

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

Present: A.S.B. Laskar

MAC Case No. 175 (Injury) / 2017

1. Smt Aparna Das

W/O - Sri Dinesh Das

2. Miss Himashri Das

D/O - Sri Dinesh Das

Both are of Village: Arikuchi

P.S. : Nalbari

District: Nalbari (Assam)----- Claimant

-V E R S U S-

1 . Smt. Namita Das

D/O Rohini Kr. Sarma

Village : Kaljar

P.S. : Barama

District- Baksa -Owner

2. Mazib Ali

S/O : Abdul Ali

Village: Kaljar

P.S. : Barama

District- Baksa (Assam) - Driver

**3. The New India Assurance Company Limited----- Opp.
Parties.**

The Ld. Counsels for the parties-

For the claimant:----- Smt. Anjali Barman

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

Date of Argument :----- 15.02.2020.

Date of Judgment :----- 15.02.2020.

(J U D G M E N T)

1. The facts leading to the institution of this case in brief is that on 21.11.2011 at about 8.30 p.m, the daughter of the claimant named above met with a vehicular accident at a place called Mugkuchi Chowk while she along with the claimant was returning home at village Arikuchi in an Auto rickshaw. While the claimant and her daughter were on the way, the Auto rickshaw was knocked by a car bearing registration no. AS-01-AF/5497 which was allegedly driven rashly and negligently. In the accident, the daughter of the claimant, the claimant herself and their co-passengers sustained injuries and soon after the accident injured were taken to the SMK Civil Hospital, Nalbari from where they were referred to the GMCH, Guwahati. After the accident, a case vide Nalbari P.S. Case No. 695/11 was registered.

2. Narrating the above stated facts in detail, the claimant filed a claim petition U/S 166/140 of the M.V. Act representing her daughter, the claimant No.2 impleading the owner, driver and the insurer of the offending vehicle as opposite parties claiming compensation amounting to Rs.5,00,000/- 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 submitting their respective written statement.

4. In her written statement, **the opposite party No.1 Smt. Namita Das**, the owner of the offending vehicle challenged the maintainability of the case. She also denied the averments made by the claimant in the claim petition. She contended that at the time of the accident, the vehicle was duly insured with the New India Assurance Company Limited vide Policy No.400194291 and the Policy was valid till 08.01.2012.

5. In his written statement, the opposite party **No.2, Md. Majib Ali**, the driver of the offending vehicle also challenged the maintainability of the case. He also denied the averments made by the claimant in the claim petition. He contended that the accident occurred due to the fault of the driver of the Auto-rickshaw and he further contended that at the time of the accident, he had a valid driving license.

6. In its written statement, the opposite party **No.3, the New India Assurance 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 Company also contended that the claim petition is bad for non-joinder of necessary parties. The Insurance Company also contended that it is not liable to compensate the claimant in case of violation of the terms of the policy.

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

Issues

(i) Whether the daughter of the claimant got injury on 21.11.2011 at about 8.30 p.m, due to rash and negligent driving by the driver of the offending vehicle no. AS-01-AF/5497 ?

(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

8. I have very carefully perused the case record and it appears that in this case the issues were framed on 09.01.2019 and the claimant adduced her evidence in affidavit on 24.04.2019 and as in her claim petition during her evidence also she narrated the occurrence in detail and also exhibited some relevant documents. Thereafter the claimant abstained from appearing before the Tribunal to face cross examination and on the prayer

of her engaged counsel adjournments were granted repeatedly, but since 01.11.2019 the claimant remained absent. It appears that since 01-11-2019 neither the claimant made her appearance before this Tribunal to face cross-examination nor her engaged counsel represented her. It appears that since 01.11.2019 no petition was also filed for the claimant. The claimant has been given opportunities consecutively for five days, but none appeared for her. In the absence of the cross-examination, I do not get inspiration to lean on in favour of the claimant and rely her evidence. The Id. Counsel for the company argued for the dismissal of the case. I have considered the submission advanced by the Id. Counsel and getting sufficient merit in his submission and in the absence of the cross examination of the claimant I find nothing to hold that the alleged accident had occurred due to rash or negligent driving or due to the fault of the driver of the alleged offending vehicle. Hence, I hold that the claimant could not establish her claim.

O R D E R

9. Considering every facts and circumstances, it is hereby ordered that the Claim petition filed by the claimant is dismissed for reasons discussed above and accordingly no award is passed for compensation.

Given under my hand and seal of this Tribunal at Nalbari on this the 15th 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:-

Smt. Aparna Das

Witness for the opposite party

Nil

Documents exhibited by the claimant

Ext.1 : FIR

Ext.2 : Charge-sheet.

Ext.3 : Seizure-list

Ext.4 :MVI Report

Ext. 5- 9:Medical Documents

Documents exhibited by the opposite party

Nil.

Member,

Presiding

Officer/

MACT, Nalbar