

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.57 of 2019(I)**

1. Md. Sahidul Islam,  
Son of Md. Sahur Uddin @ Safiruddin Ali
2. Md. Md. Sahur Uddin @ Safiruddin Ali  
Son of Late Akkas Ali,

Both are resident of  
Vill. Bhalukjarani,,  
P.O. Khalihamari,  
P.S. Tezpur,  
Dist. Sonitpur, Assam.....Claimant.

The claimant No.1 is the minor as such his father  
Claimant No.2 represented the claimant No.1.

-Versus-

1. Sri Kamal Singh Teron,  
Son of Saikia Teron,  
R/O Vill. Natundanga,  
P.O. Jakhalabandha,  
P.S. Jakhalabandha,  
Dist. Nagaon, Assam,  
(Owner of the vehicle No.AS-02BC/0420(Mahindra Supro))
2. Md. Sahid Ali,  
Son of Asraf Ali,  
R/O village. Punioni,  
P.O. Solmara,  
P.S. Tezpur,  
Dist. Sonitpur, Assam,  
(Driver of the vehicle No.AS-02BC/0420(Mahindra Supro))
3. Oriental Insurance Co. Ltd.  
Divisional Office, Main Road, Tezpur  
P.O. & P.S. Tezpur,  
Dist. Sonitpur, Assam.  
(Insurer of the vehicle No. AS-02BC/0420(Mahindra Supro))  
.....Opp. Parties.

#### ADVOCATES APPEARED

For the claimant	:- B.B. Biswas, Advocate.
For the O.P. No. 1	:- J. Baruah, Advocate.
For the O.P. No. 2	:- Binita Das, Advocate.
For the O.P. No. 3	:- B.Purkayastha, Advocate.
Date of Argument	:- <b>15-06-2020, 01-07-2020.</b>
Date of Judgment	:- <b>03-07-2020.</b>

#### **J U D G M E N T**

This is an application u/s 163(A) of M.V Act, 1988 filed by the claimant Md. Sahur Uddin @ Safiruddin Ali praying for grant of compensation on account of injuries sustained by his minor son Sahidul Islam, in a motor vehicle accident.

1. The brief fact of the case is that on 29-04-2018 at about 2-00 p.m. the victim Sahidul Islam was standing in the low land of PWD Road in front of the house of Md. Hazarat Ali at Bhalukjaroni, at that time one vehicle bearing No.AS-02BC/0420 (Mahindra Supro) coming in a rash and negligent manner knocked down the victim Sahidul Islam from his back side. As a result he sustained grievous injuries on his person including fracture of his left leg and his teeth were also broken. Immediately after the accident, the injured was taken to Kanaklata Civil Hospital, Tezpur. After giving first aid the injured was referred to GMCH, Guwahati but for better treatment he was taken to Mirdha Nursing Home, Tezpur where he was treated as an indoor patient. About Rs.1,10,000/- (Rupees one lakh ten thousand)only has been spent for the treatment of the injured Sahidul Islam.

2. After the accident, one case was registered vide Tezpur P.S. case No.958/18 u/s- 279/338 IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with Oriental Insurance Co. Ltd.

3. Against the claim petition, O.P. No.1 and 2 i.e. owner/driver of the alleged offending vehicle bearing No. AS-02BC/0420 (Mahindra Supro) have submitted written statement and it is admitted that the O.P. No. 1 is the registered owner of the vehicle and O.P. No. 2 was driving the vehicle at the relevant time of accident but it is denied that O.P. NO. 2 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 Oriental 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 and 2 from the liability of paying any compensation to the claimant.

4. O.P.No. 3 i.e. Oriental Insurance Co. Ltd. i.e. insurer of the vehicle AS 02BC/0420 has submitted written statement wherein it is stated that the accident took place due to carelessness of the injured himself. The claim is bad for non-joinder of necessary parties. As such claim is liable to be rejected. It is further stated that no such accident occurred on 29-04-2018 at about 2-00 p.m. at village Bhalukjarani involving Mahindra Supro vehicle bearing No. AS-02BC-0420 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 29-04-2018 at about 2-00 P.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-02BC/0420 (Mahindra Supro) and whether the victim Md. Sahidul Islam has sustained injury 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. Learned Counsel for the claimant has submitted written Argument. But Learned Counsel for the OP. Insurance Company neither has argued the case through video conferencing nor has submitted any written Argument. I have perused the documents available in the record.

### **Issue No. 1**

7. The claimant Sahur Uddin @ Safiruddin Ali was examined in the case as CW-1 who deposed in his evidence that he has filed this instant case due to injury sustained by his minor son Sahidul Islam in a motor vehicle accident which occurred on 29-04-2018 at about 2-00 p.m. due to rash and negligent driving by the driver of the vehicle bearing No. AS-02BC/0420 (Mahindra Supro).

8. CW-1 has exhibited the following documents-

Ext. 1 Form 54 (accident information report).

Ext. 2(1) to 2(4) are FIR and Ejahar.

Ext.3(1) to 5(5) are medical documents/cash memo/vouchers etc.

Ext. 6 to 8 are school certificate/birth certificate/voter id.

Ext. 9(1) to 9(3) are documents relating to criminal case.

Ext. 10 to 15 are X-ray plates.

9. In his cross-examination CW-1 has replied that he did not remember the date of accident. When his injured son was standing in the side (mud portion) of the road one Maxo vehicle hit his son. He could not say the registration number of the vehicle. He had not seen the accident.

10. CW-2 is Md. Hazarat Ali who deposed in his evidence that on 29-04-2018 at about 2-00 p.m. minor son of Sahur Uddin @ Safiruddin Ali was standing in the low land of PWD Road in front of his house at Bhalukjarani, at that time one vehicle bearing No. AS-02BC/0420 (Mahindra Supro) coming in a rash and negligent manner knocked down the victim Sahidul Islam. As a result he sustained grievous injuries on his person. Immediately after the accident he along with the father of the injured and some other local people took the injured to Kanaklata Civil Hospital. After giving first aid the injured was referred to GMCH, Guwahati but for better treatment he was taken to Mirdha Nursing Home, Tezpur where he was treated as an indoor patient.

11. In his cross-examination CW-2 has replied that he could not remember the date of accident but the time is around 2-00 p.m. The son of the claimant was standing on the mud portion of the road and not on the pitch area. He informed the father of the injured about the accident. After hearing a sound he had noticed that one vehicle has hit the injured. The injured was brought to the hospital in the accidental vehicle (Maxo) along with some other person.

12. Ext. 1 is the accident information report which reveals that an accident occurred on 29-04-2018 at about 2-00 pm. at Bhalukjarani under Tezpur P.S. and Sahidul Islam has sustained injuries due to the alleged accident. The vehicle bearing No. AS-02BC/0420 (Mahindra Supro) was shown to be the offending vehicle. Ext. 2 is the Ejahar lodged by the claimant Sahur Uddin stating inter-alia that on 29-04-2018 at about 2-00 p.m. while his son Sahidul Islam was standing on the road side in front of his house, at that time one vehicle bearing No. AS-02BC/0420 (Mahindra Supro) coming in a rash and negligent manner knocked down his son. As a result he sustained grievous injuries on his person including fracture of his left leg. On the basis of the ejahar, one case was registered vide Tezpur P.S. case NO.958/18 u/s- 279/338 IPC. Ext. 9(1) is the MVI report of the vehicle bearing No. AS-02BC/0420 (Mahindra Supro). Ext. 9(2) is the seizure list of seizing the vehicle bearing No. AS-02BC/0420 (Mahindra Supro). Ext. 9(3) is

the charge sheet submitted against the driver of the vehicle bearing No. AS-02BC/0420 (Mahindra Supro) Sahid Ali u/s- 279/338 IPC.

13. *To determine the negligence, I am being guided by the judgment reported in 2009 ACJ 287, National Insurance Company Limited Vs. Pushpa Rana wherein 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.*

14. **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 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"*

15. *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."*

16. In view of the evidence of the CW-2 as well as documents relating to criminal case, it can be said that the claimant is able to prove that his son Sahidul Islam has sustained injuries due to rash and negligent driving by the driver of the offending vehicle bearing No. AS-02BC/0420 (Mahindra Supro). Hence, issue No. 1 is decided in favour of the claimant.

### **Issue No. 2**

17. It is an admitted fact that the offending vehicle bearing no. AS-02BC/0420 (Mahindra Supro) was duly insured with Oriental Insurance Co. Ltd. vide policy no. 321202/31/2018/5708 valid upto 26-02.2019. The accident occurred on 29-04-2018. It transpires that the accident occurred during the subsistence of the policy of the vehicle. Hence, O.P. No. 3 i.e. Oriental Insurance Co. Ltd. is liable to pay compensation to the claimant.

18. According to the claimant, the injured Sahidul Islam was immediately after the accident brought to Kanaklata Civil Hospital, Tezpur wherein first aid was provided to him and thereafter he was treated as an indoor patient at EMM Hospital, Tezpur but no any medical document is available in the record for treatment of the injured Sahidul Islam at Kanaklata Civil Hospital, Tezpur. However, vide Ext. 3(1) it reveals that the injured Sahidul Islam was admitted to EMM Hospital & Research Centre, Tezpur on the date of accident i.e. on 29-04-2018 and discharged on 05-05-2018. On examination doctor found fracture shaft left femur and multiple injury right upper limb and face. Operation was done by inserting nail on 01-05-2018. Ext. 5(1) is the X-ray report of the left thigh which shows that the fracture mid shaft of left femur. Ext. 5(2) is the NCCT scan of brain of the injured Sahidul which also shows that soft tissue swelling in right frontal region. From the medical document available in the record it reveals that the injured Sahidul Islam has sustained grievous injuries i.e. fracture of his left leg due to the alleged accident. It is seen that the injured is a minor boy of 9 years and the student of class one ( I ) in Nehru Sowarani L.P. School, Bhalukjarani, Khaliyamari. From the birth certificate it reveals that the injured was born on 12-01-2010. The accident occurred on 29-04-2018. It transpires that the injured was 8 years of age at the time of accident. Under such circumstances, there is no question of loss of income. However as the injured was a student of class-I at the relevant time of accident and due to the alleged accident as he had to confine in bed for some days, he is not in a position to

attend classes during the period of his treatment. However, the claimant is entitled to get the amount of expenditure incurred for the treatment of his son Sahidul Islam. The claimant has submitted medical documents along with vouchers/cash memos etc. amounting to Rs.44,367/-. So, total pecuniary damage comes to Rs. 44,367/-.

19. In regard to non pecuniary damage, the victim has suffered definitely pain and agony at the age of 8 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.44,367/- +Rs.10,000/-+ Rs.10,000/- = **Rs. 64,367/- (Rupees sixty four thousand three hundred sixty seven) only.**

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

### **O R D E R**

In the result, the claim petition is allowed, awarding **Rs. 64,367/- (Rupees sixty four thousand three hundred sixty seven) only** with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 31-08-2019 till full and final realization. The O.P. No. 3 i.e. Oriental 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 Saharuddin @ Safirudin Ali 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 3<sup>rd</sup> 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:

- (i) Saharuddin @ Safiruddin Ali.
- (ii) Hazarat Ali.

### 2. Witness of the Defence:

None.

### 3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2(1) to 2(4) are FIR and Ejahar.

Ext. 3(1) to 5(5) are medical documents/cash memo/vouchers etc.

Ext. 6 to 8 are school certificate/birth certificate/voter id.

Ext. 9(1) to 9(3) are documents relating to criminal case.

Ext. 10 to 15 are X-ray plates.

### 4. Exhibits of the defence

NIL.

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