

BEFORE THE MEMBER: MOTOR ACCIDENT CLAIMS

TRIBUNAL:

MAC Case No.127/2018(Injury)

P R E S E N T :- Mrs. M. Deb
Member, M.A.C.T,
Nalbari.

Sri Dhiraj Das claimant

- Vs -

Sri Brindaban Roy ...Opp Party

Advocates Appeared :-

For the claimant : Sri A.M.B. Baruah

For the Opp. No.1 : Sri. B.R. Goswami.

Date of Argument : 01.09.2022.

Date of Judgment : 01.09.2022.

J U D G M E N T A N D O R D E R

1. This instant case has been filed u/s 166 and 140 of the Motor Vehicle Act, 1988 by the claimant namely, Sri Dhiraj Das, S/O Late Bharat Das of village Bhulukadoba, P.S. Sorbhog, Dist: Barpeta, Assam for grant of compensation for the injuries sustained by him in a motor accident which took place on 14.02.2018.

2. The facts as unfolded in the claim petition leading to

the filing of this application stated as under :-

That on 14.02.2018 at about 8.15 p.m, an accident occurred due to rash and negligent riding by the rider of offending vehicle(Motorcycle) bearing registration No.,AS-19/E-1365 when the claimant was about to cross the N.H. Way 31 and as a result, the claimant sustained grievous injuries on different parts of his body and after the accident, he had to undergo treatment for a long period and till now he is not fully cured. The claimant has suffered mentally as well as faced financial hardship due to his injuries and he also faced immense loss personally as well as his family members for which he has filed this claim case for compensation.

3. On filing of this application, notices were issued to the owner cum rider of the offending vehicle. The O.P. No. 1 contested the case by filing written statement challenging the claim of the claimant.

4. Upon pleadings of both the parties, the following issues were framed to decide the fate of the case :-

- (i) Whether the claimant got injury on 14.02.2018 at about 08.15 p.m due to rash and negligent riding by the rider of the offending vehicle No. AS-19/E-1365 ?
- (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?

5. The claimant, Dhiraj Das in support of his claim petition examined himself as PW-1. The OP No.1 also examine himself as DW-1 in support of his claim so made in the written statement.

6. Heard learned advocates. Gone through the record and relevant documents on record.

DECISION AND REASONS THEREOF

ISSUE NO.(i)

7. To arrive at a decision, let me first of all discuss the evidence of record. In this regard evidence of PW-1 makes the position clear that on 14.02.2018 at about 08.15 p.m when he was about to cross the 31 No. NH Way near Paschim Barnagar Chowk, at that time one motorcycle bearing registration No., AS-19/E-1365, which was coming from Barpeta side in a very rash and negligent manner, knocked down him at road side and as a result, he fell down near the road side and sustained grievous injuries in his whole body including face, head, leg, mouth etc. Immediately after the accident, he was taken to Manikpur Model Hospital, Barpeta and thereafter he was admitted & treated at Lower Assam Hospital & Research Centre,

Bongaigaon from 14.02.2018 to 18.02.2018, then again he was admitted at Hayat Hospital, Guwahati from 19.02.2018 to 01.03.2018 and that due to the accident, he got injured i.e. fracture of multiples ribs & fracture of left tibia and he was treated for many days at Hayat Hospital, Guwahati. PW-1 further stated that he has incurred an amount of Rs.4,29,536.00/- for his treatment.

PW-1, during his cross examination, stated that the accident occurred under Sorbhog Police Station, Barpeta District. He stated that the accident occurred on 14.02.2018 at about 8.15 p.m at Paschim Barnagar Chowk of NH 31 and at that time he was standing by the side of the road and was waiting to cross it. He further stated that he has not exhibited any document to prove his income or occupation.

PW-1, in support of his case proved the police report as Ext. 1, certified copy of FIR/Ejahaar as Ext. 2 to Ext. 2(1-4), certified copy of charge-sheet as Ext. 3 to Ext. 3(1-2), certified copy of Medical Report as Ext.4 and Ext 4(1), certified copy of Seizurelist as Ext. 5 to Ext. 5(1-3), certified copy of MVI report as Ext. 6 and Ext. 6(1), All medical vouchers, prescriptions and pharmacy bills of Lower Assam Hospital & Research Centre, Bongaigaon as Ext. 7 to Ext 7(1-36), discharge certificate of Hayat Hospital, Guwahati as Ext.8, All medical vouchers, prescriptions and pharmacy bills of Hayat Hospital, Guwahati as Ext. 9 to Ext 9(1-40).

DW-1, Sri Brindaban Ray, owner cum rider, of the offending vehicle stated that when he was coming from Sorbhog by his motorcycle bearing regd. No.AS-19-E/1365 in a normal speed towards his house at Gosaigaon on NH 31 and when he reached near Paschim Barnagar High School, suddenly one person along with a bicycle tried to cross the road and seeing the light of his motorcycle, the claimant pushed the bicycle to his side and jumped on the road and though he tried to stop the motorcycle, he could not stop it and the claimant fell down from the bicycle and sustained grievous injuries. DW-1 further stated that the accident took place in the month of February at about 8.30 p.m. and he himself was admitted in Manikpur Hospital and thereafter admitted at Lower Assam Hospital & Research Centre, Bongaigaon. He also sustained grievous injuries, therefore, he was referred to Guwahati for better treatment and he was at GNRC Hospital Guwahati from 22.02.2018 to 03.03.2018 and due to his financial hardship he was brought to his house and treated in the house and his right leg become disabled and unable to do any work. Lastly, he was treated at Chennai, but yet not cured and that he had fallen on the road by hitting the bicycle as the claimant thrown his bicycle and sustained fracture on his right hand as well as head injuries which was occurred due to fault of the claimant. He further stated that he incurred about Rs.9,00,000/- for his treatment. He also stated that an ejahar was lodged by the sister of the claimant, Marjana Rajbongshi at Sorbhog

P.S. without knowing the actual fact of the accident against his motorcycle for compensation.

During cross examination, DW-1 stated that at the time of accident, he was riding the motorcycle No.AS-19-E/1365 and at that time his motorcycle was not insured. He stated that when he was returning to his home from Sorbhog, he hit one cycle which was going in front of him. The accident took place on the NH 31. He denied the suggestion that seeing the headlight of his motorcycle, the claimant jumped from his cycle with fear. He denied the suggestion that he was not injured due to accident. After the accident, one case was registered against him for rash and negligent riding and said case is pending in the court of CJM, Barpeta. He denied the suggestion that the accident took place due to his negligent riding.

8. In the light of the above discussion, it is crystal clear that the accident took place on 14.02.2018, resulting injuries in different parts of body of the claimant and the rider of the offending vehicle bearing regd. No.AS-19-E/1365(Motorcycle). Considering all aspects and after perusing all documents and evidence of both CW-1 and DW-1, it cannot be denied that the claimant is not responsible for the alleged accident. From the evidence in chief of DW-1 and his cross examination, it can be said that had the claimant been a little bit careful, the accident could have been avoided. In view of above, I am of the considered opinion that the accident in question had taken

place due to rash and negligence of OP no 1(driver of the offending vehicle) as well as contributory negligence of the claimant. Accordingly, 40% of the amount awarded to the claimant is liable to be deducted towards contributory negligence. Hence, the issue is decided in favour of the claimant.

ISSUE NOS (ii) & (iii)

9. Now, it is to be decided in the instant case as to whether the claimant is entitled to get any compensation and as to what amount of compensation the claimant is entitled to.

10. As discussed in issue No.1, accident in question had taken place due to rash and negligence of OP no 1(driver of the offending vehicle) as well as contributory negligence of the claimant. Accordingly, 40% of the amount awarded to the claimant is liable to be deducted towards contributory negligence. On going through the case record and after perusing the cash memos and vouchers, I found that the total amount of vouchers submitted is of Rs. 3,94,767/-. From the claim petition as well as from his examination-in-chief, it reveals that before the accident the claimant was earning Rs.20,000/- per month as a businessman and his age was 26 years at the time of accident. In this case the claimant did not submit any document regarding his income. So, I am of the view that daily income of a businessman, can safely be fixed as Rs 200/- and can be assessed to be the daily income of the

claimant at the time of accident and in that way the claimant earned Rs 6,000/- per month.

11. Considering all the documents, certificates and other factors, following amount is granted as compensation :-

| Sl No. | Description | Amount |
|--------|--|----------------|
| 1. | Medical expenses | Rs. 3,94,767/- |
| 2. | Loss of earning during the period of treatment (Rs 6,000/- X 2 Months) | Rs. 12,000/- |
| 3. | For causing injury, pain, agony, shock and suffering etc. | Rs. 20,000/- |
| 4. | Compensation for loss of amenities and enjoyment for rest of the life. | Rs. 20,000/- |
| 5. | For inconvenience, discomfort, frustration, etc | Rs. 20,000/- |
| 6. | Any other material, losses which may be required in special treatment later. | Rs. 20,000/- |
| | Total | Rs. 4,86,767/- |

12. Accordingly, the claimant is entitled to get 60% of the total amount of compensation, i.e. **Rs. 2,92,060/- (Rupees Two Lakhs Ninty Two Thousand Sixty) only i.e.(60 % of Rs 4,86,767/-)**

13. Now, the question arose from whom the compensation amount should be recovered for payment to the claimant?

14. In the instant proceeding, it is found from the evidence as well as from the Accident Information Report which is marked as Ext.1 that the offending vehicle at the time of accident was not insured with any Insurance Company. Hence, the total amount of compensation is to be borne by the OP no 1(Owner cum Rider) of the offending vehicle. Hence, both the issues are decided in favour of the claimant.

ORDER

15. In the result, the claim petition is allowed. As there was a contributory negligence on the part of the claimant, 40 % of the awarded amount is liable to be deducted and so the total amount of compensation to the tune i.e **Rs. 2,92,060/- (Rupees Two Lakhs Ninty Two Thousand Sixty) only i.e.(60 % of Rs 4,86,767/-)** so computed on different heads is awarded to the claimant due to the injuries sustained by him on account of traffic accident. The OP no 1(Owner cum Rider) of the offending vehicle is directed to pay the said amount of compensation to the claimant within 60 days from the date of Judgment failing which 6% interest will be added from the date of judgment. Accordingly, this MAC case is disposed of on contest.

16. The OP no 1 may satisfy the award by depositing the awarded amount into the bank account (IDBI Bank) of the Tribunal having no.1226104000022941 (IDBI) IFSC Code-IBKL0001226 in the name of Presiding Officer/Member M.A.C.T., Nalbari by RTGS or NEFT or the OP no. 1 may satisfy the award by depositing into the bank account of Punjab National Bank having no 1592010019549 IFSC Code-PUNB0159220 in the name of Presiding Officer/Member M.A.C.T., Nalbari by RTGS or NEFT.

17. Let a copy of the judgment and order be furnished to all the concerned parties within 15 days from today as per the provisions of Section 168(2) of the M.V. Act.

Given under my hand and seal of the Tribunal on this the 1st day of Sept, 2022.

(Mrs. M. Deb)

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

Dictation taken by

M. Devi

Stenographer

APPENDIX

Witness for the claimant:-

PW-1 :Sri Dhiraj Das.

Witness for the opposite party :-

DW-1 Sri Brindaban Roy.

Documents exhibited by the claimant:-

Ext. 1: Police report.

Ext. 2 to Ext 2(1-4): Certified copy of FIR/Ejahaar.

Ext. 3 to Ext. 3(1-2) :certified copy of charge-sheet.

Ext.4 and Ext 4(1): Certified copy of Medical Report.

Ext.5 to Ext 5(1-3): certified copy of Seizurelist.

Ext. 6 and Ext 6(1):certified copy of MVI report.

Ext. 7 to Ext 7(1-36):All medical vouchers, prescriptions and pharmacy bills of Lower Assam Hospital & Research Centre, Bongaigaon.

Ext.8 :Discharge certificate of Hayat Hospital, Guwahati.

Ext. 9 to Ext 9(1-40): All medical vouchers, prescriptions and pharmacy bills of Hayat Hospital, Guwahati.

Documents exhibited by the opposite party :-

Ext. Ka: Lower Assam Hospital receipt.

Ext.Kha :Test report of Lower Assam Hospital .

Ext. Ga: Money receipt of Lower Assam Hospital.

Ext. Gha: Bill of Lower Assam Hospital.

Ext. Unga: Discharge summary of GNRC Hospital.

Ext. Cha to Ext. Chha : Bills of GNRC Hospital.

Ext. Ja: Interim Bill .

Ext. Barjha: Bill of GNRC Hospital.

Ext. Nya to Ext. Dantyanna: Medical Documents of Apollo Hospital.

Presiding Officer/ Member,

MACT, Nalbari