

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. 04 of 2017(D)

1. Sri Moniram Koch,
Son of Late Bilash Koch
R/O Vill. Naharbari Kochgaon,
P.S. Dhekiajuli,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Dip Nath,
Son of Late Mohan Ch. Nath,
R/O Vill & P.O. Jahamari,
P.S. Thelamara,
Dist. Sonitpur, Assam.
(Owner of the vehicle No.AS-12P/9046)
2. Sri Ajit Kr. Nath,
Son of S. Ch. Nath,
Vill. Katanigaon,
P.S. Thelamara,
Dist. Sonitpur, Assam,
(Driver of the vehicle No.AS-12P/9046)
3. National Insurance Co. Ltd.
Tezpur Branch,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.
(Insurer of the vehicle No.AS-12P/9046)Opposite party..

ADVOCATES APPEARED

For the claimant :- Sri P. Hazarika, Advocate.
For the O.P. No.1 &2 :- Ex-parte.
For the O.P. No. 3. :- Sri P. Kakoty, Advocate.

Date of Argument :-**27-05-2019.**
Date of Judgment :-**28 -05-2019.**

J U D G M E N T

This is an application u/s 166 of MV Act, 1988 filed by the claimant Sri Moniram Koch praying for grant of compensation on account of death of his wife Pushpeswari Koch , in a motor vehicle accident.

1. The brief fact of the case is that on 02-10-2016 at about 12-30 P.M. while the claimant's wife was proceeding Narayanpur Centre towards Dhekiajuli on foot keeping the left side of the road, suddenly one vehicle bearing No.AS-12P/9046 (M/cycle) which was proceeding from same direction in a rash and negligent manner knocked down the claimant's wife from behind. As a result the claimant's wife sustained grievous injuries on her head. She was immediately removed to Tezpur Medical College Hospital and thereafter she was shifted to GNRC Hospital, Guwahati for better treatment and ultimately she succumbed to her injuries on 14-10-2016 at GNRC Hospital, Guwahati. The claimant has spent more than 4,00,000/- (Rupees four lakhs) for the treatment of his wife.
2. After the accident, one case was registered vide Dhekiajuli P.S. case No. 869/16. At the relevant time of accident, the alleged offending vehicle was duly insured with National Insurance Co. Ltd.
3. Against the claim petition O.P. No. 3 National Insurance Co. Ltd. i.e. insurer of the vehicle bearing No. AS-12P/9046 (M/cycle) has submitted written statement wherein it is stated that the rider of the motor cycle did not possess a valid and subsisting Driving License at the relevant time of accident. The claimant has falsely narrated that the alleged accident took place due to rash and negligent driving by the driver of the offending vehicle bearing No.AS-12P/9046 (m/cycle). As a matter of fact the deceased was walking from Narayanpur Centre to Dhekiajuli and she suddenly came into the middle point of the road and therefore offending vehicle knocked down the deceased woman. The deceased herself was responsible for the accident and her personal liability to some extent rests on her and prayed to dismiss the claim petition.
4. Though notices were duly served to O.P. No. 1 and 2 but they did not turn up during trial. Hence, the case was proceeded ex-parte against them.
5. On the pleadings aforesaid, the following issues were framed –

I. Whether the accident took place on 02-10-2016 due to rash and negligent driving by the driver of the vehicle bearing No. AS-12P/9046 (Motor cycle) and whether the victim Pushpeswari Koch died due to the alleged accident?

II. Whether the claimant is/are 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 he has filed this claim case claiming compensation amounting to Rs. 12,00,000/- for the death of his wife Pushpeswari Koch arising out of a road traffic accident which occurred on 02-10-2016 caused by rash and negligent driving by the driver of the offending vehicle bearing No.AS-12P/9046 (motor cycle).

8. CW-1 has exhibited the following documents-

Ext. 1 accident information report (Form 54)

Ext. 2 to 7 are documents relating to criminal case.

Ext. 8 to 91 are medical documents/voucher/cash memos etc.

9. In his cross-examination CW-1 has replied that the deceased victim was his wife. He has not submitted any proof of age of the victim. No post mortem was conducted. He is alone at his family after death of his wife. He was also present at the accident site. Deceased was hit from the back side by a bike.

10. CW-2 is Gajen Koch, who deposed in his evidence that on the date of accident at about 1-00 P.M. while he was standing by the side of the road near Narayanpur Centre, he had seen one vehicle bearing No.AS-12P/9046 (motor cycle) coming in a rash and negligent manner knocked down one lady from behind. Having seen the accident, he rushed to the place of occurrence and found that the injured lady was sustained grievous injuries lying over the road with severe bleeding and after observation he found that the injured lady was known to him and she was Pushpeswari Koch. She was immediately taken to

Tezpur Medical College Hospital and later on he came to know that she died on 14-10-2016 at GNRC Hospital, Guwahati.

11. In his cross-examination CW-2 has replied that the claimant Moniram Koch and he belongs to the same village as such he knew him. The accident took place on 02-10-2016. The registration number of the offending vehicle was AS-12P/9046. The vehicle was halted on the spot and he noticed the registration number of the offending vehicle.

12. Ext. 1 is the accident information report from which it reveals that an accident occurred on 02-10-2016 at about 12-30 P.M. near Narayanpur Centre over NH-15 and Pushpeswari Koch died due to the alleged accident. The vehicle bearing No. AS-12P/9046(m/cycle) was shown to be the offending vehicle. Ext.2 is the FIR lodged by the claimant Maniram Koch stating that on 02-10-2016 at about 2-30 P.M. he and his wife Pushpeswari Koch while going towards Dhekiajuli from Narayanpur Centre on foot keeping the left side of the road, at that time one vehicle bearing No. AS-12H/8069(m/cycle) coming in a rash and negligent manner knocked down his wife causing severe injuries on her person. She was immediately taken to Dhekiajuli 30 bedded hospital and thereafter she was shifted to Tezpur Medical College Hospital and on the same day she was referred to GMCH, Guwahati but his wife was treated at GNRC Hospital, Guwahati from 02-10-2016 to 14-10-2016 and died during treatment. On the basis of the ejahar, one case was registered vide Dhekiajuli P.S. case No. 869/16 u/s- 279/304(A) IPC. Ext. 4 is the charge sheet submitted against the driver of the vehicle bearing No.AS-12P/9046(m/cycle) Ajit Kr. Nath u/s- 279/304(A) IPC. Ext. 5 is the seizure list of seizing the vehicle bearing No.AS-12P/9046 and its documents. Ext. 6 is the MVI report of the vehicle bearing No. AS-12P/9046 showing the following damages- front head light assembly.

13. Learned Counsel for the Insurance Company has argued before me that in FIR the number of offending vehicle was mentioned as AS-12H/8069 but later on another vehicle bearing No.AS-12P/9046 was implanted in collision with police and vehicle owner. The FIR was filed after 51 days of the accident and accordingly the vehicle was seized and inspected by MVI after 2 and half months of the accident which creates genuine apprehension about the implantation of a bike to receive undue advantage of a beneficial legislation. No post mortem was

conducted on the dead body of the deceased which is compulsory as per law and prayed to dismiss the claim case.

14. In support of his submission learned counsel has placed reliance on a case law-

Anil & Ors. Vs. New India Assurance Co. Ltd. reported in Civil Appeal No. 3291-3292 of 2011 decided on 19-01-2018.

In the said case, Hon'ble the Supreme Court of India held that not conducting post mortem and delay in filing FIR is a serious lapse.

15. On the other hand, Learned Counsel for the claimant did not specifically give plausible explanation why the post mortem examination on the dead body of Pushpeswari Koch was not conducted . However, the claimant side has called the Extract copy of Dhekiajuli P.S. GDE Nos. 36/16, 37/16 and 38/16 dtd. 02-10-2016. From Extract copy of Dhekiajuli P.S. GDE No. 36/16 dtd. 02-10-2016 it reveals that at about 12-50 P.M. the O/C Dhekiajuli P.S. received a telephonic message from one unknown person that an accident occurred near Narayanpur Centre involving a motor cycle.

16. It is not disputed proposition of law that delay in lodging FIR in MACT cases is usually not vital, but an extra ordinary delay in lodging FIR must be explained to rule out any possibility of false implication or manipulation of a vehicle allegedly involved during accident. The law to this effect has been laid down by the Hon'ble Supreme Court in case titled [Ravi vsBadrinarayan&Ors CIVIL APPEAL NO. 1926 of 2011 dated 18 February, 2011](#). The observation of the Court is as under:

“The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of

the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons”.

17. In view of the above said case, it is necessary that there must be some cogent reason or explanation to explain delay in lodging FIR which stopped the family members of the deceased to lodge FIR in time. However, without any such explanation, the delay assumed significant to determine compensation.

18. In the present case, on receipt of the information regarding accident, I/C traffic S.I. B. Sarkar has been deputed to enquire the matter. As per extract copy of Dhekiajuli P.S. GDE No. 37/16 dtd. 02-10-2016 at about 12-55 P.M. I/C traffic S.I. B. Sarkar along with staff of the P.S. went out for the place of accident. In Extract copy of Dhekiajuli P.S.GDE No. 38/16 dtd. 02-10-2016 recorded at about 1-35 P.M. after arrival of I/C traffic B. Sarkar and staff of the P.S. from the place of accident, it is reported that at Narayanpur Centre after getting down from a vehicle Maniram Koch and his wife Pushpeswari Koch while going on foot, one motor cycle bearing No. AS-12P/9046 coming in a rash and negligent manner knocked down Pushpeswari on her back causing grievous injuries on her person. Immediately she was taken to Dhekiajuli CHC. As her condition was critical she was shifted to Tezpur Medical College Hospital.

19. It reveals from the extract copy of Dhekiajuli P.S. GDE No. 38/16 dtd. 02-10-2016, that though the police visited the place of accident immediately after the accident and found the offending motor cycle (AS-12P/9046) in the place of accident but it is not clear why the I/O did not seize the vehicle on the date of accident. The offending vehicle was identified on the date of accident but in the ejarah number of the offending vehicle was shown as AS-12H/8069.

20. From Ext. 3 it cannot be ascertained who had written the FIR. If the offending vehicle has been identified on the date of accident as AS-12P/9046, why another number of the vehicle has been shown in the FIR. There is no explanation from the side of the claimant why he has put another number of the vehicle to be the involved in the accident. It is seen that the accident occurred on

02-10-2016. The ejahar was lodged on 22-11-2016 i.e. after 51 days of the accident. The claimant has stated in the ejahar that as he was busy in the treatment of his deceased wife and after her death due to performing religious rituals i.e. sardha etc. there was delay in lodging FIR.

21. While deposing before the Court the claimant did not utter a single word regarding delay of lodging FIR. The I.O. also did not give any explanation though the ejahar was lodged involving the vehicle bearing No.AS-12H/8069 but subsequently another vehicle was seized i.e. AS-12P/9046 and charge sheet was also submitted against the driver of the said vehicle. Though the ejahar was lodged on 22-11-2016 but from Ext. 5 seizure list it reveals that the alleged offending vehicle was seized on 16-12-2016 i.e. after around 2 ½ months of the accident and the MVI inspected of the vehicle bearing No. AS-12P/9046 on 19-12-2016. It transpires that the alleged offending vehicle bearing No. AS-12P/9046 was available on the spot on the very day of accident as per Dhekiajuli P.S. GDE No. 38/16 dtd. 02-10-2016 but the vehicle was not seized immediately after the accident. The Dhekiajuli P.S. GDE No. 38/16 is also silent whether the vehicle No. AS-12P/9046 had any damage due to the alleged accident.

22. It is seen that the deceased died on 14-10-2016 but the claimant nowhere stated that when last rites of his wife was performed. Usually last rites of the deceased used to have performed within fortnight from the date of death. Deceased died on 14-10-2016 and it can be presumed that last rites of the deceased be performed on or before 31-10-2016, but ejahar was lodged on 22-11-2016 i.e. after 22 days of alleged religious rituals. In fact, there are lots of unexplained facts which indicate that delay in lodging FIR was deliberate and even involvement of the offending vehicle is also doubtful.

23. Apart from that it reveals that the deceased was admitted to GNRC Hospital, Guwahati on 02-10-2016 and during treatment she died in the hospital on 14-10-2016. But the claimant nowhere stated that the post mortem examination of his deceased wife has not been done. There is no explanation from the side of the claimant why post mortem examination on the dead body of his wife has not been conducted. Ext. 13 is the Medical Certification of death issued by GNRC Hospital, Guwahati which reveals that the deceased died due to severe head injury with sepsis with acute renal failure. But without post mortem examination we cannot come to the conclusion that whether deceased died of

natural death or her death was caused relating to the alleged accident as because the deceased died after 12 days of accident. From Ext. 10 it reveals that the deceased Pushpeswari Koch was admitted to GNRC Hospital, Guwahati on 02-10-2016 and discharged on 5-10-2016. As per Ext. 12 operation of the deceased was done on 06-10-2016 at GNRC, Dispur. From the Ext. 13 it reveals that the patient was admitted to GNRC North Guwahati on 13-10-2016 and she died on 14-10-2016. It cannot be ascertained from Ext. 10, 12 or 13 whether the deceased was continuing her treatment as an indoor patient after her operation on 06-10-2016.

24. In view of the above, I am of the opinion that the claimant has not come with clean hands as such the claimant is not entitled to get any compensation as prayed for.

25. 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 28th day of May, 2019.

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) Sri Moniram Koch.
- (ii) Sri Gajen Koch.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 accident information report (Form 54)

Ext. 2 to 7 are documents relating to criminal case.

Ext. 8 to 91 are medical documents/voucher/cash memos etc.

4. Exhibits of the defence

NIL.

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