

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.35 of 2019(I)

1. Smti. Jonaki Borthakur,
Wife of Late Nilutpal Bhattacharjee,
R/O vill. Dandinath Kalita Path, L.B. Road,
P.O.& P.S. Tezpur,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Sujit Ghosh,
Son of Late Sudhir Ghosh,
R/O vill. Jahajghat,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam,
(Owner of the vehicle No. AS-12E/4309(Truck)
2. Sri Satrughana Rai,
Son of Late Lal Dev Rai,
R/O vill. Jahajghat,
P.O.& P.S. Tezpur,
Dist. Sonitpur, Assam,
(Driver of the vehicle No. AS-12E/4309(Truck)
3. The New India Assurance company Ltd.
Tezpur Branch, Main Road,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.
(Insurer of the vehicle No. AS-12E/4309(Truck).....Opp. Parties.
1. Mrs. Manti Borthakur,
Wife of Sri Ram Narayan Kalita,
Pharmacist, Thakurbari Tea Estate,
P.O. Thakurbari,
P.S. Rangapara,
Dist. Sonitpur, Assam
2. Sri Bhupen Borthakur,
Son of Late Debendra Borthakur,

C/O Sweet Home, L.B. Road,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.
3. The Oriental Insurance Co. Ltd.
Tezpur Branch,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.
(Insurer of the vehicle No. AS-12T/6501(Jupiter scooty)
.....Proforma Opp. Parties.

ADVOCATES APPEARED

For the claimant :- A. Bhuyan, Advocate.
For the O.P. No. 1&2 :- T. Paul, Advocate,
For the O.P. No.3 :- P. Sarmah, Advocate.
For the Proforma O.P. 1 &2 :- K. Devi, Advocate.
For the Proforma O.P. No.3 :- S. Acharjee, Advocate.

Date of Argument :-**10-02-2021.**
Date of Judgment :-**12-02-2021.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by the claimant Smti. Jonaki Borthakur, praying for grant of compensation on account of injuries sustained by her minor daughter Astha Bhattacharjee, in a motor vehicle accident.

1. The brief fact of the case is that on 16-04-2018 at about 1-00 P.M. while the minor daughter of the claimant was proceeding in a scooty bearing No. AS-12T/6501 and when reached Ambagan Road at Tezpur Town, suddenly one truck bearing No.AS-12E/4309 coming on the wrong side of the road dashed against the scooty with great impact. As a result of the said accident, both the rider of the scooty sustained grievous injuries on their persons. The daughter of the claimant sustained grievous injuries on her left leg including fracture of left toe finger, crush injury on left leg, left arm and forearm. Immediately the daughter of the claimant was taken to B.K. Memorial Hospital, Tezpur and then to B.J. Hospital, Tezpur and thereafter the injured took treatment at Down Town Hospital, Guwahati as an indoor patient.

2. After the accident, one case was registered vide Tezpur P.S. case No. 776/2018 u/s- 279/338 IPC. At the relevant time of accident, both the vehicles

were duly insured with New India Assurance Co. Ltd. and Oriental Insurance Co. Ltd. respectively.

3. Against the claim petition O.P. No. 1 and 2 i.e. owner/driver of the alleged offending vehicle bearing No. AS-12E/4309(Truck) have submitted written statement and it is admitted that 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. 2 was driving the vehicle in a rash and negligent manner for which the accident took place. It is alleged that the driver of the scooty bearing No.AS-12T/6501 drove the vehicle in a very rash and negligent manner and hit the alleged truck bearing No.AS-12H/7015(Truck) and the accident occurred. It is further stated that at the relevant time of accident the alleged offending truck was duly insured with New India Assurance Co. Ltd. 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. Proforma O.P. No. 1 and 2 owner/driver of the scooty bearing No. AS-12T/6501 have also submitted written statement by stating that Proforma O.P. NO. 2 was riding the scooty along with minor daughter of the claimant who was sitting as a pillion rider and when they reached Ambagan Road of Tezpur Town, suddenly one truck bearing No. AS-12E/4309 coming from the opposite direction hit the scooty head on with great impact on the wrong side of the road. As a result of the said accident, the daughter of the claimant sustained grievous injuries on her person. It is also stated that the TVS Jupiter scooty bearing No. AS-12T/6501 which was involved in the said accident was duly insured with Oriental Insurance Co. Ltd. at the relevant time of accident and prayed to absolve Proforma O.P. No. 1 and 2 from the liability of paying any compensation to the claimant.

5. O.P. No. 3 New India Assurance Co. Ltd. i.e. insurer of the vehicle bearing No. AS-12E/4309(Truck) has submitted written statement wherein it is denied that the said accident took place due to rash and negligent driving by the driver of the vehicle bearing No. AS-12E/4309 (Truck). It is alleged that the said accident took place for the gross negligence of the driver of the scooty bearing No. AS-12T/6501. As such the insurance company is not liable to pay any compensation to the claimant and prayed to dismiss the claim petition.

6. Proforma O.P. No.3 Oriental Insurance Co. Ltd. i.e. insurer of the vehicle bearing No. AS-12T/6501(Jupiter scooty) has also submitted written statement and it is submitted that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle bearing No.AS-12E/4309(Truck). Moreover, the claimant has raised no claim against the Oriental Insurance Co. Ltd.. Hence, Proforma O.P. No. 3 has no liability for payment of compensation to the claimant.

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

I. Whether the accident took place on 16-04-2018 at about 1-00 P.M. due to rash and negligent driving by the driver of both the vehicles bearing No.AS-12E/4309(Truck) and AS-12T/6501(Jupiter scooty) and whether Miss Astha Bhattacharjee 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?

8. I have heard argument advanced by Learned Counsel of both sides. I have also perused the documents available in the record.

Issue No. 1

9. The claimant was examined in the case as CW-1 who deposed in her evidence that on 16-04-2018 at about 1-00 P.M. her minor daughter who was sitting as a pillion rider in a scooty bearing No.AS-12T/6501 driven by her father i.e. the Proforma O.P. NO. 2 while proceeding towards Tezpur Town met with an accident when a truck bearing No.AS-12E/4309 coming on the wrong side of the road knocked down the scooty. As a result her daughter sustained grievous injuries on her person including fracture of her left toe finger and crush injury on left leg , left arm and forearm.

10. CW-1 has exhibited the following documents-

Ext. 1 accident information report (Form 54).

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

Ext. 7(1) to 11(51) are medical documents/cash memo/bills etc.

11. In her cross-examination CW-1 has replied that the accident occurred between two vehicles one scooty and a truck. She did not know the registration number of both the vehicles. The scooty was driving by her father and her daughter was a pillion rider at the time of accident.

12. CW-2 is the injured Astha Bhattacharjee, who deposed in her evidence that on 16-04-2018 at about 1-00 P.M. she was proceeding in a scooty as a pillion rider bearing No.AS-12T/6501 driven by her grandfather in a normal speed. When they reached Ambagan Road of Tezpur Town, suddenly one truck bearing No.AS-12E/4309 (Truck) hit their scooty head on with great impact in the wrong side of the road. As a result of the said accident, she sustained grievous injuries on left leg including fracture of left toe finger, crush injury on left leg, left arm and forearm. Her grandfather also sustained grievous injuries in the said accident. She took treatment at B.K. Memorial Hospital, Tezpur, B.J. Hospital, Tezpur and Down Town Hospital, Guwahati.

13. In her cross-examination CW-2 has replied that on the date of accident she was travelling in a scooty from Bengali Theatre towards chowk bazaar, Tezpur. The scooty was riding by her grandfather Bhupen Borthakur. There was head on collision between the scooty and the truck.

14. Ext. 1 is the accident information report which reveals that an accident occurred on 16-04-2018 at about 1-00 P.M at Ambagan Road under Tezpur P.S. and Astha Bhattacharjee has sustained injury due to the alleged accident. The vehicle bearing No. AS-12E/4309(Truck) was shown to be the offending vehicle. Ext. 2 is the Ejahar lodged by one Nilutpal Bhattacharjee alleging involvement of the vehicle bearing No.AS-12E/4309(Truck) causing injury of Astha Bhattacharjee and Bhupen Bhattacharjee 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.776/2018 u/s- 279/338 IPC. Ext. 3(1) is the seizure list of seizing the vehicle bearing No.AS-12E/4309(Truck) and its documents. Ext. 3(2) is another seizure list of seizing the vehicle bearing No.AS-12T/6501(Jupiter scooty) and its documents. Ext. 5(1) is the MVI report of the vehicle bearing No. AS-12E/4309(Truck) having no damages. Ext. 5(2) is another MVI report of Jupiter Scooty bearing No. AS-12T/6501 with following damages- front mudguard, head light, steering handle, R/H side body, tail lamp, both side rear view mirrors. Ext.

6 is the charge sheet submitted against the driver of the vehicle bearing No. AS-12E/4309(Truck) Satrughana Rai u/s- 279/338/427 IPC.

15. *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.*

16. **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"

17. *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."

18. Therefore, in view of the evidence of CW-2 as well as documents relating to criminal case, it can be said that the claimant is able to prove that her minor daughter Astha Bhattacharjee had sustained injury due to rash and negligent driving by the driver of the offending vehicle bearing No.AS-12E/4309(Truck). Hence, issue No. 1 is decided in favour of the claimant.

Issue No. 2

19. It is an admitted fact that the offending vehicle bearing No. AS-12E/4309(Truck) was insured with New India Assurance Co. Ltd. vide policy No.530110331170100000614 valid upto 05-09-2018. The accident occurred on 16-04-2018. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e New India Assurance Co. Ltd is liable to pay compensation to the claimant.

20. According to the claimant, immediately after the accident her minor daughter was taken to B.K. Memorial Hospital, Tezpur where first aid was provided to her and thereafter to B.J. Hospital, Tezpur on the same day. In the evening an operation was done on her left toe finger. Later on, her daughter was taken to Down Town Hospital, Guwahati on 07-05-2018 and admitted there as an indoor patient. Ext. 4(1) is the injury report of Astha Bhattacharjee which reveals that she was treated at B.K. Memorial Hospital, Tezpur on the date of accident i.e. on 16-04-2018 for her injury on left leg and left forearm. Ext. 4(2) is the advice slip of B.J. Hospital, Tezpur which shows that the injured Astha Bhattacharjee has attended the said hospital on the date of accident i.e. on 16-04-2018 and operation was done by k-wire fixation and ankle block with C arm guidance. Ext. 8 is the discharge certificate which reveals that the injured Astha Bhattacharjee was admitted to Down Town Hospital, Guwahati on 07-05-2018 and discharged on 09-05-2018 and the doctor diagnosed crush avulsion left leg with necrosed skin and debridement SSG done under GA on 08-05-2018. From the medical documents available in the record it reveals that the minor daughter of the claimant Astha Bhattacharjee has sustained grievous injuries due to the alleged accident.

21. Though the claimant has stated that her minor daughter was a student of class VI of St. Josephs Convent H.S. School, Tezpur and her study was severely affected due to the alleged accident but to prove the fact in question the claimant has not submitted any document to show that her daughter was

student of class-VI at the relevant time of accident and her study was grossly affected due to the alleged accident. As such the claimant is not entitled to get any compensation on the head of Academic loss. It is seen that the injured was a student at the relevant time of accident and she was about 14 years of age. So, there is no question of loss of income. However, claimant is entitled to get the amount of expenditure incurred for the treatment of her minor daughter. The claimant has submitted cash memos/vouchers amounting to Rs.92,830/-. So, the total pecuniary damage comes to =Rs. 92,830/-.

22. In regard to non pecuniary damage, the victim has suffered definitely pain and agony at the age of 14 years due to the alleged accident. So, an amount of Rs.25,000/- is awarded for pain and agony and another amount of Rs. 25,000/- is also awarded for loss of amenities.

23. Therefore, total compensation comes to Rs. 92,830/-+ Rs.25,000/-+ Rs.25,000 = **Rs. 1,42,830/- (Rupees one lakh forty two thousand eight hundred thirty) only.**

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

O R D E R

In the result, the claim petition is allowed, awarding **Rs. 1,42,830/- (Rupees one lakh forty two thousand eight hundred thirty) only** with interest thereon @ 6% per annum from the date of filing of the case i.e. on 28-08-2019 till full and final realization. The O.P. No. 3 i.e. New India Assurance 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 Smti. Jonaki Borthakur through NEFT. Claimant is directed to furnish her Bank details of any Nationalized Bank to this Tribunal. On receipt of the same, office of Motor Accident Claims Tribunal, Tezpur will do the needful in sending the required documents to the Insurance Company for payment of compensation to the claimant.

Insurance Company is directed to furnish compliance report accordingly.

Given under my hand and seal on this 12th day of February, 2021.

Dictated and corrected by me

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) Smti. Jonaki Borthakur.
- ii) Miss Astha Bhattacharjee.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 accident information report (Form 54).

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

Ext. 7(1) to 11(51) are medical documents/cash memo/bills etc.

4. Exhibits of the defence

NIL.

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