

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

MAC Case No. 287 (Injury)/ 2017

Sri Nagendra Deka@ Nagen Deka
S/O Lt. Dip Ch. Deka - Injured

Represented by
Smt. Mira Deka
W/O Sri Nagendra Deka
Vill: Balitara
P.S.: Ghagrapar
District: Nalbari (Assam)-----Claimant

-V E R S U S-

1. Liberty Videocon General Insurance Company Limited

2. Sri Debabrat Saha
S/O Sambhu Nath Saha
P.O. & P.S : Garchuk
District: Kamrup -Owner

3. Sri Bhadreswar Deka
S/O Sri Ram Ch. Deka
P.O. & P.S. Goreswar
District: Kamrup-Driver----- Opp. Party.

The Ld. Counsels Appeared:-

For the claimant:----- Sri Ramesh Kr. Sarma

For the Opp. No.1:----- Sri Kishor Kumar Talukdar

Date of Argument :----- 12.03.2020

Date of Judgment :----- 22.06.2020.

(J U D G M E N T)

1. The facts leading to the institution of this case in brief is that on 11.11.2017 at about 6.40 a.m, Sri. Nagendra Deka the husband of the claimant named above met with a vehicular accident at a place called Ganesh Mandir Chowk under the Nalbari Police Station while he was coming towards Nalbari Town riding a motorcycle bearing No. As-14-D/2996. While Sri. Deka was on his way, the offending vehicle a Truck bearing No. AS-01-EC/5061 which was allegedly driven rashly and negligently knocked his motorcycle. In the accident, Sri. Deka sustained grievous injuries and soon after the accident he was taken to the SMK Civil Hospital, Nalbari from where he was taken to the Down Town Hospital, Guwahati and then to the Popular Nursing Home, Patna.

After the accident, an FIR was also lodged and a case vide Nalbari P.S. Case No.886/17 was registered. In due course the claimant amended her claim petition and stated that injured is an employee of Balitara High School.

2. Narrating the above stated facts in detail, the claimant filed a claim petition U/S 166/140 of the M.V. Act for her husband impleading the owner, driver and the insurer of the offending vehicle as opposite parties claiming compensation amounting to Rs. 15,00,000/- 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. In their joint written statement, opposite party No.2 and 3, the owner and driver of the offending vehicle challenged the maintainability of the case and contended that there was no rash or negligence in driving the offending vehicle. They also contended that the vehicle was driven with a valid driving license and it was duly insured with the Liberty Videocon General Insurance Company Limited vide Policy No.2013-300201-16-1002905-00-000 and the policy was valid till 01-03-2018. They further contended that the offending vehicle had a valid fitness certificate and route permit. The opposite party no. 1, the Liberty Videocon General Insurance Company Ltd. also challenged the maintainability of the case. The Insurance Company denied all the averments and allegations made by the claimant in her claim petition. The Insurance Company also prayed for strict proof of the averments made by the claimant in her claim petition. The Company admitted that the vehicle was duly insured with it, but, denied the involvement of the offending vehicle in the accident. The Company further contended that the driver of the vehicle did not possess valid driving license and there was no valid route permit or fitness certificate of the vehicle.

4. Thereafter, going through the pleadings and hearing the parties, the following issues were framed:-

Issues

(i) Whether the husband of the claimant got injury on 11.11.2017 at about 6.40 a.m, due to rash and negligent driving by the driver of the offending vehicle no. AS-01-EC/5061 at Ganesh Mandir Chowk ?

(ii) Whether the prayer of the claimant for compensation due to the injury of her husband can be allowed and if so, who is to pay the same and to what extent?

(iii) To what other relief or reliefs the claimant is entitled to?

Decision & Reasons Thereof

5. In this case the husband of the claimant, the injured adduced his evidence and also exhibited some documents. The claimant also adduced the evidence of the doctor who had issued the disability certificate. The contesting opposite party abstained from adducing evidence. Let me see how far the claimant is successful in establishing his claim.

Issue No.1:

6. It is already stated that in her claim petition the claimant alleged that the accident occurred due to rash and negligent driving by the driver of the offending vehicle and it appears that during his evidence, the injured also reiterated the same. During his evidence the injured, Sri Nagendra Deka narrated that on 11.11.2017 at about 6.40 a.m, the offending vehicle had knocked his motor cycle while he was coming towards Nalbari. He also narrated that the offending vehicle was driven rashly and negligently. He further narrated about his injuries and his treatment in the SMK Civil Hospital Nalbari, Down Town Hospital Guwahati, Paras HMRI Hospital Patna and in the Popular Nursing Home, Patna. He further narrated that he sustained grievous injuries in his left leg, head and other parts of body. He added that he is a clerk in the Balitara High School. He further narrated that he had appeared before a Medical Board and his disability was assessed to the extent of 45%. He also exhibited the Accident Information Report in Form 54, FIR, charge-sheet, seizure-list and medical documents. During his cross-examination, he reiterated the date and time of the accident. He also re-iterated that the offending Truck was driven in a rash and negligent manner. He further admitted that he is a diabetic patient and submitted cash memos and vouchers for his diabetic treatment also. He further admitted that he is getting his salary regularly and he has not suffered any loss of income. In his additional evidence, the injured exhibited some medical documents and during his cross examination, he denied the suggestion that the documents exhibited by him are fake.

7. In his evidence, Dr.Chittaranjan Pathak, the witness for the claimant

narrated that on 13.12.2018, a Medical Board was constituted under his chairmanship to assess the disability of the injured and he further narrated that the Board assessed the disability of the injured to the extent of 45 % of locomotor type in relation to his left leg. He also exhibited the disability certificate which has been marked as Ext.2. During his cross-examination, he stated that the disability of the injured was in relation to his left leg and it was not in respect of whole body.

8. I have very carefully perused the case record and heard the Id. counsels representing both sides. The Id. Counsel for the Company submitted his argument in writing. The Id. Counsel for the claimant argued that the rash and negligent driving by the driver of the offending vehicle has been established and he also tried to draw attention of this Tribunal towards the documents exhibited by the injured. But opposing his submission, the Id. Counsel for the opposite party argued that the injured is a Govt. servant and is getting his salary and for that, there is no question of his loss of income due to disability. It is further argued that the rash and negligent driving by the driver of the offending vehicle has not been properly established. It is also argued that the injured is a diabetic patient and in the expenditure for his treatment he has included the expenditure for the treatment for diabetes.

9. I have very carefully considered the submission advanced by the Id. Counsels and it appears that as in the claim petition, during his evidence, the injured also narrated the occurrence in detail and the injured also stated about the rash and negligent driving by the driver of the offending vehicle. It appears that the opposite party failed to rebut the evidence of the injured regarding the rash and negligent driving by the driver of the offending vehicle. During his cross examination also the injured reiterated the fact that the offending vehicle was driven in a rash and negligent manner. The opposite party also abstained from adducing rebuttal evidence regarding rash and negligent driving. The injured also exhibited the FIR and the charge-sheet and it appears from the Ext. 7(3), the charge-sheet that it was submitted against the driver of the offending vehicle U/s 279/338/427 IPC. In my view, if the driver 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 driver of the offending vehicle. Hence, this issue is decided accordingly in favour of the claimant.

Issue Nos. 2 & 3

10. While deciding earlier Issue, it is already seen that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. Now, the question is whether the claimant is entitled to the amount claimed by her as compensation for her husband. During his evidence the injured narrated about the injuries and the treatment he received after the accident. It appears from the evidence that after the accident the injured was treated in the SMK Civil Hospital, Nalbari, Down Town Hospital, Guwahati, Paras HMRI Hospital, Patna and in the Popular Nursing Home, Patna. It appears from the Exht. 4(78), the discharge summary certificate issued by the Popular Nursing Home, Patna that the injured was diagnosed with fracture of both bone of left leg and was treated with ilizarov external ring fixator. It also appears that the injured was treated in the hospitals on different occasions. From the documents exhibited by the injured, it appears that an amount of **Rs. 9,46,310/-** was spent for his treatment and there is no doubt that he is entitled to the amount spent for the treatment. Apart from that, the injured is also entitled to be compensated for the pain and suffering undergone by him due to the injuries he had sustained in the accident. Considering the injuries and the sufferings of the injured, I hold that an amount of **Rs.75,000/-** will be sufficient for the pain and sufferings undergone by him due to the accident. Apart from the above, the injured is also awarded **Rs.25,000/-** for the loss of amenities in life. That apart from that the injured is also awarded **Rs. 100,000/-** for the cost of transportation, attendant, diet etc. During evidence, the injured admitted that he is getting his salary regularly and he has not incurred any loss of income. As such, no compensation is awarded for loss of future income.

11. Now, the question is who is to pay the amount of compensation. It appears from the Exht.1, the Accident Information Report that the driver of the offending vehicle had a valid driving license at the time of the accident and the vehicle was duly insured with the Liberty Videocon General Insurance Company Limited vide Policy No.2013-300201-16-1002905-00-000 and the

policy was valid up to 01.03.2018. The Insurance Company also admitted that the vehicle was duly insured with it. As such, I hold that the opposite party no. 1, the Liberty Videocon General Insurance Company Limited is liable to pay the compensation.

O R D E R

12. Considering every facts and circumstances, it is hereby ordered that the opposite party No.1, the Liberty Videocon General Insurance Company Limited shall make the payment of **Rs 9,46,310+75,000+25,000+100,000=11,46,310/- rounded to Rs.11,46,300/- (Rs. Eleven lakh forty six thousand and three hundred only)** in favour of the injured as prayed by the claimant claimant within 60 days from today with interest @ 6% per annum from the date of filing of the claim petition on 22.12.2017.

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. In this case though argument was heard on 12.03.2020, but due to lock down judgment could not be pronounced in time.

Given under my hand and seal of this Tribunal at Nalbari on this the 22nd Day of June,2020.

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:-

- 1.Sri Nagendra Deka
- 2.Sri Chittaranjan Pathak

Witness for the opposite party

Nil

Documents exhibited by the claimant

Ext. 1 : Accident Information Report in Form 54.

Ext. 2-: Disability certificate

Ext.3-6 : Medical documents.

Ext.7 : FIR, charge-sheet, seizure-list, MVI Report, Injury Report.

Ext.8 : Driving license of the injured

Documents exhibited by the opposite party

Nil.

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