

BEFORE THE MEMBER: MOTOR ACCIDENT CLAIMS

TRIBUNAL: NALBARI

MAC Case No.26/2019(Injury)

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

Sri Gamswar Boro Injured

Mrs. Manachari Boro claimant

- Vs -

National Insurance Co. Ltd.& another

... Opp Parties.

Advocates Appeared :-

For the claimant : Sri R.K. Sarma.

For the Opp. No.2 : Sri A.J. Talukdar.

Date of Argument : 20.09.2022

Date of Judgment : 20.09.2022

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, Mrs. Manachari Boro, W/O Sri Laudum Boro of village Barnadipar, P.O. & P.S. Goreswar, Dist: Baksa, Assam for

grant of compensation for the injuries sustained by her son in a motor accident which took place on 06.11.2018.

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

That on 06.11.2018, when Gamswar Boro, the injured was proceeding from Goreswar towards his own residence at Suagpur as pillion rider by motorcycle bearing registration No.,AS-25-L-4572 with his friend, Sri Baneswar Basumatary which was ridden in a high speed as well as in a rash and negligent manner, the said vehicle met with an accident at Jattheng par under Goreswar P.S. As a result, her son sustained grievous head injuries. Immediately after the accident, he was admitted at Naukata PHC but he was referred to GMCH, Guwahati. But he was taken to GNRC Hospital and treated there for a long time and still his treatment is going on and his physical and mental condition is very critical and he cannot remember anything due to loss of memory and the injured was a businessman

3. On filing of this application, notices were issued to the owner cum rider and insurer of the offending vehicle. The O.P. Nos 1 & 2 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 Sri Gamswar Boro got injury on 06.11.2018

at about 3.35 p.m in a Road Traffic Accident at Jatthengpar due to rash and negligent riding by the rider of the offending vehicle No. AS-25-L/4572 ?

(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 in support of her claim petition examined the injured as PW-1 and Sri Ramani Deka as PW-2. The OP No.2 also examine one witness Sri Bipulanda Goswami as DW-1.

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 whether on the relevant date alleged accident occurred and as a result of the said accident the injured Gamswar Boro sustained grievous head-injuries.

Let me first of all discuss the evidence on record. In this

regard evidence of PW-1 makes the position clear that on 06.11.2018 at about 3.35 p.m, when he was proceeding from Goreswar towards his own residence at Suagpur as pillion rider by motorcycle bearing registration No.,AS-25-L-4572 with his friend, Sri Banerwar Basumatary which was ridden in a high speed as well as in a rash and negligent manner, the said vehicle met with an accident at Jattheng par under Goreswar P.S. and as a result, the he sustained grievous head injuries. Immediately after the accident, he was admitted at Naukata PHC but he was referred to GMCH, Guwahati. But he was taken to GNRC Hospital, North Guwahati and treated there for a long time and still his treatment is going on. PW-1 further stated that he was a businessman and he earned Rs.9000/- per month. He also stated that he incurred Rs. 4,50,000/-for his treatment and he has claimed Rs.10,50,000/- as compensation.

PW-1 during his cross examination stated that the accident occurred on 06.11.2018.The offending vehicle No.AS-25-L-4572 which was ridden by Sri Banerwar Basumatary who was his co-villager. Initially after the accident, he was treated at Naukata PHC thereafter he was taken to GNRC Hospital. He has further stated that he has not exhibited any document of Naukata Hospital and also has not exhibited any document to prove his occupation or income. The rider of the offending vehicle did not sustain injury.

PW-1, in support of his case proved the police report as Ext. 1, FIR/ejahaar as Ext. 2, Discharge summary as Ext. 3 to 5, Gaonburha certificate as Ext.6, Admit card of the injured as Ext. 7, Adhar card as Ext. 8 , Interim bill as Ext. 9 to 32, Investigation Report as Ext.33, Medical bill, cash memos, prescription etc as Ext. 34 to 267.

PW-2, Sri Ramani Deka stated that on 06.11.2018 at about 3.35 p.m, when he was going to bazar and reached at the place of occurrence, he saw the occurrence. The alleged motorcycle bearing registration No.,AS-25-L-4572 which was coming from Goreswar side towards Suagpur side in a high speed as well as in a rash and negligent manner and due to such riding, the vehicle met with an accident at Jattheng par under Goreswar P.S. As a result, the injured Gamswar Boro fell down from the bike and sustained grievous head injuries and immediately after the accident, he was admitted at Naukata PHC.

During cross examination PW-2 stated that at the time of occurrence, he was going towards Naukata market. After the accident, the injured was taken to Naukata PHC.

DW-1 Bipulananda Goswami, the Investigator of the National Insurance Co. Ltd. stated that he was entrusted by the Company to investigate the case. During investigation, he visited the place of occurrence and asked the local people about the accident and he came to know

that the injured himself was the rider of the offending vehicle and that he also visited the owner of the offending vehicle, but he could not meet him as he already died. He has recorded the statement of Goniram Boro, the son of the owner of the offending vehicle. Goniram Boro stated him that the injured took the motorcycle from his father and his father did not accompany the injured at the time of accident. Ext.A is the authority letter issued by the Company authorizing him to depose in this case. Ext.B is the statement of Goniram Boro. Ext.C is his report.

During his cross examination he stated that he has been appointed in the National Insurance Company in the year 2019 and since 2015, he has been working as Investigator for the Insurance Company. He further stated that he has not exhibited the death certificate of the owner and also stated that he has not collected any document from the police station to prove that the claimant was riding the motorcycle.

8. DW-1 in his evidence stated that the Injured himself was the rider of the offending vehicle. In this regard, he exhibited the statement of Ganiram Boro(Son of the owner cum rider of the offending vehicle). But the OP no 2(Insurance Company) failed to examine Ganiram Boro as witness. The OP no 1(owner cum rider of the offending vehicle) filed W.S. But, in his WS, he has not metioned that he was not riding the offending vehicle at the time of accident. In view of the above discussion, the statement of

Ganiram Boro cannot be taken into consideration.

9. In the light of the above discussion, it is crystal clear that the accident took place on 06.11.2018 ,resulting grievous head injuries which was due to rash and negligent riding of the rider of the offending vehicle bearing regd. No.AS-25-L-4572 (Motorcycle). Hence, the issue is decided in affirmative.

ISSUE NOS (ii) & (iii)

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)the accident occurred due to rash and negligent riding of the rider of the offending vehicle (Motorcycle), and so the claimant is entitled to receive compensation due to the injuries sustained by the injured. 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 278705/-. From the claim petition as well as from the examination-in-chief of PW-1, it reveals that before the accident the injured was earning Rs.9,000/- per month as a businessman and his age was 23 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

250/- 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 7500/- per month.

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

Sl No.	Description	Amount
1.	Medical expenses	Rs. 278705/-
2.	Loss of earning during the period of treatment (Rs 7500/- X 1 Months)	Rs. 7500/-
3.	For causing injury, pain, agony, shock and suffering etc.	Rs. 30000/-
4.	Compensation for loss of amenities and enjoyment for rest of the life.	Rs. 30000/-
5.	For inconvenience, discomfort, frustration, etc	Rs. 25000/-
6.	Any other material, losses which may be required in special treatment later.	Rs. 20000/-
	Total	Rs. 3,91,205/-

13. Accordingly, the injured/claimant is entitled to get total amount of compensation of **Rs.3,91,205/- (Rupees Three Lakhs Ninty One Thousand Two 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 National Insurance Co. Ltd. vide policy No.39010231186200594611 valid up to 12.05.2019. Therefore, the compensation so awarded by this Tribunal in different heads to the claimant is liable to be paid by the OP No.2 i.e. the National Insurance Co. Ltd. Hence, both the issues are decided in affirmative

ORDER

16. In the result, the claim petition is allowed. The total amount of compensation to the tune **Rs.3,91,205/- (Rupees Three Lakhs Ninty One Thousand Two Hundred and Five) only** .only so computed on different heads is awarded to the claimant due to the injuries sustained by the injured on account of traffic accident. The OP No. 2 i.e. the National 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 22.01.2019 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 20th 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 Gamswar Boro

PW-2 : Sri Ramani Deka

Witness for the opposite party :-

DW-1 : Sri Bipulananda Goswami.

Documents exhibited by the claimant:-

Ext.1: police report;

Ext. 2 to Ext.2 (3) : FIR, Ejahar.

Ext. 3 to Ext.5 : Discharge summary

Ext. 6 : Gaonburha certificate

Ext.7 : Admit card of the injured person.

Ext.8: Adhar card

Ext.9 to Ext.32: Interim bills.

Ext 33: Investigation report.

Ext.:34 to 267 : Cash Memos and vouchers

Documents exhibited by the opposite party :-

Ext.A is the authority letter issued by the Company.

Ext.B is the statement of Ganiram Boro.

Ext. C is the report of investigator.

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

