

IN THE COURT OF THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR AT TEZPUR

Present : Smti. M. Nandi.,
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur

MAC Case No.30 of 2019(I)

1. Sri Ratneswar Borah,
Son of Late Bhola Borah,
R/O of vill. Bam Parbatia, Barhoi Chuburi,
P.S. Tezpur,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Nayan Jyoti Kaushik
Son of Sri Anil Kumar Sarmah,
R/O Vill. Dhara Bamun Chuburi,
P.O.& P.S. Tezpur.
Dist. Sonitpur, Assam,
(Owner-cum-driver of the vehicle No.AS-12T/8901(motor cycle)
2. Liberty Videocon General Insurance Co. Ltd.
Divisional Office, 3B, Ganpati Enclave, Bora Service,
G.S. Road, Guwahati, Assam.
Dist. Kamrup (M), Assam.
(Insurer of the vehicle No. AS-12T/8901(motor cycle)
.....Opp. Parties.

ADVOCATES APPEARED

For the claimant :- Abhijit Bhuyan, Advocate.
For the O.P. No. 1 :- P. Kr. Sarmah, Advocate.
For the O.P. No. 2 :- T. Ghosh, Advocate.

Date of Argument :-**15-06-2020, 01-07-2020.**
Date of Judgment :-**02-07-2020.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by the claimant Sri Ratneswar Borah praying for grant of compensation on account of injuries sustained by him in a motor vehicle accident.

1. The brief fact of the case is that on 10-08-2018 in the morning the claimant was proceeding in his bicycle towards his house from Mission Chariali side. When the claimant reached Da-dhara in front of J.K. Tyre shop he was hit by a motor cycle(Royal Enfield Himalalya) bearing NO. AS-12T/8901 on the extreme left side of the road. The vehicle was coming in a rash and negligent manner. As a result the accident took place. Immediately after the accident the claimant fell down on the road side and sustained grievous injuries on various parts of his body including severe head injuries. The bicycle of the claimant was badly damaged. The claimant was immediately taken to Kanaklata Civil Hospital, Tezpur and thereafter on the same day to Baptist Mission Hospital, Tezpur where preliminary treatment was provided to him. But due to serious nature of head injuries the claimant was shifted to GMCH, Guwahati in the same evening and from GMCH to AGILE Hospital, Guwahati on the next day where he was admitted as an indoor patient for 7 days.

2. After the accident, one case was registered vide Tezpur P.S. case No.1688/18 u/s- 279/338/427 IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with Liberty Videocon General Insurance Co. Ltd.

3. Against the claim petition, O.P. No.1 i.e. owner-cum-driver of the alleged offending vehicle bearing No. AS-12T/9801 has submitted written statement and it is admitted that he is the registered owner of the vehicle and at the relevant time of accident he was driving the said motor cycle but it is denied that he was driving the vehicle in a rash and negligent manner for which the accident took place. It is further stated that the alleged vehicle was duly insured with Liberty Videocon General Insurance Co. Ltd. at the relevant time of accident. Hence, if any liability arises that will be borne by the insurer of the said vehicle and prayed to exonerate O.P. No. 1 from the liability of paying any compensation to the claimant.

4. O.P.No. 2 i.e. Liberty Videocon General Insurance Co. Ltd. i.e. insurer of the vehicle bearing No. AS-12T/8901(motor cycle) has also submitted written statement wherein it is stated that the owner himself was an unlicensed driver and thereby contravened the provisions of the M.V. Act and the Rules framed there under for which the insurer gets absolved from any liability for compensation. It is admitted that the policy No. 2012-300201-17-8003852-00-

000 for the period 23-03-2018 to 22-03-2019 was issued in favour of Nayan Jyoti Kaushik vide vehicle bearing No. AS-12T/9801. It is denied that on 10-08-2018 the vehicle bearing No.AS-12T/9801(motorcycle) was involved in an accident which occurred at Da-dhara in front of J.K. Tyre Shop. It is further stated that mere providing a police case no. is not sufficient to substantiate the sole negligence on the part of the driver of the alleged offending vehicle and prayed to dismiss the claim petition with cost.

5. On the pleadings aforesaid, the following issues were framed –

I. Whether the accident took place on 10-08-2018 at about 8-00 A.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-12T/8901(Royal Enfield Himalaya) and whether the claimant Ratneswar Borah was injured due to the alleged accident?

II. Whether the claimant is entitled to get any compensation as prayed for and if so, from whom and to what extent?

6. Ld. Counsel for the claimant has submitted written argument. But Ld. Counsel for the Insurance Company has neither appeared to argue the case through video conferencing nor submitted any written argument. I have also perused the documents available in the record.

Issue No. 1

7. The claimant was examined in the case as CW-1 who deposed in his evidence that on 10-08-2018 at about 7-30 a.m. while he was proceeding towards his house after completion of his night duty by riding his bicycle from Mission Chariali side and when he reached Da-dhara in front of J.K. Tyre shop the back tyre of his bicycle was hit by a motor cycle bearing No.AS-12T/8901 from behind which was coming in a rash and negligent manner. As a result he fell down on the road side and sustained grievous injuries on his person. His bicycle was also badly damaged.

8. CW-1 has exhibited the following documents-

Ext. 1 Form 54 (accident information report).

Ext. 2 to 6 are documents relating to criminal case.

Ext.7 to 13(36) are medical documents/cash memo/vouchers etc.

9. In his cross-examination CW-1 has replied that on the date of accident he was on his bi cycle heading towards his house after his night duty. He performed his duty at night at Lahkar Udyog Pvt. Ltd. Every night he used to do his duty and he did not sleep during night.

10. Ext. 1 is the accident information report which reveals that an accident occurred on 10-08-2018 at about 8-00 am. in front of J.K. Tyre, Tezpur and Ratneswar Borah has sustained injuries due to the alleged accident. The vehicle bearing No. AS-12T/8901(motorcycle) was shown to be the offending vehicle. Ext. 2 is the FIR lodged by one Kalyan Borah alleging involvement of the vehicle bearing No. AS-12T/8901(motorcycle) causing injury to his father Rateneswar Borah due to rash and negligent driving by the driver of the said vehicle. On the basis of the ejahar, one case was registered vide Tezpur P.S. case NO.1688/18 u/s- 279/338/427 IPC. Ext. 3(1) is the seizure list of seizing the vehicle bearing No. AS-12T/8901(motorcycle) and its documents. Ext. 3(2) is another seizure list of seizing one Hero Royal bi cycle. Ext. 5 is the MVI report of the vehicle bearing No. AS-12T/8901(motorcycle). Ext. 6 is the charge sheet submitted against the driver of the vehicle bearing No. AS-12T/8901(m/cycle) Nayan Jyoti Kaushik u/s- 279/338/427 IPC.

11. *To determine the negligence, I am being guided by the judgment reported in 2009 ACJ 287, National Insurance Company Limited Vs. Pushpa Rana wherein in it was held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under [section 279/304 A IPC](#) or the certified copy of the FIR or in addition the recovery memo and the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent.*

12. **In the case of Ranu Bala Paul & Ors. v. Bani Chakraborty & Ors.** reported in 1999 ACJ 634, it was observed as under:

"In deciding a matter tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil

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case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accidents Claims Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the tribunal there must be some material on the basis of which the tribunal can arrive or decide things necessary to be decided for awarding compensation. But the tribunal is not expected to take or to adopt the nicety in civil or of a criminal case. After all, it is a summary inquiry and this is a legislation for the welfare of the society"

13. *In Bimla Devi and ors. Vs. Himachal Road Transport Corporation and Ors (2009) 13 SC 530, Supreme Court held that*

" In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

14. In view of the aforesaid legal proposition as well as documents relating to criminal case, it can be said that the claimant is able to prove that he has sustained injuries due to rash and negligent driving by the driver of the offending vehicle bearing No. AS-12T/8901(motorcycle) .Hence, issue No. 1 is decided in favour of the claimant.

Issue No. 2

15. It is an admitted fact that the offending vehicle bearing no. AS-12T/8901(motorcycle) was duly insured with Oriental Insurance Co. Ltd. vide policy no. 2012-300201-17-8003852-00-000 valid upto 22-03-2019. The accident occurred on 10-08-2018. It transpires that the accident occurred during the subsistence of the policy of the vehicle. Hence, O.P. No. 2 i.e. Liberty Videocon General Insurance Co. Ltd. is liable to pay compensation to the claimant.

16. According to the claimant, immediately after the accident he was taken to Kanaklata Civil Hospital, Tezpur and thereafter on the same day he was shifted to Baptist Christian Hospital, Tezpur and after that he was taken to GMCH, Guwahati and from GMCH to Agile Hospital, Guwahati on the next day where he

was admitted as an indoor patient for 7 days. Ext. 4 is the Medico legal report of the victim Ratneswar Borah which shows that the claimant was treated at Kanaklta Civil Hospital, Tezpur on the date of accident i.e. on 10-08-2018. On examination doctor found abrasion on right side of forehead 1 cm X 1 cm. Multiple abrasion of 1 cm.X ½ c.m. over right forearm and hand (palm). Ext. 8 is the OPD card of the claimant showing that he has attended Baptist Christian Hospital, Tezpur on the date of accident i.e. on 10-08-2018. Ext. 9 is the visiting card of GMCH, Guwahati to attend the injured/claimant Ratneswar Borah showing the date on 11-08-2018. Ext. 10 is the discharged certificate of Agile Hospital, Pvt. Ltd., Guwahati which reveals that the claimant was admitted to Agile Hospital, Pvt. Ltd., Guwahati on 11-08-2018 and discharged on 18-08-2018. On examination doctor found injury on his head and face. As nowhere it is mentioned in any injury report that the injury was grievous in nature, it transpires that the injury of the claimant was simple in nature.

17. The claimant has stated that he was working in Lahkar Udyog Pvt. Ltd., Tezpur and he was getting salary Rs.5,500/- per month. In support of his submission the claimant has produced one certificate from Lahkar Udyog Pvt. Ltd., Tezpur vide Ext. 11 which shows that the gross salary of the claimant was Rs. 8,000/- and Rs. 420/- +Rs. 140/- = Rs. 560/- was deducted due to Provident fund and ESIC. But the person who issued Ext. 11 was not examined to prove the fact and from Ext. 11 it cannot be ascertained who put the signature on behalf off Lahkar Udyog Pvt. Ltd., Tezpur. As the claimant himself has stated in claim petition that he used to get Rs. 5,500/- from Lahkar Udyog Pvt. Ltd., Tezpur. Under such circumstances, Ext. 11 is not considered in this case. However, the claimant is entitled to get the amount of expenditure incurred for his treatment.

18. Though the claimant has stated that after the accident he became physically unfit to continue his previous occupation, but the medical documents does not show that he has sustained such severe injuries on his person for which he was unable to do any work after the accident. So loss of income cannot be adjudged in this case. The claimant has submitted medical documents along with vouchers/cash memos etc. amounting to Rs.1,40,426/-. So, total pecuniary damage comes to Rs. 1,40,426/-.

19. In regard to non pecuniary damage, the victim has suffered definitely pain and agony at the age of 58 years due to the alleged accident. So, an amount of Rs.10,000/- is awarded for pain and agony and another amount of Rs. 10,000/- is also awarded for loss of amenities.

20. Therefore, total compensation comes to Rs. 1,40,426/- +Rs.10,000/-+ Rs.10,000/- = **Rs. 1,60,426/- (Rupees one lakh sixty thousand four hundred twenty six)only.**

21. Hence, issue No. 2 is decided accordingly.

O R D E R

In the result, the claim petition is allowed, awarding **Rs. 1,60,426/- (Rupees one lakh sixty thousand four hundred twenty six)only** with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 27-08-2019 till full and final realization. The O.P. No. 2 i.e. Liberty Videocon General Insurance Co. Ltd is directed to make payment of the aforesaid amount within a period of 30 (thirty) days from the date of receipt of order in the Savings Account of the claimant Ratneswar Borah through NEFT. Claimant is directed to furnish his Bank details of any Nationalized Bank to this Tribunal or the concerned Insurance Company for payment.

Insurance Company is directed to furnish compliance report accordingly.

Given under my hand and seal on this 2nd day of July, 2020.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

(M. Nandi.)
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

A N N E X U R E

1. Witness of the Claimant:

1) Ratneswar Borah.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2 to 6 are documents relating to criminal case.

Ext. 7 to 13(36) are medical documents/cash memo/vouchers etc.

4. Exhibits of the defence

NIL.

(M. Nandi.)
Member
MACT, Sonitpur, Tezpur