

BEFORE THE MEMBER: MOTOR ACCIDENT CLAIMS

TRIBUNAL: NALBARI

MAC Case No.190/2018(Injury)

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

Sri Najiram Boro Injured

Smt. Manju Boro claimant

- Vs -

Oriental Insurance Co. Ltd.& others

..... Opp. Parties.

Advocates Appeared :-

For the claimant : Smt. S. Majumdar

For the Opp. No.3 : Sri P.K. Sarma.

Date of Argument : 07.09.2022.

Date of Judgment : 07.09.2022.

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, Smt. Manju Boro, W/O Sri Gopal Boro of village Khatarbari, P.S.Tamulpur, Dist.Baksa, Assam for grant of

compensation for the injuries sustained by her son, Najiram Boro in a motor accident which took place on 12-12-2017.

2. The facts as unfolded in the claim petition leading to the filing of this application stated as under:-

That on 12-12-2017, while the son of the claimant i.e. the injured, Najiram Boro was coming from Symbiosis Academy, Rangia towards his residence on the left side of the road as a pillion rider on a Motorcycle bearing registration No. AS-01DB/9642 with his friend and when they reached Chikanibari Rangia Bhutan State Road at about 4.30 p.m, the offending vehicle bearing registration No. AS-01GC/2265 (Tempo Van) which was driven in excessive speed as well as in a rash and negligent manner, hit the motorcycle and as a result, her son, Najiram Boro sustained haematoma in the right frontal region and small contusions in the right frontal lobe with fracture of the right half of the frontal bone, pneumocephalus, right maxila fracture with fracture lateral wall right orbit and injury all over the body. Immediately after the accident, the injured was taken to Tamulpur PHC. Thereafter he was referred to GMCH, Guwahati for better treatment. The claimant's son was admitted at GNRC Hospital, North Guwahati on 12.12.2017 and discharged on 20.12.2017 and till now he is undergoing treatment. The claimant stated that due to the accident, her son has lost his study as well as working capacity. The offending vehicle, owned

by O.P. No.1, Sri Kanchan Das is duly insured with O.P. No.3 i.e. the Oriental Insurance Company Ltd. The claimant as such filed claim petition praying for award of Rs.5,30,000/-.

3. In connection with the accident, Tamulpur P.S. Case No.361/17 U/S 279/338/304(A) IPC was registered against the OP No.2, the driver of the offending Tempo.

4. On filing of this application, notices were issued to the owner, driver and insurer of the offending vehicle. The O.P. No.1 & 3 contested the case by filing written statement challenging the claim of the claimant. The O.P. No.2 neither appeared before this Tribunal nor contested the case by filing written statement. Hence, the case against the O.P. No.2 proceeded ex-parte.

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

- (i). Whether there is cause of action to file this case by the claimant?
- (ii) Whether Najiram Boro was injured in a Road Traffic Accident on 12.12.2017 at about 04.30 p.m. at Chikanibari due to rash and negligent driving by the driver of the offending vehicle No. AS-01-GC/2265(Tempo Van) ?
- (iii). Whether the claimant is entitled to get any compensation as prayed for, and if so, to what

extent and from whom?

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

6. The claimant, Smt Manju Boro in support of her claim petition examined herself as CW-1 and the injured, Sri Najiram Boro as CW-2. The O P No.3 did not examine any witness in support of its claim so made in the written statement.

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

DECISION AND REASONS THEREOF

ISSUE NO. (i) & (ii)

8. To arrive at a decision whether on the relevant date alleged accident occurred and as a result of the said accident, Najiram Boro (injured) the son of the claimant, sustained haematoma in the right frontal region and small contusions in the right frontal lobe with fracture of the right half of the frontal bone, right maxila fracture with fracture lateral wall right orbit and injury all over the body. Let me first of all discuss the evidence on record. In this regard evidence of CW-1 makes the position clear that on 12.12.2017 while her son, Najiram Boro was coming from Symbiosis Academy, Rangia towards his residence on the

left side of the road as a pillion rider on a Motorcycle bearing registration No. AS-01DB/9642 with his friend and when they reached at Chikanibari, Rangia Bhutan Road at about 4.30 p.m, then the offending vehicle bearing registration No. AS-01GC/2265 (Tempo Van) which was driven in excessive speed as well as in a rash and negligent manner hit the motorcycle and as a result, her son, Najiram Boro sustained haematoma in the right frontal region and small contusions in the right frontal lobe with fracture of the right half of the frontal bone, right maxilla fracture with fracture lateral wall right orbit and injury all over the body and immediately after the accident, her son was taken to Tamulpur PHC and thereafter he was referred to GMCH, Guwahati for better treatment, but, her son was admitted at GNRC Hospital, North Guwahati on 12.12.2017 and discharged on 20.12.2017 and still he is undergoing treatment. The claimant as CW-1 further stated that she has incurred Rs.1,10,000/-for the treatment of her son, Najiram Boro.

During cross examination, CW-1 stated that her son was the pillion rider of the motorcycle driven by his friend, Birjit Brahma.

CW-1 in support of her case proved the accident information Report as Ext.1, Discharge certificate as Ext.2, Advice slip as Ext.3 to Ext.3(12), Cash memo as Ext. 4 to Ext.4(15), Hospital bill as Ext.5 to Ext.5(4), Receipt Memo as Ext. 6 to Ext. 6(11), Pathology Report as Ext.7 to

Ext.7(4), Certified copy of FIR, Charge sheet, Seizure-list, MVI Report, P.M. Report as Ext. 8 to Ext.8(15).

CW-2, Sri Najiram Boro, the injured supported the version of CW-1 and during his cross examination he stated that the motorcycle in which he was riding was knocked by a Tempo and he cannot say the number of the motorcycle on which he was pillion. He further stated that they were knocked from the opposite direction.

It reveals from Ext.1 i.e. the accident information Report that O/C of Tamulpur Police Station mentioned clearly that the accident took place on 12.12.2017 at about 4.30 p.m. at Chiknibari on 172 D Rangia Bhutan State Road and the vehicle involved in the accident was a Tempo Van bearing regd. No. AS-01GC/2265 i.e the offending vehicle in this case. The name of the owner of the aforesaid vehicle is also mentioned as Kanchan Das in the instant case and the said vehicle was duly insured with Oriental Insurance Co. Ltd. i.e. OP No.3 vide policy No.321390/31/2018/125 valid up to 21.05.2018. On contrary the OP No. 1 & 3 contested the case by filing written statement but failed to examine any witness to prove their case.

9. In the light of the above discussion, it is crystal clear that the accident took place on 12.12.2017, resulting grievous injuries of the injured, Najiram Boro which was

due to rash and negligent driving of the driver of the offending vehicle bearing regd. No. . AS-01GC/2265 (Tempo Van). In view of the above discussion, both the issues are decided in affirmative.

ISSUE NOS (iii) & (iv)

10. 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.

11. As discussed in issue No.(i) & (ii), the accident occurred due to rash and negligent driving of the driver of the offending vehicle (Tempo Van), and so the claimant is entitled to receive compensation due to the injuries sustained by her son in the said accident. On going through the record and perusing the cash memos and vouchers, I found that the total amount of vouchers and cash memos submitted is of Rs.54,605/-

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

Sl	Description	Amount
1.	Medical expenses	Rs. 54,605/-
2.	For causing injury, pain, agony, shock and suffering etc.	Rs 27,000/-
3.	Compensation for loss of amenities and enjoyment for rest of the life.	Rs 27,000/-
4.	For inconvenience, discomfort, frustration, etc	Rs 27,000/-
5.	Any other material, losses which may be required in special treatment later.	Rs 25,000/-
	Total	Rs. 1,60,605/-

13. Accordingly, the claimant is entitled to get total amount of compensation of **Rs. 1,60,605/- (Rupees One Lakh Sixty Thousand Six Hundred and Five) only .**

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

15. 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 under the insurance coverage of

Oriental Insurance Co. Ltd. vide policy No.321390/31/2018/125 valid up to 21.05.2018. Therefore, the compensation so awarded by this Tribunal in different heads to the claimant/injured is liable to be paid by the OP No.3 i.e. the Oriental Insurance Co. Ltd. Hence, the issues are decided in favour of the injured/claimant.

ORDER

16. In the result, the claim petition is allowed. The total amount of compensation to the tune of **Rs. 1,60,605/- (Rupees One Lakh Sixty Thousand Six Hundred and Five) only** so computed on different heads is awarded to the claimant due to the injuries sustained by her son (injured) on account of traffic accident. The OP No.3 i.e. the Oriental Insurance Co. Ltd. is directed to pay the said amount of compensation to the claimant within 60 days from today with 6% interest from the date of filing of the claim petition, i.e. from 20.07.2018 till the date of realization. Accordingly, this MAC case is disposed of on contest.

17. The company 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 company 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.

18. 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 7th day of Sept, 2022.

(Mrs. M. Deb)
**Presiding Officer/ Member,
MACT, Nalbari**

Dictation Taken by

M. Devi

Stenographer.

APPENDIX

Witness for the claimant:-

CW-1 : Smt. Manju Boro

CW-2 : Sri Najiran Boro

Witness for the opposite party :-

Nil

Documents exhibited by the claimant:-

Ext.1: the accident information Report

Ext.2: Discharge certificate

Ext.3 to Ext.3(12): Advice slip

Ext. 4 to Ext.4(15): Cash memo

Ext.5 to Ext.5(4): Hospital bill

Ext. 6 to Ext. 6(11): Receipt Memo

Ext.7 to Ext.7(4);:Pathology Report

Ext.8 to Ext.8(15): Certified copy of FIR, Charge sheet, Seizure-list, MVI Report, P.M. Report.

Documents exhibited by the opposite party:-

Nil

Presiding Officer/ Member,

MACT, Nalbari