

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

MAC Case No. 275 (Injury)/ 2018

Sri Mahesh Kalita
S/O Lt. Chakreswar Kalita
Vill: Tilana
P.S.: Nalbari
District: Nalbari (Assam)-----Claimant

-V E R S U S-

1. Sri Bhulla Nath Bhattarai
S/O Gopi Krishna Bhattarai
Village : Sundaripara
P.O. & P.S : Barbari
District: Baksa-Owner

2. Sri Kulen Kalita
S/O Lt. Chakreswar Kalita
Vill: Tilana
P.S.: Nalbari
District: Nalbari (Assam)-Driver

3. The New India Assurance Company Limited----- Opp. Party.

The Ld. Counsels Appeared:-

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

Date of Argument :----- 06.03.2020
Date of Judgment :----- 26.06.2020.

(J U D G M E N T)

1. The facts leading to the institution of this case in brief is that on 24.06.2018 at about 4.00 pm, the claimant named above met with a vehicular accident at a place called Dumuni Road under the Tihu Police Station while he was going towards Dumuni Chowk on the pillion of a motorcycle bearing No. AS-28-4569 which was allegedly driven rashly and negligently by his brother Kulen Kalita. In the accident, the claimant Sri Mahesh Kalita sustained grievous injuries and soon after the accident he was taken to the Sarathi Multi speciality Hospital, Nalbari from where he was taken to the Popular Nursing Home, Patna. After the accident, entries bearing No. 423 and 424 dated 24.06.2018 were made in the General Diary of the Nathkuchi P.P.

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. 5,50,000/- under

different heads.

3. On receipt of the claim petition, same was admitted and notices were issued upon the opposite parties. In due course the opposite party No.2, the rider of the offending vehicle and the Insurance Company made their appearance and contested the case by filing their respective written statement. Due to the absence of the opposite party No.1, the owner of the offending vehicle, the inquiry proceeded ex-parte against him. In his written statement, the opposite party No.2, the rider of the offending vehicle challenged the maintainability of the case and contended that at the time of the accident, he had a valid driving license. 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 his claim petition. The Insurance Company also contended that there was no rash or negligent driving of the offending vehicle and prayed for strict proof of the averments made by the claimant in his claim petition. The company also contended that the alleged offending vehicle was ridden without the permission of its owner

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

Issues

- (i) Whether the claimant got injury on 24.06.2018 at about 4.00 p.m. due to rash and negligent driving by the rider of the offending motorcycle No. AS-28-4569 ?
- (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 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 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, Mahesh Kalita narrated that on 24.06.2018 at about 4.00 p.m, he met with the accident which occurred due to rash and negligent driving of the rider of the motorcycle with whom he was going towards Dumuni Chowk. He further narrated about his injuries and treatment in the Sarathi Multi Specialty Hospital, Nalbari and in the Popular Nursing Home, Patna. He further narrated that he sustained fracture of left 5th and 7th ribs, comminuted displaced fracture of medial and lateral

tibial plateau and upper shaft tibia. He also exhibited the Accident Information Report in Form 54, Extract of G.D, medical documents, Voter I/D, Pan Card along with other documents. During his cross-examination, he stated that at the time of accident, he was posted in the Garbhitar High School. He also stated that the owner of the motorcycle was a friend of his brother. He denied the suggestion that he has not spent the amount for his treatment as claimed by him. During his cross-examination he also stated that at the time of the accident, a Truck was coming from the opposite direction which was driven rashly and negligently and to avoid the accident his brother drove the motorcycle towards the extreme left side of the road. He also admitted that if the Truck had not been driven rashly, the accident might not have occurred. He denied the suggestion that there was no fault on the part of the rider of the motorcycle. He also admitted that the owner, insurer and the driver of the truck have not been impleaded in this case. He further admitted that he has not stated anything about the truck in his claim petition or in the affidavit. He also could not say from whom his brother hired/borrowed the motorcycle.

7. I have very carefully perused the case record and heard the Id. counsels representing both sides. The Id. Counsel for the Company submitted that there was no rash or negligent driving by the rider of the offending vehicle. The Id. Counsel also argued that the Truck which had caused the accident has not been impleaded by the claimant and for that he is not entitled to any compensation. 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 injured.

8. I have very carefully considered the submission advanced by the Id. Counsels and it appears that as in the claim petition, during his evidence also, the claimant narrated the occurrence in detail and stated about the rash and negligent driving by the rider of the offending vehicle. It is well settled that the standard of proof required in a criminal case is beyond reasonable doubt whereas in a civil case including the petition under section 166 of the M.V. Act negligence is required to be proved only on the touchstone of preponderance of probabilities. In this particular case it is apparent that in his affidavit for evidence the claimant alleged that the accident occurred due to rash and negligent driving by the rider of the offending vehicle. But during cross examination the claimant revealed that at the time of the accident a truck was coming from the opposite direction which was driven rashly and negligently. The claimant specifically stated that to avoid the accident the rider of the motorcycle drove it towards the extreme left side of the road and this shows that the rider of the motorcycle was neither rash nor negligent in driving the motorcycle, rather he drove it

towards the extreme left side of the road to avoid the accident. The claimant also stated that if the truck was not driven rashly and negligently the accident might not have occurred. It is true that the claimant stated about the rash and negligent driving by the rider of the offending vehicle, the motorcycle, but during his cross examination it is revealed that the accident occurred due to rash and negligent driving of the truck. The claimant has not impleaded the owner, driver or the insurer of the truck as opposite party in his claim petition. From above discussed factors it appears that there was no rashness or negligence in driving the alleged offending vehicle by its rider. Hence I hold that the claimant could not establish that the accident occurred due to rash or negligent driving by the rider of the offending motorcycle. As such this issue is decided against the claimant.

Issue Nos. 2 & 3

9. While deciding earlier Issue, it is already seen that the rash and negligent driving by the rider of the offending vehicle have not been established. Hence I find it redundant to discuss these issues. As the claimant could not establish the rash or negligent driving of the offending vehicle by its rider I hold that he is not entitled to get compensation from the opposite parties. As such these issues are decided against the claimant.

ORDER

10. Considering every facts and circumstances, and for the reasons discussed above the claim petition is hereby dismissed.

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 argument was heard on 12.03.2020, but as self was on leave and 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 26th Day of June,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:-

1.Sri Mahesh Kaliata

Witness for the opposite party

Nil

Documents exhibited by the claimant

Ext. 1 : Accident Information Report in Form 54.

Ext. 2-6 : Medical documents.

Ext.7 : Voter I/D, Pan Card.

Ext.8 : I/ Card Salary Slip

Ext.9 : Train Ticket.

Documents exhibited by the opposite party

Nil.

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