

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.126 of 2019(I)

1. Md. Bajaruddin Ahmed,
Son of Late Abdul Hai,
R/O vill. Rangagara No. 1 ,
P.O. Rangagara No. 2
P.S. Dhekiajuli,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Md. Saddam Hussain,
Son of Sh. Khalilur Rahman,
R/O vill. Rangagara NO. 1
P.O. Rangagara NO.2
P.S. Dhekiajuli,
Dist. Sonitpur, Assam,
(Owner of the vehicle No. AS-12AC/8737(Bolero Pickup van)
2. Sh. Golum Mustafa,
Son of Amuluddin Sheikh,
R/O vill. Maila Ali,
P.O. Sirajuli,
P.S. Dhekiajuli,
Dist. Sonitpur, Assam,
(Driver of the vehicle No. AS-12AC/8737(Bolero Pickup van)
3. Oriental Insurance company Ltd.
Tezpur Branch,
Himat Singka Building , N.T. Road, Tezpur,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.
(Insurer of the vehicle No. AS-12AC/8737(Bolero Pickup van)
.....Opp. Parties.

ADVOCATES APPEARED

For the claimant	:- S. Chetri, Advocate.
For the O.P. No. 1&2	:- Ex-parte
For the O.P. No.3	:- M. Baruah, Advocate.

Date of Argument **:-12-02-2021.**
Date of Judgment **:-18-02-2021.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by the claimant Md. Bajaruddin Ahmed, 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 09-05-2019 while the claimant was waiting for one Burhan Uddin at Kuchi Bridge, Type-I colony, Seppa under East Kameng District, Arunachal Pradesh, suddenly one vehicle bearing No. AS-12AC/8737(Bolero Pickup) coming in a rash and negligent manner knocked down the claimant from behind. As a result, he sustained grievous injuries on his person. Immediately he was taken to District Hospital, Seppa Arunachal Pradesh for treatment and after providing initial treatment he was referred to higher centre for better management. Accordingly, the injured was taken to Baptist Christian Hospital, Tezpur and from where he was referred to GNRC Hospital, Guwahati wherein he was admitted and treated as an indoor patient. Due to the alleged accident, the claimant has sustained grievous injuries on his head and his right hand has been fractured.

2. After the accident, one GDE was recorded vide Seppa P.S. GDE No. 06 dtd. 12-05-2019. 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.3 Oriental Insurance Co. Ltd. i.e. insurer of the vehicle bearing No. AS-12AC/8737(Bolero Pickup) has submitted written statement wherein it is denied all about the accident alleged to have been taken place on 09-05-2019 at about 9-00 P.M. at Type-1 colony, Seppa under East Kameng District, Arunachal Pradesh. It is further stated that there was no such rash and negligent driving on the part of the driver of the alleged vehicle as stated in the claim petition. Even if it is found to have been proved by the claimant but O.P. No. 3 is not liable for compensation as alleged accident occurred due to mechanical defect of the vehicle and prayed to dismiss the claim petition with cost.

4. Though notices were served to O.P. No.1 and 2 i.e. owner/driver of the alleged offending vehicle bearing No. AS-12AC/8737(Bolero Pickup) but none has appeared to contest the case. Hence, case was proceeded ex-parte against O.P. No. 1 and 2.

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

1. Whether the accident took place on 09-05-2019 at about 9-00 P.M. at Kuchi Bridge, Type-I Colony, Seppa, under East Kameng District, Arunachal Pradesh, due to rash and negligent driving by the driver of the vehicle bearing No. AS-12AC/8737(Bolero Pickup) and whether the claimant Md. Bajaruddin Ahmed has sustained injury due to the alleged accident?

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

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

Issue No. 1 and 2

7. The claimant was examined in the case as CW-1 who deposed in his evidence that on 09-05-2019 he met with an accident at Kuchi Bridge, Type-1 Colony Seppa, East Kameng District, Arunachal Pradesh when he was waiting for Burhan Uddin for which he sustained injury caused by a vehicle bearing No. AS-12AC/8737(Bolero Pickup) coming in a rash and negligent manner. As a result he fell down on the road side ditch and sustained grievous injuries. He undertook treatment at District Hospital, Seppa Arunachal Pradesh, E.M.M. Hospital and Research Centre, Tezpur and GNRC Hospital, Guwahati.

8. CW-1 has exhibited the following documents-

Ext. 1 accident information report (Form 54).

Ext. 2 Extract copy of GD Entry.

Ext. 3(1) to 358 are medical documents/cash memo/bills etc.

9. In his cross-examination CW-1 has replied that the accident took place at Seppa at Arunachal Pradesh. Prior to the date of accident, he went to Seppa

from Dhekiajuli. On the date of accident at about 9-00 P.M. he was standing along with Burhan Ali at Type-1 colony at Seppa. At that time one vehicle came and knocked him down as a result he fell on a nearby Nalla. At that time he did not notice the vehicle. Later on, he came to know that the driver of the vehicle surrendered before the police station.

10. Ext. 1 is the accident information report which reveals that an accident occurred on 09-05-2019 at about 2100 hrs. Type-1 colony, Seppa and Bajaruddin Ahmed has sustained injury due to the alleged accident. The vehicle bearing No. AS-12AC/8737(Bolero Pickup) was shown to be the offending vehicle. Ext. 2 is the Extract copy of GDE No.006 dtd. 12-05-2019 wherein it is stated that a written complaint received from one Burhan Uddin of Rangagora Dhekiajuli of Sonitpur District, presently residing at main Bazar Line, Seppa to the effect that his elder brother Bajaruddin Ahmed presently at Type-1 Colony, Seppa got hit from behind by a vehicle(Bolero pickup) bearing No.AS-12AC/8737 near Kuchi Bridge, Type-1 Colony Seppa on 09-05-2019 at around 2100 hrs. while he was waiting for Burhan Uddin at Kuchi Bridge and lost his sense. Later on he took him to District Hospital, Seppa and referred from Seppa to GNRC, Guwahati, Assam.

11. From Ext. 2 it reveals that a written complaint was received on 12-05-2019 and thereafter Seppa P.S. GDE No. 06 was registered. But it is not clear from Ext.2 if written complaint was received why no any case was registered in connection with the accident. CW-1 i.e. the injured in his cross-examination replied that his brother lodged the Ejarah in the police station. But copy of FIR is not available in the record. Admittedly no case was registered on the written complaint regarding accident. Though the offending vehicle was available on the spot, now the question comes why the vehicle was not seized and MVI was not conducted. The owner and driver of the vehicle did not appear before the court to give clarification that the vehicle bearing No. AS-12AC/8737(Bolero pickup) actually met with an accident on 09-05-2019 at Seppa. Route permit is also not available in the record to show that the alleged offending vehicle is used to travel in between Assam and Arunachal Pradesh. Under such backdrop it creates some doubt regarding involvement of the offending vehicle bearing No.AS-12AC/8737(Bolero Pickup) in the alleged accident in which the claimant has sustained injury.

12. Another disturbing feature found in the record that the claimant categorically stated that immediately after the accident he was taken to Seppa District Hospital and after providing initial treatment he was referred to higher centre for better treatment. The claimant has produced one medical certificate which shows that he was treated at Seppa District Hospital on the date of accident i.e. on 09-05-2019. But the Injury Report is totally silent that he has been referred to any other hospital for better treatment.

13. Regarding treatment of the claimant he has also given different version. In his claim petition the claimant has stated that immediately after the accident he was taken to District Hospital, Seppa and thereafter he was referred to Baptist Christian Hospital, Tezpur and thereafter he was shifted to GNRC Hospital, Guwahati wherein he was treated as an indoor patient. But the claimant in his evidence on affidavit has contended that immediately after the accident he was brought to Seppa District Hospital, Arunachal Pradesh and after providing initial treatment he was referred to Tezpur Medical College & Hospital, Tezpur. But he was shifted to EMM Hospital, Tezpur and again he was referred to GNRC Hospital, Guwahati. But from Ext. 2 (Extract copy of GDE) and Ext. 5 (discharge certificate of GNRC) it reveals that the claimant was initially treated at Seppa District Hospital, Arunachal Pradesh and then referred to GNRC Hospital, Guwahati. These two documents are totally silent regarding treatment of the claimant in any other hospital like EMM Hospital, Tezpur. The claimant also admitted in his cross-examination that he was only treated at GNRC Hospital, Guwahati.

14. Apart from that the Hon'ble Supreme Court has observed some case laws on the point of registration of FIR in connection with motor accident cases.

15. In the case of Lalita Kumari Vs. Government of Uttar Pradesh reported in 2014(2) SCC 1 Supreme Court has made it abundantly clear that registration of FIR under section 154 of the Code of Criminal Procedure, 1973 is mandatory, if the information discloses commission of a cognizable offence. In such a case, no preliminary enquiry is permissible and this provision must be strictly complied with.

16. In the case of Jai Prakash Vs. National Insurance Company Ltd reported in 2010(2) SCC 607 has observed that the officer-in-charge of the concerned police station is required to submit accident information report (AIR) in Form

No.54 to the jurisdictional Tribunal within 30(thirty) days of the registration of the FIR. The General Diary (GD) Entry is only an entry in the General Diary maintained in a police station recording receipt of information. If the information pertains to cognizable offence, registration of FIR is mandatory. No preliminary inquiry is required for registration of FIR in such cases. It, however, does not mean that after registration of FIR, there is no power of the police to conduct investigation about the genuineness of the road accident. Direction of the Supreme Court is that after registration of the FIR the accident information report (AIR) has to be submitted to the jurisdictional Tribunal within 30(thirty) days.

17. In the case in hand, the direction of the Hon'ble Apex Court has not been followed. Under such backdrop, I am of the opinion that the present claim petition is not maintainable being devoid of any merit. Hence, issue No. 1 and 2 are decided accordingly.

O R D E R

In the result, claim petition is dismissed. There is no order as to cost.

Given under my hand and seal on this 18th 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.

ANNEXURE

1. Witness of the Claimant:

(i) Md. Bajaruddin Ahmed.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 accident information report (Form 54).

Ext. 2 Extract copy of GD Entry.

Ext. 3(1) to 358 are medical documents/cash memo/bills etc.

4. Exhibits of the defence

NIL.

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