

**BEFORE THE MEMBER: MOTOR ACCIDENT CLAIMS**

**TRIBUNAL: NALBARI**

**MAC Case No.65/2020(Injury)**

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

Abdul Asif Faridar ..... Injured

Ranu Begum .....claimant

- Vs -

Oriental Insurance Co. Ltd.& Ors ..... Opp. Parties.

**Advocates Appeared :-**

For the claimant : Sri R.K. Sarma

For the Opp. No.1 : Smt. K. Goswami

Date of Argument : 19.09.2022.

Date of Judgment : 19.09.2022.

**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, Ranu Begum, W/O Abdul Jabbar of village Ghoga P.S. Mukalmua, Dist. Nalbari, Assam for grant of compensation for the injuries sustained by her son, Abdul Asif Faridar in a motor accident which took place on 16.03.2020.

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

That on 16.03.2020, when the claimant's son, Abdul Asif Faridar who was 25 years at the time of accident was proceeding towards Mukalmua from Guwahati riding on his motorcycle bearing registration No. AS-14H-9613 (TVS Apache) very gently on his left side of Guwahati Mukalmua Road and when he reached Kandhbari, the offending vehicle bearing registration No. AS-14C-3744 (Mini Truck) which was driven in a rash and negligent manner from the opposite direction suddenly moved to the wrong side of the road and knocked down the motorcycle with full force. As a result, her son sustained 1) fracture, shaft of femur right, (2) comminuted fractures BB Rt leg,(3) Crush injuries of the lower part of right leg and (4) Multiple abrasions & lacerations etc. Immediately after the accident, the injured was taken to Mukalmua PHC from there he was shifted to Ayursundra Super Speciality Hospital, Guwahati and admitted there on 17.03.2020 to 23.03.2020. Thereafter, he was admitted at Swagat Super Speciality Hospital, Guwahati on 23.03.2020 to 11.04.2020. Again he was admitted at Swagat Super Speciality Hospital, Guwahati on 23.04.2020 to 29.04.2020. When he suffered from non-union of right tibial fracture and non recovery of his crash injuries, he got admitted at Popular Nursing Home, Patna from 11.06.2020 to 03.07.2020. Thereafter he was again admitted at Popular Nursing Home, Patna

from 12.09.2020 to 16.09.2020. He is still under tender advice of doctors. He has another critical operation still to be performed. The injured, Abdul Asif Faridar has become permanently disabled due to injuries sustained in the accident. He cannot move without the help of crutches and attendants for which he has to stay away from his occupational works and thereby he has suffered the loss of present, future income, amenities, prosperities as well as exceptions of life and an amount of Rs.12,00,000/-has been incurred for his treatment. The offending vehicle, owned by O.P. No. 2, Sri Bhaskar Barman and is duly insured with O.P. No.1. i.e. the Oriental Insurance Company Ltd. The claimant as such filed claim petition praying for award of Rs.25,00,000/-.

**3.** On filing of this application, notices were issued to the owner, driver 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. The O.P. No.3 neither appeared before this Tribunal nor filed any written statement. Hence, the case against the O.P. No.3 proceeded ex-parte.

**4.** 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?
- (ii) Whether Abdul Asif Faridar was injured in a Road Traffic Accident on 16.03.2020 at about 6.00 p.m at

Kandhbari PWD Road due to rash and negligent driving by the driver of the offending vehicle bearing registration No. AS-14-C/3744 (Mini Truck) ?

- (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?

**5.** The claimant, in support of her claim petition examined the injured, Abdul Asif Faridar as CW-1 and Dr. Trailokya Haloi as C.W-2. The OPs did not examine any witness in support of its 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) and (ii)**

**7.** To arrive at a decision whether on the relevant date alleged accident occurred and as a result of the said accident Abdul Asif Faridar sustained multiple fractures like(1) Fractures,shaft of femur right,(2) communitied fractures BB Rt. Leg,(3) Crush injuries of the lower part of Rt leg and (4) Multiple abrasions & Laceration etc. Let

me first of all discuss the evidence on record. In this regard evidence of CW-1 makes the position clear that on 16.03.2020 at about 6.00 pm, while he was proceeding towards Mukalmua from Guwahati riding his own motorcycle bearing registration No. AS-14H-9613 (TVS Apache) very gently on his left side of Guwahati Mukalmua Road and when he reached at Kandhbari, the offending vehicle bearing registration No. AS-14C-3744 (Mini Truck) which was driven in a rash and negligent manner by the opposite party No.3 from the opposite direction suddenly moved to the wrong side of the road and knocked down his motorcycle and as a result, he sustained grievous injuries on different parts of his body. Immediately after the accident, he was taken to Mukalmua PHC from there he was shifted to Ayursundra Super Speciality Hospital, Guwahati and admitted there on 17.03.2020 to 23.03.2020. Thereafter, he was admitted at Swagat Super Speciality Hospital, Guwahati on 23.03.2020 to 11.04.2020. Again he was admitted at Swagat Super Speciality Hospital, Guwahati on 23.04.2020 to 29.04.2020. When he suffered from non-union of right tibial fracture and non recovery of his crash injuries, he got admitted at Popular Nursing Home, Patna from 11.06.2020 to 03.07.2020. Thereafter he was again admitted at Popular Nursing Home, Patna from 12.09.2020 to 16.09.2020. He is still under tender advice of doctors. He has to undergo further operation. CW-1 further stated that he has become permanently

disabled due to injuries sustained in the accident due to which he has to forsake his occupation and he is not capable to walk without support and he has incurred completely the loss of present as well as future income (100% functional Disability) as well as happiness, amenities, prosperity and future prospect of life including marriage prospect as well.

CW-1 appeared before the Medical Board convened by the Joint Director of Health Services, Nalbari and assessed his disability to be 55% after examining by the said Board. He further stated that at the time of accident, he was engaged in business of Sales & Repairs of Stitching Machines at Mukalmua Chowk by name & style "Sagar" and he earned Rs.20,000/- p.m.

During cross examination CW 1 stated that on the day of occurrence, he was riding a bike and one another person, namely, Abdul Mallik was sitting as a pillion rider but he forgot to mention about him in his petition. On the day of occurrence, he was returning from Guwahati and one mini truck which was coming from the opposite side knocked down his vehicle. He sustained fracture injuries below the knee joint on his right leg. He also had fracture in his hip joint. Thereafter he was taken to Mukalmua PHC from there was referred to GMCH. Thereafter he took treatment at Popular Nursing Home, Patna and after that at Ayurchandra Hospital, but due to Covid-19, he was again sent to GMCH. Subsequently, he got admitted at

Swagat Hospital for two months. He further stated that he spent Rs. 20 lakhs in his treatment.

CW-1 in support of his case proved the accident information Report as Ext. 1, Disability certificate as Ext.2, Certified copies of FIR, charge sheet, seizure list, MVI Report, Injury report, sketch map etc. as Ext.3 to Ext.3(16), Money receipts and cash memos etc as Ext.4 to Ext.4(147), Medical papers which includes prescriptions, investigation report, discharge certificate etc. as Ext.5 to Ext.5(50); Pan card as Ext.6, Educational documents Ext.6(1); Business related documents as Ext.7 to Ext.7(6).

In connection with the accident, Mukalmua PS Case No.130/2020 U/S 279/338/427 IPC was registered and completion of investigation police filed charge sheet against the driver of the offending vehicle bearing registration No. AS-14C-3744 (Mini Truck) i.e. the opposite party No.3. CW-2, Dr Trailokya Haloi, Sr M & H.O, stated that he had examined Abdul Asif Faridar on 09-02-2021 and found that he is a case of external fixator crush injury in right leg with weakness of both lower limb and right upper limb. His disability is calculated to be of 55 % of locomotor type. Ext.2 is the disability certificate. During his cross examination CW-2 stated that he has personally examined the injured. The disability certificate, Ext.2 was issued for five years only. The claimant was asked for review after 5 years. After 5 years, the percentage of injury may increase or decrease.

**8.** In the light of the above discussion, it is crystal clear that the accident took place on 16.03.2020, resulting grievous injuries of the injured which was due to rash and negligent driving of the driver of the offending vehicle bearing regd. No. AS-14-C/3744 (Mini Truck). In view of the above discussion, the issues are decided in affirmative.

**ISSUE NOS (iii) & (iv)**

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

**10.** As discussed in issue No. (i) and (ii), the accident occurred due to rash and negligent driving of the driver of the offending vehicle (Mini Truck) and so the injured/claimant is entitled to receive compensation due to the injuries sustained by the injured in the said accident. For calculation of compensation, on going through the record, I found that the total amount of vouchers and cash memos submitted is of Rs.8,23,381/-.From the Ext 6(Pan Card), it is found that the age of the injured was 25 years at the time of accident. From the claim petition as well as from the deposition, it reveals that before the accident the claimant was working as a businessman and earned Rs. 20,000/- per month. In this regard, some documents have been submitted to prove that the injured was engaged in a business, but, the claimant did not examine anyone to

prove the income of the injured. So, I am of the view that daily income of a businessman, can safely be fixed as Rs 300/- and can be assessed to be the daily income of the injured at the time of accident and in that way the claimant earned Rs 9000/-per month. The injured as CW-1 also stated that due to injuries sustained by him in the accident, he became physically disabled and his disability is calculated to be of 55% of locomotor type in relation to right leg. The claimant has submitted the Ext.2, the disability certificate.

**11.** To prove the disability, the claimant examined the doctor as CW-2. During the evidence, the doctor stated that the injured suffered disability to the extent of 55% of locomotor type in relation to right leg, as such, as per the decision of **Raj Kr. Vs. Ajay Kr. reported in (2011) 1 SCC 343**, the functional disability is taken to be 30%. The income of the injured was Rs 1,08,000/- per annum ( Rs. 9000/- X 12), the loss of earning due to functional disability would be 30% of Rs 1,08,000/- which is Rs 32,400/-. As the age of the injured at the time of accident was 25 years, the multiplier applicable would be 18. Therefore, the loss of future earning would be Rs 5,83,200/-.

So, considering all the documents and certificates, and as the injured suffered grievous injuries and became disabled, following amount is granted as compensation :-

Sl No.	Description	Amount
1.	Medical expenses and Transport to Hospital.	Rs. 8,23,381/-
2.	Loss of earnings due to disability	Rs 5,83,200/-
3.	Loss of earning during the period of treatment(9000 X 7)	Rs 63,000/-
4.	Loss of amenities of Life.	Rs. 40,000/-
5.	Loss of expectation of life.	Rs. 40,000/-
	Pain and suffering.	Rs. 50,000/-
	Total	Rs. 15,99,581/-

**12.** Accordingly, the claimant is entitled to get total amount of compensation of **Rs. 15,99,581(Rupees Fifteen Lakhs Ninty Nine Thousand Five Hundred Eighty One ) only .**

**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 under the insurance coverage of Oriental Insurance Co. Ltd. vide policy No. 321200/31/2020/539 valid up to 25.04.2020. Therefore, the compensation so awarded by this Tribunal in different

heads to the claimant is liable to be paid by the OP No.1 i.e. the Oriental Insurance Co. Ltd. Hence, both the issues are decided in affirmative.

### **ORDER**

**15.** In the result, the claim petition is allowed. The total amount of compensation to the tune of **Rs. 15,99,581/- (Rupees Fifteen Lakhs Ninty Nine Thousand Five Hundred Eighty One ) 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.1 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 10.11.2020 till the date of realization. Accordingly, this MAC case is disposed of on contest.

**16.** 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.

**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 19<sup>Th</sup> 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 :Abdul Asif Faridar

CW-2 : Dr. Trailokya Haloi

### **Witness for the opposite party :-**

Nil

### **Documents exhibited by the claimant:-**

Ext. 1: The accident information Report.

Ext.2: Disability certificate

Ext.3 to Ext.3(16): Certified copies of FIR, charge sheet, seizure list, MVI Report, Injury report, sketch map etc.

Ext.4 to Ext.4(147): Money receipts and cash memos etc.

Ext.5 to Ext.5(50): Medical papers which includes prescriptions, investigationreport, discharge certificate etc.

Ext.6: Pan card

Ext.6(1): Educational document.

Ext.7 to Ext.7(6) : Business related documents.

### **Documents exhibited by the opposite party**

**Nil**

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