

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL: NALBARI
Present: A.S.B. Laskar,

MAC Case No. 101 (Injury) / 2017

Sri Kumud Barman
S/O Sri Bhaben
Vill: Borajal
P.S.: Ghagrapar
District: Nalbari (Assam)-----Claimant

-V E R S U S-

1 . Md. Riaj Ali
S/O Abdul Gani
Village: Balajan
P.S.: Nalbari
District: Nalbari **-Owner**

2. Sri Ajit Baruah
S/O Barihana Baruah
Village: Bahjani
P.S.: Nalbari
District: Nalbari **- Rider**

3. The New India Assurance Co. Ltd. ----- Opp. Party.

The Ld. Counsels Appeared:-

For the claimant:----- Sri Gakul Barpujari.

For the Opp. No.3:----- Sri Prafulla Kr. Sarma

Date of Argument :----- 10.02.2020

Date of Judgment :----- 24 .02.2020.

(J U D G M E N T)

1. The facts leading to the institution of this case in brief is that on 30.11.2016 at about 10.01 p.m, the claimant named above met with a vehicular accident at a place called Panbari while he was returning home from Borajal. While the claimant was on his way, the offending vehicle a motorcycle bearing No. AS-14-D/6095 which was allegedly driven rashly and negligently knocked him. In the accident, the claimant sustained grievous injuries and soon after the accident he was taken to the GMCH, Guwahati.

2. Narrating the above stated facts in detail, the claimant filed a claim petition U/S 166/140 of the M.V. Act impleading the owner, rider and the insurer of the offending vehicle as opposite parties claiming compensation amounting to Rs.10,00,000/- under different heads.

3. On receipt of the claim petition, same was admitted and notices were issued upon the opposite parties, but none except the opposite party No.3, the New India Assurance Company Limited made its appearance and contested the case by filing written statement and adducing evidence. The Insurance Company challenged the maintainability of the case. The Insurance Company denied all the averments and allegations made by the claimant in the claim petition. The Insurance Company also prayed for strict proof of the averments made by the claimant in the claim petition.

4. Thereafter, going through the pleadings and hearing the parties, the following issues were framed by my Id. Predecessor-in-office:-

Issues

- (i) Whether the claimant got injury on 30 .11.2016 at about 10.01 p.m, due to rash and negligent driving by the rider of the offending vehicle no. AS-14-D/6095 ?
- (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?

Decision & Reasons Thereof

5. In this case the claimant adduced his evidence and also exhibited some documents. The contesting opposite party also adduced the evidence of two witnesses. Let me see how far the claimant is successful in establishing his claim.

Issue No.1:

6. It is already stated that in his 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 his evidence also the claimant reiterated the same. During his evidence the claimant narrated that on 30.11.2016 he was knocked by the offending vehicle while he was returning home. He also narrated that the offending vehicle was driven rashly and negligently. He further narrated about his injuries and his medical treatment in the GMCH, Guwahati. He added that his monthly income is Rs.10,000/- and he had to suffer loss in business due to the accident. The claimant exhibited the Accident Information Report in Form 54, the Extract of G.D and medical documents. During his cross-examination, the claimant admitted that he had

good relation with the opposite parties. He admitted that he has not exhibited any document relating to his occupation. He denied the suggestion that he did not sustain any injury in any road traffic accident.

7. In his evidence, Sri Mrinal Malla Patowary, the O/C, Ghagrapar Police Station who deposed for the Insurance Company narrated that the G.D. No,646 dated 30.11.2016 does not reveal the number of the vehicle. But, an entry was made on that day about the road traffic accident. He also exhibited the extract of G.D. which has been marked as Ext.A.

8. In his evidence, Sri Rantu Patowary, the DW-2, a panel Investigator for the Company narrated that he was entrusted by the Company to inquire about the entry in the G.D of the Ghagrapar Police Station. He also narrated that he had filed an application before the S.P., Nalbari regarding the G.D Entry No. 646 dated 30.11.2016 and he was furnished with the extract of the G.D. certified by the O/C, Ghagrapar Police Station. He also narrated that the extract of the G.D. does not reveal the No. of the offending vehicle. He also exhibited the extract of the G.D. which has been marked as Ext.C and the report prepared by him which has been marked as Exht.B.

9. I have very carefully perused the case record and heard the Id. counsels representing both sides. 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 tried to draw attention of this Tribunal towards the documents exhibited by the claimant. But opposing his submission, the Id. Counsel for the Company argued that no accident as claimed by the claimant had occurred and the claimant also did not sustain any injury. The Id. Counsel high lighted the evidence of the DWs.

10. I have very carefully considered the submission advanced by the Id. Counsels and it appears that as in his claim petition during his evidence also the claimant narrated the occurrence in detail and he also stated about the rash and negligent driving by the rider of the offending vehicle. It appears that the opposite party tried to establish that no accident as alleged had taken place. The opposite party also exhibited the extract of the G.D. no. 646 dated 30.11.2016. The Id. Counsel for the opposite party argued that in the G.D. no.

646 dated 30.11.2016, the number of the vehicle has not been mentioned. I have very carefully perused the Ext. A and it appears that in G.D. 649 dated 01.12.2016, the police had mentioned the number of the motorcycle. Apart from that the Ext.B the report of the D.W.2 a panel investigator also reveals that an accident had occurred on 30.11.2016 involving the offending vehicle. As such, there remains no doubt about the accident. But the question is whether the accident had occurred due to rash or negligent driving by the rider of the offending vehicle. It appears that during his cross-examination also the claimant reiterated the date of the accident and he specifically stated that at the time of the accident, he was returning home. Thus, it appears that the opposite party failed to rebut the evidence of the claimant regarding the rash and negligent driving by the rider of the offending vehicle. The opposite party the owner and rider also abstained from adducing rebuttal evidence regarding rash and negligent driving. In my view, if the rider drove the offending vehicle carefully, the accident and the injury of the claimant could have been averted. The Accident Information Report in Form 54, the Ext. 1 also reveals the involvement of the offending vehicle and the parties in the accident. From all these, it appears 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

11. While deciding earlier Issue, it is already seen that the accident occurred due to rash and negligent driving by the rider of the offending vehicle. Now, the question is whether the claimant is entitled to the amount claimed by him as compensation. During his evidence the claimant narrated about the injuries and the medical treatment he received after the accident. To prove the expenditure the claimant also exhibited the relevant cash memos and vouchers. But it appears from the cash memos that the claimant was prescribed with Alkeran which is an anti-cancer ("antineoplastic" or "cytotoxic") chemotherapy drug, Somatosan, Adryamycin Etc. As such I do not get inspiration to accept all the cash memos and vouchers submitted by the claimant. Hence from the accepted cash memos and vouchers it appears that an amount of **Rs.930/-** was spent by the claimant during his treatment and there is no doubt that he is entitled to the amount spent for the treatment. Apart from that, the claimant is also entitled to be compensated for the pain

and suffering undergone by him due to the injuries he had sustained in the accident. It appears from the Exht.2 that the claimant was diagnosed with head injury with type III compound fracture of shaft of (R) Fibula. Considering the injuries and the sufferings of the claimant, I hold that an amount of **Rs.20,000/-** will be sufficient for the pain and sufferings undergone by him due to the accident. Apart from the above, the claimant is also awarded **Rs.10,000/-** for the loss of amenities in life. The claimant is also awarded **Rs.5000/-** for special diet and **Rs.10,000/-** for conveyance, attendant and for miscellaneous expenses during his treatment.

12. Now, the question is who is to pay the amount of compensation. It appears from the Exht.1, the Accident Information Report that the rider of the offending vehicle had a valid driving license at the time of the accident and the vehicle was insured with the New India Assurance Company Limited vide policy No. 5309023115010000-6803 which was valid till 08.12.2016. As such, I hold that the opposite party no. 3, the New India Assurance Company Limited is liable to pay the compensation.

O R D E R

13. Considering every facts and circumstances, it is hereby ordered that the opposite party No.3, the New India Assurance Company Limited shall make the payment of **Rs. 9,30+20,000+10,000+5,000+10,000=Rs.45,930/- rounded to Rs.45,900/- (Rs. Fory five Thousand and nine hundred only)** in favour of the claimant within 60 days from today with interest @ 6% per annum from the date of filing of the claim petition on 08.05.2017.

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 24th Day of February,2020.

Dictated & corrected by me.

Presiding Officer /Member
M.A.C.T, Nalbari

Presiding Officer/ Member
M.A.C.T, Nalbari

APPENDIX

Witness for the claimant:-

Sri Kumud Barman

Witness for the opposite party

- 1.Sri Bhaskar Malla Patowary
- 2.Sri Rantu Patowary

Documents exhibited by the claimant

- Ext. 1 : Accident Information Report in Form 54.
Ext. 2-18: Medical documents.
Ext. 19 : Extract of G.D..

Documents exhibited by the opposite party

- Ext A: Extract of G.D.
Ext.B : G.D. for the year 2016, Report of the Panel Investigator
Ext.C : Extract of G.D.

**Presiding Officer/ Member,
MACT, Nalbari**