

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL:  
NALBARI**

**Present: A.S.B. Laskar,**

**MAC Case No.277 (Injury) / 2017**

**Sri Sudesh Brhama-**

**S/o Sri. Dusmanta Brahma-- Injured**

**Smt. Purnima Brahma**

**W/O Dusmanta Brahma**

**Village- Jaripara**

**P.S. Barama**

**District: Baksa BTAD (Assam)----- Claimant**

**-V E R S U S**

**1. Sri Dharitri Malakar**

**W/O. Upendra Malakar**

**District: Nalbari (Assam) --Owner**

**2. Sri Dharitri Malakar**

**W/O Upendra Malakar**

**Village & P.O. Milanpur**

**P.S. Nalbari**

**District: Nalbari (Assam) --Driver**

**3. The National Insurance Co. Ltd.**

**Nalbari Branch. ----- Opp. Parties.**

**The Ld. Counsels Appeared:-**

**For the claimant:----- Sri Lankeswar Talukdar.**

**For the Opp. No.3:----- Sri. Mrigen Das.**

**Date of Argument :----- 21.06.2019/22.07.2019**

**Date of Judgment :----- 22 .07.19.**

## **( J U D G M E N T )**

- 1.** The facts leading to the filing of this claim petition in brief is that on 30.09.2017, Sudesh Brahma met with a road traffic accident at Bangaon while he was there with his mother and was waiting for a bus to go to their village Jaripara. While they were waiting for the bus, the offending vehicle bearing registration No. AS-14-E/9779 which was ridden rashly and negligently knocked Sudesh Brahma from behind and caused injuries in various parts of his body. Soon after the accident Sudesh Brahma was taken to the SMK Civil Hospital, Nalbari from where he was referred to the GMCH, Guwahati for better treatment, but Sudesh Brahma was admitted in the Dispur Hospital where he received treatment.
- 2.** Narrating the above stated facts in detail, Smt. Purnima Brahma the mother of the injured, Sudesh Brahma filed the instant claim application U/S 166/140 of M.V. Act praying for compensation amounting to Rs.8,50,000/- under different heads impleading the owner cum driver and the insurer of the offending vehicle as opposite parties.
- 3.** On receipt of the claim petition, same was admitted and notices were issued upon the opposite parties, but the opposite party No.3, the National Insurance Co. Ltd. only made its appearance and contested the case by filing written statement.
- 4.** In its written statement, the opposite party No.3, the National Insurance Company td. Contended that there was no cause of action to institute the claim petition. The Insurance Company also contended that the offending vehicle was not insured with it and it also denied the involvement of the offending vehicle in the alleged accident. The Insurance Company also denied the averments made by the claimant in her claim petition and prayed for its dismissal.
- 5.** Thereafter, going through the pleadings and hearing the parties, the following issues were framed by my Id. Predecessor:

### **Issues**

- (i) Whether the claimant got injury on 30.09.2017 at about 12 a.m due to rash and negligent driving by the driver of the offending vehicle no. AS-

14-E/9779 ( scooty) ?

(ii) 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?

### **Decision & Reasons Thereof**

**6.** In this case, the claimant adduced her evidence and Sri Khagen Ch. Baishya and Nikon Ramchiary also deposed supporting the claimant, but the opposite party abstained from adducing any evidence. Due to the absence of the opposite party the case proceeded ex-parte against them and the evidence of the claimant and her witnesses remained unchallenged. Let me see how far the claimant is successful in her effort.

### **Issue No.1**

**7.** It is already stated that in her claim petition the claimant alleged that the accident occurred due to rash and negligent driving by the rider of the offending vehicle and it appears that during her evidence also the claimant reiterated the same. The claimant narrated that on 30.09.2017 while she along with her son, the injured, were waiting for a bus, her son was knocked by the offending vehicle which was driven rashly and negligently. The claimant also narrated the injury sustained by her son and she also narrated about the treatment received by her son due to the accident. The claimant also exhibited the accident information report in the form no 54, the extract of the GD and the medical documents including the cash memos. During his evidence, Sri Khagen Ch. Baishya, an eye witness of the accident also narrated that on 30.09.2017 he had witnessed the accident while he was coming from Baganpara. He also narrated that the offending vehicle was at a high speed and knocked the son of the claimant from behind and caused injuries. During his evidence, Sri. Nikan Ramchiary also an eye witness of the accident narrated that the offending vehicle was at a high speed and it was driven rashly and negligently. He also narrated that the son of the claimant was knocked from behind by the offending vehicle.

**8.** I have very carefully perused the evidence of the witnesses and

also scanned the documents exhibited by the claimant .The Id. Counsel for the claimant argued that the rash and negligent driving by the rider of the offending vehicle has been established and he also prayed for allowing the claim petition. I have very carefully considered the submission advanced by the Id. Counsel and it appears that the evidence of the claimant and her witnesses remained un-rebutted as they were not subjected to cross-examination by the opposite parties and in the absence of their cross-examination, I find nothing to hold that that there was no negligence in driving the offending vehicle. Apart from the evidence the Accident Information Report in Form 54 which has been marked as Ext.1 and the Ext.2 extract of the G.D. also disclose the accident and the involvement of the offending vehicle and its rider. Hence, from all these above discussed factors there remain no doubt that the accident occurred due to rash and negligent driving by the rider of the offending vehicle. Hence, this Issue is decided accordingly in favour of the claimant.

### **Issue Nos. 2 & 3**

**9.** While deciding the earlier Issue, it is already seen that the accident occurred due to negligent driving by the rider of the offending vehicle. Now the question is whether the claimant is entitled to the amount as claimed by her in her claim petition. During her evidence the claimant specifically narrated about the injuries sustained by her son and she also exhibited relevant documents narrating the treatment of her son and expenditure incurred for the treatment. The Id. Counsel for the claimant submitted that an amount of Rs. 2,65,910/- was spent for the treatment of the son of the claimant and it appears from the documents exhibited by the claimant that she had to spend the amount for the treatment of her son and there is no doubt that she is entitled to the amount. Apart from the expenditure for the treatment the claimant is also entitled to be compensated for the pain and suffering undergone by the injured due to the accident. The documents exhibited by the claimant show that her son had suffered grievous injury and he was hospitalized for a long time. Hence, in my view an amount of **Rs.25,000/-** will be sufficient to meet the ends of justice for the pain and suffering undergone by the injured due to the accident.

**10.** Now, the vital question is who is to pay the amount. The accident information Report in the Form 54 specifically reveals that the offending vehicle was duly insured with the National Insurance Co. Ltd. vide Policy No.39010231166202957627 which was valid till 28.10.2017 and the driver of the offending vehicle had a valid driving license which was valid till 28.02.2037 .Hence, the opposite party, the National Insurance Co. Ltd. shall pay the amount of compensation. Accordingly, both these issues are decided accordingly.

### **O R D E R**

**11.** Considering every facts and circumstances, it is hereby ordered that the opposite party No.3, the National Insurance Co. Ltd. shall make the payment of **Rs. 2,65,910+25,000=2,90,910 rounded to Rs.2,90,900/-** only as compensation in favour of the claimant on behalf of the injured within 60 days from today with interest @ 6% per annum from the date of filing of the claim petition on 13.12.2017

Let a copy of the judgment be furnished to all the concerned parties within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act. This MAC Case is disposed of on contest.

Given under my hand and seal of this Tribunal at Nalbari on this the 22<sup>nd</sup> Day of July, 2019.

**Dictated & corrected by me.**

**Presiding Officer /Member  
Member**

**M.A.C.T. Nalbari**

**Presiding Officer/**

**M.A.C.T. Nalbari**

**APPENDIX**

**Witness for the claimant:-**

Smt Purnima Brahma

Sri Khagen Ch.Baishya

Sri Nikan Ramchiary

**Witness for the opposite party**

Nil :-

**Documents exhibited by the claimant**

Ext. 1 : Accident Information Report in Form 54.

Ext. 2 : the extract Of th G.D

Ext. 3 - 185 : Medical documents.

**Documents exhibited by the opposite party**

Nil

**Presiding Officer/ Member,**

**MACT, Nalbari**

