negligent driving of the driver of the offending vehicle i.e. the opposite party No.2. Due to the said accident, the claimant sustained serious injuries on his person and there was dislocation over his hip joint and right side fracture of nasal bone with chest injury. Immediately, after the accident some well wishers arranged him medical treatment. Thereafter, he was admitted at Guwahati Medical College and Hospital (in short GMCH) as an indoor patient since 08-10-

2003 to 10-10-2003 for his fracture injury. For that accident, police was informed and a case was registered Vide Sarthebari P.S. Case No.133/03 U/SS 279,337,338 and 304 (A) IPC. It is also the case of the claimant that the offending vehicle was duly insured with the National Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimant for the above premises claimed Rs.2,50,000/- 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, driver as well as the insurance company i.e. the opposite party No.3 the insurer of the offending vehicle.

4. Inspite of received of notices from this Tribunal neither the owner and driver nor the insurance company i.e. the insurer of the offending vehicle appeared before this Tribunal, therefore the case proceeded ex- parte against them.

5. After gone through the claim petition submitted by the claimant, 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?

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

7. I have heard argument from the claimant. I also perused the evidence on record carefully.

8. Now, let me first of all, discuss the evidence on record to decide the issue No.1.

**(Issue No.1)**

9. 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 vehicle having registration No.AS-03/E-4817, the said vehicle met with an accident at Barpeta, Hajo PWD road near Sarthebari at about 11:45 a.m., as a result of rash and negligent driving of the driver of the offending vehicle i.e. the opposite party No.2. As a result of the accident, he got different injuries on his person including a fracture injury. According to him, he was undergoing treatment at GMCH from 08-10-2003 to 10-10-2003. As the opposite parties are absent his evidence remain unchallenged. In course of his evidence the claimant exhibited and proved several documents including Exhibit-1 medical report, Exhibit-2 discharge certificate issued by GMCH, Exhibit-3 X-ray report issued by GMCH and Exhibit-10 accident information report.

10. From the oral evidence of CW 1 together with documentary evidence of Exhibit 1 to Exhibit 10 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 vehicle and as a result of the said accident the claimant got fracture injuries on his person and there is no reason to disbelieve the said fact.

**11.** We know that if a person got injury due to vehicular accident on public road as a result of rash and negligent driving of the offending vehicle by its driver, he is entitled to get compensation under the Motor Vehicles Act. In the present case, as noted here in before, the claimant got fracture injuries on his person due to vehicular accident as a result of rash and negligent driving by its driver on the PWD road and as a result of that accident he was undergoing treatment at GMCH, Guwahati, so, he is entitled to get compensation for the injuries sustained by him.

**12.** 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 as CW 1 claimed Rs.2,50,000/- as compensation. Medical vouchers exhibited and proved by the claimant showed that he expended Rs.19,313/- for his treatment. So, the said amount is awarded to the claimant as compensation towards his medical treatment. The claimant in his claim petition stated that he was a cultivator by profession at the time of accident and was earning Rs.6,000/- per month but there is no documentary evidence to prove his income. However, we know that in the year 2003 a cultivator can easily earn Rs.2000/- per month. As the claimant was undergoing treatment in GMCH from 08-10-2003 to 10-10-2003 i.e. for about two days therefore, during that period he cannot earn anything. So, he lost his income for two days. Accordingly, he is entitled to get Rs.133/- towards his loss of earning during the period of his treatment. From exhibit 2 it appears that claimant got fracture injury on his person due to the accident.

**13.** 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.3000/-. 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.3000/-   |
| 3. For the loss of income during<br>his medical treatment:- | Rs.133/-    |
| 4. For medical expenses:-                                   | Rs.19,313/- |

Total compensation:-

Rs.,27,446/-

Thus, the total amount of compensation comes to Rs.27,446/- (Rupees twenty seven thousand four hundred forty six only).

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

As all the opposite parties inspite of received of notices from this Tribunal did not appear before this Tribunal and as the claimant in his evidence stated that the offending vehicle was duly insured with the opposite party No.3 and it had valid insurance coverage at the time of accident therefore, to the opinion of this Tribunal the opposite party No.3 is liable to pay the said amount of compensation to the claimant.

Hence, this issue is decided accordingly.

**[ Issue No.2 ]**

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

**[ O R D E R ]**

**16.** In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs. 27,446/- (Rupees twenty seven thousand four hundred forty six only)/- which is rounded to Rs.27,450/- (Rupees twenty seven thousand four hundred fifty only)/- as calculated on different heads is awarded to the claimant. The opposite party No.3 i.e., the National Insurance Company Ltd., the insurer of the offending vehicle 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.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.

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

**19.** Judgment prepared, signed and pronounced, today the 12<sup>th</sup> Day of December '2014 in the open court.

  
Presiding Officer/ Member,

MACT, Nalbari.