

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

Present: A.S.B. Laskar,

MAC Case No. 176 (Injury) / 2017

**Sri Nayan Das
S/O Late Madan Das
Village: Chechamukh
P.S.: Hajo
District : Kamrup (Assam)----- Claimant**

-V E R S U S-

1. The National Insurance Co. Ltd.

**2. Sri Achyutananda Das
S/O Late K.C. Das
Village & P.O. Kulhati
P.S. Hajo
District : Kamrup - (Owner)**

**3. Sri Kamal Kumar Das
S/O Pramod Ch. Das
Village & P.O. Kulhati
P.S. Hajo
District : Kamrup-(Driver) ----- The Opp. Parties.**

**The Ld. Counsels Appeared:-
For the claimant:-----Md. Khairuddin Ahmed
For the Opp. No.1:--- Smt. Manika Sarma Chakraborty.**

**Date of Argument :---- 06.02.2020
Date of Judgment :---- 20.02.2020.**

(J U D G M E N T)

1. The facts leading to the institution of this case in brief is that on 13.01.2016 at about 11.00 a.m, the claimant named above met with a vehicular accident at a place called Jayguru Chowk while he was waiting there for a vehicle. While the claimant was waiting there, he was knocked by the offending vehicle a motorcycle bearing No. AS-01-L/6325 which was allegedly driven rashly and negligently. In the accident, the claimant sustained grievous injuries and soon after the accident he was taken to the GMCH, Guwahati from where he was taken to the Dispur Polyclinic and Nursing Home, Guwahati where he received treatment from 25.02.2016 to 27.02.2016 as indoor patient. After the accident an entry was made in the G.D. of North Guwahati Police Out-Post vide No.484 dated 13.01.2016.

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 who also made their appearance and contested the case by filing their respective written statement.

4. In their written statement the opposite party No.1 & 2, the owner and rider of the offending vehicle challenged the maintainability of the case and contended that there was no rashness or negligence in driving the offending vehicle. They also contended that the vehicle was duly insured with the National Insurance Company Limited vide Policy No.200800/31/15/6200003936 which was valid till 26.12.2016. They further contended that the vehicle was driven with a valid driving license.

5. In its written statement, the opposite party No. 3, the National Insurance Company Ltd. also 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.

6. 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 13.01.2016 at about 11.00 a.m, due to rash and negligent driving by the rider of the offending vehicle no. AS-01-L/6325 ?
- (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

7. In this case the claimant adduced his evidence and also exhibited some documents. But, the contesting opposite party abstained from

adducing evidence. Let me see how far the claimant is successful in establishing his claim.

Issue No.1:

8. 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 13.01.2016 at about 11.00 a.m, he was knocked by the offending vehicle at Jayguru Chowk while he was waiting there for a vehicle. He also narrated that the offending vehicle was driven rashly and negligently. He further narrated that he had sustained serious injuries and immediately after the accident, he was taken to the GMCH, Guwahati where he received treatment from 13.01.2016 to 22.01.2016. The claimant also narrated about his treatment in the Dispur Polyclinic & Nursing Home, Guwahati. The claimant added that procedure was done in his left tibia. The claimant also narrated that he was a businessman and his monthly income was Rs.15,000/ and due to the injuries he could not resume his business for six months. The claimant also exhibited the Accident Information Report in Form 54 and the medical documents. . During his cross-examination, he admitted that he did not lodge any FIR after the accident. He also admitted that he has not exhibited any document relating to his income.

9. I have very carefully perused the case record and heard 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 Insurance Company submitted that the accident occurred due to the fault of the claimant and he is not entitled to any compensation for injury from the Company.

10. I have very carefully considered the submission advanced by the Id. Counsels representing both sides and it appears that in this case the accident and the injury of the claimant is neither denied nor disputed by the contesting opposite party. But, the question is whether the accident

occurred due to rash and negligent driving by the rider of the offending vehicle. It appears that similar to his claim petition during his evidence also the claimant narrated about the accident in detail and he also stated that the offending vehicle was driven rashly and negligently. I found that the contesting opposite party could not rebut the evidence of the claimant. The owner and the driver of the offending vehicle have not also adduced rebuttal evidence regarding rash and negligent driving. The Insurance Company has not also adduced rebuttal evidence. Above all, the Exht.1, the accident information report also reveals the involvement of the parties and the vehicle in the accident. As such, it appears that the accident occurred due to the fault of the rider of the offending vehicle. Hence, this issue is decided in favour of the claimant.

Issue Nos. 2 & 3

11. While deciding the 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 his medical treatment after the accident. It appears from the medical documents that the claimant was treated in the GMCH and in the Dispur Polyclinic & Nursing Home, Guwahati after the accident. It appears from the Exht.4(1) that the claimant was diagnosed with fracture of mid shaft of left tibia. The claimant also exhibited relevant documents relating to his treatment and it appears that an amount of **Rs.1,38,823/-** was spent for his treatment and there is no doubt that the claimant is entitled to the amount spent during 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 sustained by him in the accident. Considering the injuries and the sufferings by the claimant, I hold that an amount of **Rs.20,000/-** will be sufficient for the pain and suffering undergone by him due to the accident.

12. During his evidence, the claimant also stated about his loss of income for the injuries he had sustained in the accident. The claimant stated that his monthly income was Rs.15,000/-, but he has not exhibited any document relating to his income. But, I hold that a man of the age of the claimant who was about 21 years old at the time of the accident can

easily earn Rs.6,000/- in a month and I hold that for the injures he had sustained he was definitely unable to perform his normal activity at least for a period of two months. As such, I hold that the claimant had to incur loss of Rs.6,000 X 2 = Rs.12,000/- as his monthly income. Apart from the above the claimant is awarded **Rs. 10,000/-** for the loss of amenities in life and **Rs.5,000/-** is awarded for special, diet. The claimant is also awarded **Rs.10,000/-** for miscellaneous expenditure like transportation, cost of attendant etc.

13. 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 National Insurance Company Limited vide Policy No.200800/31/15/6200003936 which was valid till 26.12.2016. The insurance company has not also adduced evidence to show that the offending vehicle was not duly insured with it. As such, I hold that the opposite party no 1, the National Insurance Company Limited is liable to pay the compensation.

O R D E R

14. Considering every facts and circumstances, it is hereby ordered that the opposite party no 1, the National Insurance Company Limited shall make the payment of Rs. **1,38,823+20,000+12,000+10,000+5,000+10,000 = 1,95,823/-** rounded to **Rs.1,95,800/-** (one lakh ninety five thousand and eight 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 27.07.2017. 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 **20th 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 Nayan Das

Witness for the opposite party

Nil

Documents exhibited by the claimant

Ext. 1 : Accident Information Report in Form 54.

Ext. 2 : Extract of G.D.

Ext.3-8:Medical documents.

Documents exhibited by the opposite party

Nil

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