

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. 01/2019 (PD)**

Smt. Basanti Borah  
W/o – Late Akan Borah  
R/o – Village – Gharpora Chuburi ( Mazgaon Kharaati)  
P.O & P.S - Tezpur  
Dist. - Sonitpur, Assam.

-Versus-

1. Mr. Brijlal  
S/O – Amar Nath  
R/O – Their The  
Dist. – Patiala  
City - Patiala, Punjab  
P.O – Punjab University  
P.S – Patiala  
PIN - 147001

2. Joginderpal Singh  
S/O – Gopal Singh  
R/O – 77/84/5 Preet Nagar, Patiala  
P.O – Patiala  
P.S – Tripuri Patiala  
Dist- Patiala, Punjab  
City – Patiala  
Pin – 147001

3. Virendra Singh  
S/O – Suraj Singh  
R/O – Ward No. 15, Lichu Bagan  
Rubber Bagan near Gurukul School  
P.O & P.S – Tezpur  
PIN - 784001

(Owner of the golden transport service, ketekibari, Sonitpur, Assam)

4. New India Assurance company Limited.  
(Insurer of Vehicle registration no. PB 11 AY 8164, Truck)

5. National Insurance Company Ltd.  
(Insurer of the vehicle registration no. AS 12 M 3190, Scooty)

#### ADVOCATES APPEARED

For the claimant	:- L. Satnami, Advocate
For the O.P. No. 1,2 & 3	:- exparte
For the O.P. No.4	:- P.Sethi, Advocate
For the O.P. No.5	:- S. K. Singh, Advocate
Date of Argument	:- <b>04.06.2020, 10.07.2020</b>
Date of Judgment	:- <b>15.07.2020</b>

#### JUDGEMENT

This is an application u/s 166 of MV Act filed by the claimant Basanti Borah praying for grant of compensation on account of damages caused to their vehicle AS 12 M 3190 (Honda Activa Scooty) in a motor vehicle accident.

1. The brief fact of the case is that on 06.09.2017 the elder son of the claimant Akanta Borah was shifting his father's vehicle bearing no. AS 12 M 3190 from Tezpur through Tezpur Golden Transport Service to his brother in law at Meerut, UP, but on 06.09.2017 at around 2 pm at NH 31 near masjid Khana Higher Secondary School, district Alipurduar, West Bengal under Samuktala police station, the goods carriage vehicle vide no. PB 11 AY 8164(Truck) where the vehicle of the claimant was loaded met with an accident due to sudden accidental fire on the road over NH 31 near masjid Khana Higher Secondary School, district Alipurduar, WB. As a result, the vehicle of the claimant (Activa scooty) bearing no. AS 12 M 3190 was gutted by fire and has been completely damaged along with other articles loaded in the truck. The accident occurred due to negligent driving of the driver of the truck bearing no. PB 11 AY 8164 and prayed for compensation for the damage of their vehicle.

2. After the accident one GD Entry was recorded vide Samuktala P.S. GDE no. 613 dtd 20.09.2017. At the relevant time of accident, the alleged offending truck was duly insured with New India Assurance Company Ltd.
3. O.P no. 4, New India Assurance Co. Ltd, insurer of the vehicle PB 11 AY 8164, has submitted Written Statement wherein it is stated that the liability of an insurance company in damage to a property of a third party risk is limited to Rs. 6000/- only as per section 147(2) of the MV Act 1988 and the balance of claim if any has to be fastened from the insured/ owner of the said vehicle which got involved in an accident as such the claim of the claimant which has been made in her claim application to the tune of Rs. 3 lakhs is not entitled for same.
4. It is further stated that the claim application is barred by limitation as because the alleged accident took place on 06.09.2017 but the instant case was filed by claimant in the month of July'2019. i.e. after the lapse of around 2 years from the date of accident and no any explanation has been given by the claimant in her claim petition for the said delay as such the instant case is liable to be dismissed.
5. It is also submitted in the written statement by Opposite Party no. 4 that the scooty of the claimant was burnt during transportation to a different place at UP while it was being transported from Tezpur through Tezpur Golden Transport Services which is a transportation carriage of truck and lorry supplier, so the claimant should have approached for her compensation claim before the District Consumer Dispute Redressal Forum for the said damage of the scooty due to deficiency in service of the said transport company and this Motor Accident Claims Tribunal is not the appropriate forum for the claim made by the claimant and prayed to dismiss the claim petition with cost.
6. Opposite Party no. 5, National Insurance Company Ltd., insurer of the vehicle bearing no. AS 12 M 3190 (Activa Scooty) of the claimant has also submitted written statement and denies the allegation regarding the manner in which the alleged accident said to have occurred. It is further denied that on 06.09.2017 at about 2 pm the vehicle bearing no. AS 12 M 3190 was involved in an accident near masjid Khana Higher Secondary School, under Samuktala

Police station, district Alipurduar, West Bengal. It is also stated that from a bare reading of the claim petition it is evident that the claimant has made this insurer as necessary party to the proceedings. The claimant has not claim any relief from this insurer. The claimant in her claim petition categorically stated that the alleged accident has occurred due to the sole negligence of the driver of the offending vehicle bearing no. PB 11 AY 8164. Hence, this opposite party is in no way liable to pay any compensation and prayed to dismiss the claim petition with cost.

7. It is seen that notices to Opposite Party no 1,2 and 3 have been duly served. But they did not appear during trial. Hence, the case was proceeded exparty against Opposite Party no. 1, 2 and 3.

8. On the pleadings aforesaid the following issues were framed –

- (I) Whether the accident took place on 16.09.2017 at around 2. PM under Samuktala P.S., Alipurduar, West Bengal, due to rash and negligent driving by the driver of the vehicle bearing no. PB-11AY-8164(medium goods vehicle) resulting in damage to the vehicle bearing no. AS 12M 3190 (Scooty) belonging to the claimant 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?

9. Learned Counsel for the Claimant has submitted Written Argument through email. But inspite of repeated direction Learned Counsel for the Insurance Company has neither submitted written argument nor placed his argument through video conferencing. I have also perused the documents available in the record.

#### **Issue no. 1**

10. The claimant Basanti Borah and her son Akanta Borah were examined in the case as CW 1 and CW 2. They deposed in their evidence that on 06.09.2017 while their scooty bearing no. AS 12M 3190 (Activa) was shifting from Tezpur to

Meerut, UP through Tezpur Golden Transport Services, the truck bearing no. PB 11AY-8164 met with an accident due to sudden accidental fire in which the Scooty of the claimant was loaded and their scooty has been completely damaged.

CW-1 has exhibited the following documents –

Ext 1 claimant's Aadhar card and Voter ID.

Ext 2 Activa Scooty RC and Insurance.

Ext 3 consignment copy issued by Golden Transport Service.

Ext 4 Activa retail invoice receipt /Registration invoice receipt of DTO, Sonitpur, Assam

Ext 5 RTI application copy by Dy Superintendent, Alipurduar, W.B

Ext 6 Death certificate of claimant's husband.

Ext 7 Next of kin certificate.

11. In her cross examination CW-1 has replied that the scooty was purchased vide Ext. 4 on 01.10.14. She has been shown the certificate of insurance vide Ext. 2 (ii) of Activa for the period from 20.10.16 to 19.10.17. It is true that scooty was insured to cover third party liability only and it was not the first party insurance policy and therefore Scooty was not covered for its own damages. After purchase the vehicle, it was used by her husband and after death of her husband her family members used it. The scooty which got damage due to burn was transported through Tezpur Golden Transport Services from Tezpur to Meerut. She could not say how the vehicle caught fire in which their scooty was loaded.

12. In his cross examination CW 2 has replied that he has not done any marine insurance for transporting the said scooty from Tezpur to Meerut and he has no personal knowledge whether Opposite Party no. 3 had taken separate insurance or not while transporting the scooty.

13. To prove her case the claimant has submitted consignment receipt vide no. 2777 which shows that one scooty bearing no. AS 12 M 3190 was booked to deliver at Meerut from Tezpur through a carriage bearing no. PB 11 AY 8164 vide Ext. 3. In Ext. 3 it is clearly written that the transport company is not responsible for breakage, leakage and damages. All risk on the way to truck owner's and driver's only. It is seen that the said scooty was insured in the name of Late Akan Borah, husband of the claimant and after his death the vehicle was not transferred to the name of any other person i.e. either claimant or her son.

14. The claimant has also submitted a xerox copy of FIR lodged by Jogender pal singh, driver of the damaged truck which also reveals that some household articles along with the scooty bearing no. AS 12 M 3190 were shifting in the truck bearing no. PB 11 AY 8164 from Tezpur to Meerut, UP. On the basis of Ejahar a GDE was recorded vide Samuktala PS GDE no. 613 dated 20.9.2017. The claimant has also submitted some photographs of the damaged vehicle which shows that the truck bearing no. PB 11 AY 8164 was carrying a scooty along with some other articles. The claimant has not furnished Form 54 i.e. Accident Information Report or any other documents relating to criminal case i.e. seizure list or MVI reports of the vehicle involved in the accident. However, as the opposite party/Insurance company or other Opposite Parties have failed to show any better documents to prove the fact that no such accident took place involving the scooty AS12M-3190 on transit, under such circumstances, Opposite Parties are liable to pay compensation.

Hence Issue no. 1 is decided in favour of the claimant.

### **Issue no. 2**

15. Insurance policy of the offending truck is available in the record which shows the period of Insurance from 22/06/2017 to 21/06/2017. The accident occurred on 06/09/2017. It transpires that the accident occurred during the subsistence of the policy of the vehicle.

*16. In view of the fact that in respect of damage caused to the property of a third party, Section 147(2)(b) of the said Act limits the liability of an insurer to payment of Rs. 6000/- only. It is clear from the bare reading of section 147 that this section separates the liability of an insurer into two parts, namely, Clause (a) and Clause*

*(b). While Clause (a) makes the insurer, in case of death and injury of person, liable to pay the amount of liability incurred under the relevant policy of insurer, Clause (b) makes it clear that for the damage caused to any property of a third party, insurer's liability is limited to an amount of Rs. 6,000/-. If any contract entered into between the insurer and the insured exceeds the limit imposed by Clause (b), then, the burden rests on the person, who makes such a claim, to prove that the restriction imposed under Clause (b) does not apply to his or her case.*

17. In the case at hands, it is an admitted fact that the scooty vide no. AS12M-3190 of the claimant was insured to cover under third party liability only.

18. The claimant has exhibited the retail invoice of the vehicle Activa Scooty vide Ext no. 4 and price of the vehicle was around Rs. 50,000/-. The vehicle was purchased in the year 2014 and the accident occurred in year 2017. Hence price of the vehicle will be fixed at Rs. 35,000/- i.e. depreciation value after three years of purchase.

19. Hence liability of the Opposite Party no. 4, New India Assurance Co. Ltd. is limited to Rs. 6000/- only for damage caused to the vehicle of the claimant and remaining amount Rs. 29,000/- be paid by opposite Party no. 1, i.e. owner of the vehicle no. PB 11AY-8164, Brijlal.

Hence, Issue no. 2 is decided accordingly

### **ORDER**

In the result, the claim petition is allowed, awarding **Rs.35,000/- ( Rupees thirty five thousand) only** with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 17-07-2019 till full and final realization. The O.P. No. 4 i.e. New India Assurance Company Ltd. is directed to make payment of **Rs. 6000/- (Rupees Six thousand) only** and remaining amount of **Rs. 29,000/- (Rupees twenty nine thousand) only** will be paid by O.P No. 1 owner of the vehicle PB 11AY-8164, Brijlal, within a period of 30(thirty) days from the date of receipt of

order by way of Account payee cheque in the name of the claimant Smt. Basanti Borah.

Given under my hand and seal on this 15<sup>th</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:

- 1) Basanti Borah.
- 2) Akanta Borah.

### 2. Witness of the Defence:

None.

### 3.Claimant's Exhibits:

Ext 1 claimant's Aadhar card and Voter ID.

Ext 2 Activa Scooty RC and Insurance.

Ext 3 consignment copy issued by Golden Transport Service.

Ext 4 Activa retail invoice receipt /Registration invoice receipt of  
DTO, Sonitpur, Assam

Ext 5 RTI application copy by Dy Superintendent, Alipurduar, W.B

Ext 6 Death certificate of claimant's husband.

Ext 7 Next of kin certificate.

### 4.Exhibits of the defence

NIL.

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