

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. 322 of 2001(PD)

1. Union of India represented by Commanding
Officer 521 ASC BN.C/O 99 APO.
.....Claimant.

-Versus-

1. Mrs. Tinky Roy,
W/O S.K. Roy,
C/O Kamakhya Store, Ganga Market,
Itanagar, P.O. Itanagar, Arunachal Pradesh.
[(Owner of the vehicle No. AR-01A/2743(Truck))]
2. Sri Bholayadav,
S/O- RameswarYadav,
R/O Vill.-Khelmati North Lakhimpur,
P.O. North Lakhimpur,
Dist –North Lakhimpur, Assam
[(Driver of the vehicle No. AR-01A/2743(Truck))]
3. Branch Manager,
Oriental Insurance Co. Ltd.
Tezpur Branch,
Dist. Sonitpur, Assam
[(Insurer of the vehicle No. AR-01A/2743(Truck))]
.....Opposite parties.

ADVOCATES APPEARED

For the claimant	: - Sri S. Mishra, Advocate.
For the O.P. No.1& 2	:-Ex-parte.
For the O.P. NO.3	:-Sri A. Kr.Paul, Advocate.

I. Whether the accident took place on 17-09-2000 due to rash and negligent driving by the driver of the vehicle bearing no.AR-01A/2743 (Truck)?

II. Whether the claimant is entitled to any compensation and if yes, what will be the quantum of compensation and by which of the respondents this amount shall be paid?

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

Issue 1

6. On behalf of claimant Union of India Major B.K. Gaurwas examined in the case as CW-1, who deposed in his evidence that this compensation case was filed by Major Jasdev Singh, the then Commanding Officer, 521 ASC Bn. C/O 99 APO on behalf of the Union of India claiming compensation for the damage caused to the Army vehicle No. 96D/102994A in an accident which took place on 17-09-2000. Major Jasdev Singh has been transferred and he (CW-1) has been authorized to depose in this case. From the record he knew that an accident had taken place on 17-09-2000 at Salanibari on the National Highway in which the Army vehicle bearing No.96D/102994A was damaged. The other vehicle involved in the accident was registered as AR-01A/2743 (truck) claiming compensation for the damage caused to the Army vehicle. Due to the alleged accident the Army vehicle got badly damaged. The damage of the Army vehicle was assessed by Army Surveyor Sri R.A. Verma who has been retired. After the accident the accidental vehicle cannot be put on road even after repairing, so the said vehicle was directly converted from class III to class-VI. Class III vehicles are those vehicles, which needs some repairing and can be put on road after getting them repaired. But class VI vehicles are those vehicles which cannot be put on road and they are taken away completely from the road.

7. CW-1 has exhibited the following documents.

Ext 1 claim petition.

Ext 2 is the Technical Inspection report (vehicles)

Ext 3 assessment cost of damage of the Army vehicle.

Ext. 4 Death certificate of vehicle driver Lalji Prasad.

Ext. 5 sketch Map.

8. In his cross-examination CW-1 has replied that at the time of occurrence he was serving in Army at Meerat. He was not aware whether any step has been taken by their Unit in summoning Major Jasdev Singh to appear in this case who had filed this case on behalf of Union of India. He is not technically qualified. As such he had deposed about the damage caused to the vehicle by going through the record. He has not brought any documents to substantiate his statement that the original price of the concerned Army vehicle was Rs. 6,81,290/-. As he was not an eye witness to the accident, he could not say as to for whose fault the accident had taken place.

9. CW-2 is HavilderJasminder Singh who claimed to be the eye-witness to the accident. He deposed in his evidence that on 17-09-2000 he was working as a Nayak in Army and he was attached at Signal company of the Army. On the date of accident he was travelling in Army truck No. 96D/102994A from Thakurbari to Solmara. At about 5-45 A.M. when they were travelling in a truck, another truck bearing No. AR-01A/2743 coming from opposite direction dashed on the driver side of their vehicle. As a result of which their vehicle got damaged and the driver died on the spot. He immediately came down and saw that the driver of their vehicle was dead and the vehicle was badly damaged. The dead body of the driver was taken to the Army Hospital. He (CW-2) also got injuries due to the alleged accident and treated at the Army Base Hospital. The Army vehicle was moving at a speed of 30 K.M. per hour at the relevant time of accident. The accident took place due to fault of the driver of the truck bearing No.AR-01A/2743.

10. In his cross-examination CW-2 has replied that the record of their movement from their unit is maintained properly. He had not produced any document to substantiate his statement that he was officially on move on that day and was travelling in the said vehicle from Thakurbari to Solmara. He was sitting in the rear body of the truck. As he was sitting on the rear portion of the vehicle, he could not see the truck from the opposite direction and hit their vehicle.

11. From the evidence of CW-1 it reveals that he was not present when the accident took place and he was not even posted at Salanibari 521 ASC Battalion. The

person who filed the claim case was not examined as he was transferred from the 521 ASC Battalion when the case was fixed for evidence. CW-1 had knowledge about the case from the record maintained in the Army Base Office of 521 ASC Battalion. Though CW-2 stated that he was travelling in the army vehicle at the relevant time of accident but he had admitted that as he was sitting on the rear portion of the Army vehicle, he could not see the offending truck coming from opposite direction and hit the Army vehicle. But from the record, it reveals that one case was registered in connection with the alleged accident vide Tezpur P.S. case No. 524/2000.

12. The record of Tezpur P.S. case No. 524/2000 corresponding to G.R. case No. 1061/2000 is called for from the Court of Learned Magistrate from which it reveals that the Ejahar was lodged by captain 521 ASC Battalion Siji Pillai stating that the vehicle bearing No. 96D102994A Lory Shaktiman driven by NK/MT Lalji Prasad of 521 ASC Battalion was coming from Thakurbari to Misa Cantt on bonafide Military duty on 17-09-2000 at about 5-45 hrs. At about 06-15 hrs. approximate 800mtrs. from the Salanibari Out Post, one civil vehicle bearing No. AR-01A/2743 collided with the Army vehicle bearing No. 96D102994A due to rash and negligent driving by the civil vehicle driver. The driver of the Army vehicle Lalji Prasad died on the spot and the Army vehicle was badly damaged. On the basis of the ejahar one case was registered vide Tezpur P.S. case No. 524/2000 u/s- 279/337/338/304(A)/427 IPC. After completion of investigation charge sheet was submitted against the driver of the offending vehicle bearing No. AR-01A/2743 (truck) Bholayadav u/s 279/337/338/304(A)/427 IPC. Death Certificate (deceased driver) of Army vehicle Lalji Prasad and injury report of CW-2 Jasminder Singh and MVI reports of both the vehicles and seizure list are also available in the record. Injury report shows that CW-2 sustained injury causing deformity of Nasal bone.

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 RanuBala Paul &Ors. v. BaniChakraborty&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. Therefore, in view of the documents relating to criminal case as well as aforesaid Legal proposition, it can be said that the alleged accident took place due to rash and negligent driving by the driver of the offending vehicle bearing No.AR-01A/2743(truck) causing damage to the vehicle bearing No.96D-102994A. 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. AR-01A/2743(truck) was insured Oriental Insurance Co. Ltd. vide policy No. 2407/2000 valid upto 12-12-2001. The accident occurred on 17-09-2000. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e. Oriental Insurance Co. Ltd. is liable to pay compensation to the claimant.

18. Regarding damage of the vehicle, the claimant side has exhibited one document vide Ext. 3 assessment cost of damage in respect of the vehicle bearing No. 96D-102994A which reveals that the vehicle was inspected and cost of damage was assessed by Army Surveyor R. A. Verma but he was not examined in this case to prove the fact in question. According to Ext. 3 the Army vehicle was classified on basis of AO 5/95, AO 199/57 and taking into account the depreciated value of the vehicle is as follows-

(A) Full PV rate of class I(one) vehicle in 1996 when the vehicle was issued to Army was Rs. 6,81,290/-.

(B) Before accident vehicle was downgraded to class III(three) on 29-09-2000. Therefore, cost of vehicle before accident i.e. 50% of full vocabulary rate was Rs.3,40,645/-.

(C) After accident vehicle was downgraded to Class VI (six). Therefore cost of Class VI vehicle i.e. 20% of full vocabulary rate was Rs. 1,36,258/-.

(D) Actual cost of damage =Rs. 3,40,645.00 - Rs.1,36,258.00= Rs.2,04,387.00.

19. From Ext. 3, it reveals that after the accident the cost of damage of the vehicle was assessed as Rs. 2,04,387/- but it is not clear from Ext. 3 on what basis the vehicle was downgraded from class I to class III and class III to class VI. As the surveyor R.A. Verma was not examined in this case, the Insurance company did not get the opportunity to cross-examine the witness and we are not able to get any clarification from the person who assessed the vehicle after damage and how he came to the conclusion that after the accident the cost of damage of the vehicle was Rs. 2,04,387/-. Apart from that the claimant side has not produced any document regarding repairing cost of the damaged vehicle.

20. Under such circumstances, it can be said that the claimant has failed to prove Ext. 3 in proper perspective on account of cost of the damage of the vehicle amounting to Rs. 2,04,387/-. So, Ext. 3 is not considered in this case. However, from the MVI report it reveals that following damages were caused to the Army vehicle due to the alleged accident-

Front wind shield glass, driver's cabin, steering system, chassis found bent(both side), front show, RHS head light assembly, front bumper, fuel tank and battery.

The Motor Vehicle Inspector also reported that the vehicle could not be road tested due to aforesaid damages. So, from the MVI report it reveals that the Army vehicle was damaged due to the alleged accident. As there is no conclusive report available in the record regarding repairing cost of the damaged Army vehicle, lump sum amount be awarded on the basis of the report of Motor Vehicle Inspector and the amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) be assessed as the cost of the damage of the Army vehicle.

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

ORDER

In the result, the claim petition is allowed, awarding Rs.1,50,000/- (Rupees one lakh fifty thousand) only with interest thereon @ 6% per annum from the date of judgment i.e. on 23-11-2020 till full and final realization. The O.P.No.3 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 by way of account payee cheque in the name of claimant through this Tribunal. The amount if paid earlier be adjusted during final payment of compensation.

Given under my hand and seal on this 23rd day of November, 2020.

Dictated and corrected by me.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

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

ANNEXURE

1. Witness of the Claimant:

- (i) Major B.K. Gaur
- (ii) HavilderJasminder Singh

2. Witness of the Defence:

Nil

3. Claimant's Exhibits:

Ext 1 claim petition.

Ext 2 is the Technical Inspection report (vehicles)

Ext 3 assessment cost of damage of the Army vehicle.

Ext. 4 Death certificate of vehicle driver Lalji Prasad.

Ext. 5 sketch map.

4. Exhibits of the defence.

Nil.

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