

**IN THE COURT OF  
MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL  
SONITPUR AT TEZPUR**

**PRESENT :** **SRI S. DAS**  
Member, Motor Accident Claims Tribunal,  
Additional District Judge,  
Sonitpur at Tezpur

**M.A.C. CASE NO. 208 OF 2011**

**Sri Sanjeeb Mech**  
S/o Late Prafulla Mech  
Resident of village – Kacharigaon,  
P.O. & P.S. – Tezpur  
District – Sonitpur, Assam

**-VERSUS-**

- 1. Sri Nayan Jyoti Saikia**  
S/o Sri Bipin Saikia  
Resident of village – Bamparbatia, Barhoi Chuburi,  
P.O. & P.S. – Tezpur  
District – Sonitpur, Assam
- 2. National Insurance Co. Ltd.**  
Tezpur Branch  
District – Sonitpur, Assam

**APPEARANCE**

For the Claimant	:	Sri N. M. Goswami, Advocate
For the Opp. Party No. 1	:	None appeared
For the Opp. Party No. 1	:	None appeared
Date of Argument	:	06-02-2015 & 04-03-2015
Date of Judgement	:	02-05-2015

## JUDGEMENT

This claim case has been filed by the claimant, Sri Sanjeeb Mech, u/s 166 and 140 of M.V. Act., 1988, claiming compensation of an amount of Rs. 45 lakhs for the injuries sustained by him on a motor vehicle accident on 12-02-2008 at about 9.45 P.M..

The facts of the case as under :-

On 12-12-2008 at about 9.45 P.M. the claimant along with his friend Sri Chinmoy Bora were proceeding from Triveni Hall, Tezpur towards Kanaklata Civil Hospital side on foot keeping to the extreme left side of the road. But when they reached near Kanyapur Hotel, Tezpur, suddenly a motor cycle (Pulsar) bearing registration No. AS-12D-4786 driven by its driver in a rash and negligent manner and in very high speed knocked down the claimant and his friend from behind. As a result of this accident, the claimant sustained multiple grievous injuries on his person, face, teeth, fingers of left hand and particularly received multiple fracture on his left leg. He was immediately admitted in Civil Hospital, Tezpur, but after considering the seriousness of the injuries he was referred to GMCH, Guwahati and he was admitted in GMCH. As the condition of the claimant did not improve, he was shifted to Patna for better orthopedic care treatment. The doctors of the Popular Nursing Home at Patna had amputated the left leg of the claimant above the knee level due to severe infection. Hence, the claimant becomes permanently disabled for whole life.

The claimant has also stated in his claim petition that a case vide Tezpur P.S. case no. 401 / 2008 u/s 279 / 338 IPC has been registered in connection with the accident.

The motor cycle (Pulsar) bearing registration No. AS-12D-4786 belonged to O.P. No. 1 and driven by himself on the date of occurrence, and which was insured with O.P. No. 2.

Notices upon the Opp. Parties were duly served. The O.P. No. 2 being the insurer of the offending vehicle bearing registration No. AS-12D-4786 appeared after receipt of notice, but did not file WS and the case proceeded ex-parte against Opp. Party No. 2, the National Insurance Co. Ltd., vide order dated 26-04-2012. OP. No. 1 filed his WS on 01-07-2012.

The OP No. 1 Sri Nayan Jyoti Saikia, being the owner and driver of the vehicle bearing Regd. No. AS-12D-4786 has filed written statement on 01-07-2012. In his written statement Opp. No. 1 stated that the present claim petition of the claimant is not maintainable and tenable against the answering opposite party and liable to be dismissed forthwith. The cause of accident and nature of injuries of the injured are denied by this answering opposite party. It is contended that the amount of compensation claimed by the claimant is too excessive, unreasonable and categorically mentioned and as such the claimant is not entitled to receive the same. However, it is added that if the claimant be entitled to any compensation such compensation should be paid by the insurer, i.e. National Insurance Co. Ltd. Tezpur Branch, as the vehicle bearing registration No. AS-12D-4786 (Motor Cycle) was duly insured with the opposite party no. 2 vide policy no. 200201/31/07/6200003267 valid up to 12-12-2008 at the relevant time of the alleged accident and the vehicle was being plied by complying with all the terms and conditions as stated in the policy including the drivers clause. The said vehicle was also having all other valid documents like D/L, R/C Book, Insurance Policy etc. at the relevant time of the accident.

The claimant has examined himself alongwith another person namely Sri Chinmoy Bora as witnesses in support of his case and also produced certain documents in support of his claim petition. The Opp. parties have neither adduced any evidence nor produced any documents in support of his pleadings.

I have carefully gone through the evidence on record and also heard the submissions of the learned counsel appearing for the parties.

My findings on the issues are given below :

### ISSUES

1. Whether the accident took place due to rash and negligent driving by the driver of the offending vehicle ?
2. Whether the claimant is entitled to any compensation as prayed for ?
3. To what relief the parties are entitled ?

### DECISION AND REASONS THEREOF

#### ISSUE NO 1 :

CW-1 Sri Sanjib Mech, being the claimant, has stated that on 12-02-2008 at about 9.45 P.M. the claimant along with his friend Sri Chinmoy Bora were proceeding from Triveni Hall, Tezpur towards Kanaklata Civil Hospital side on foot keeping to the extreme left side of the road. But when they reached near Kanyapur Hotel, Tezpur, suddenly a motor cycle (Pulsar) bearing registration No. AS-12D-4786 driven by its driver in a rash and negligent manner and in very high speed knocked down the claimant and his friend from behind. As a result of this accident, the claimant sustained multiple grievous injuries on his person, face, teeth, fingers of left hand and particularly received multiple fracture on his left leg. He was immediately admitted in Civil Hospital, Tezpur, but after considering the seriousness of the injuries he was referred to GMCH, Guwahati and he was admitted in GMCH. As the condition of the claimant did not improve, he was shifted to Patna for better orthopedic care treatment. Accordingly, he was admitted and treated at Popular Nursing Home at Patna as an indoor patient from 16-02-2008 to 22-01-2009. In the said hospital there were many ortho-surgery was done on the left leg and on the fingers of the left hand of the claimant. But the said injuries sustained on the left leg of the claimant was gradually getting infected and the doctors of the Popular Nursing Home at Patna decided to amputate the left leg of the claimant just above the knee level to save

the life of the claimant. Finally the doctors had amputated the left leg of the claimant above the knee level. Hence, the claimant becomes permanently disabled for whole life. He had spent more than Rs. 15,00,000/- (fifteen lakhs) in his medical treatment, conveyance, attendance, high calorie diet, care, fitting of artificial leg etc. and it may go further up as his treatment is still going on as an outdoor patient of different hospital and doctors as he has not fully recovered from his accidental injuries. It is further stated and submitted that the claimant / injured is given hydraulically articulated artificial leg which needs servicing at Delhi after every one year and needs to be replaced after every five years for which the injured / claimant would have to incur an amount of Rs. about 25,000/- per year for servicing of the leg and another amount of Rs. 1,50,000/- (approx) every after 5 years for replacement of the said leg.

Further in his evidence, he has stated that at the time of the accident the claimant was a healthy boy of about 20 years and being a software expert, he was earning approximately Rs. 10,000/- per month by providing computer software services as a home service provider. Also in his evidence he stated that he had to travel a lot for his profession but due to the said accident his earning capacity has drastically reduced to almost nil.

In support of his evidence, the claimant has exhibited some documents. They are stated as below :

- Ext No. 1 : is the Accident Information Report issued by Tezpur Police station.
- Ext. No. 2 : is the Permanent disable certificate issued by Govt. of Assam (Proved in Original).
- Ext No. 3 to Ext. No. 376 : are medical documents, bills and vouchers incurred during his treatment.

CW-2 Sri Chinmoy Bora, in his evidence also has stated the same as narrated by the CW-1 in his deposition. This CW has also claimed that the accident occurred due to rash and negligent driving of the driver of the offending

Page 5 of 9

vehicle bearing Regd. No. AS-12D-4786 (Motor Cycle). Further in his evidence, regarding income of the claimant, this witness has also stated that the claimant was earning Rs. 10,000/- (approx) per month being a software expert by providing software service as a home service provider. In his evidence, he stated that being a friend of claimant has the knowledge that the treatment of the claimant is still going on as outdoor patient of different hospital and the claimant is not fully recovered from his injuries.

However, the CWs were not cross examined by Opp. No. 1. From the evidence of both the CWs, it transpires that Sri Sanjib Mech met with an accident on the date of alleged accident. Also, it reveals from the evidence of the CWs and perusal of documents that the injured claimant Sanjib Mech was admitted at Kanaklata Civil Hospital, Tezpur for treatment as indoor patient from and thereafter he was admitted to the Popular Nursing Home, Patna for better treatment. The CW-1 has produced a certified copy of Accident Information Report as Ext. 1. The Ext. 1 issued by Tezpur Police Station goes to show that the claimant Sanjib mech sustained injuries in a motor vehicle accident on 12-02-2008 at about 9:45 A.M. Near Kainyapur Hotel, Tezpur under Tezpur P/S, involving vehicle No. AS-12D-4786 (Motor Cycle) and also the vehicle was duly insured with the OP No. 2 i.e. National Insurance Co. Ltd.. Further, in the absence of evidence to the contrary, I also find that the vehicle was driven in a rash and negligent manner. Therefore, Issue No. 1 is decided holding that the accident took place as a result of rash and negligent driving by the driver of the offending vehicle bearing registration No. AS-12D-4786 (Motor Cycle).

Accordingly, the Issue No. 1 is answered in affirmative.

**ISSUE NO 2 & 3 :**

As the accident took place due to rash and negligent driving of the vehicle bearing registration No. AS-12D-4786 (Motor Cycle), the claimant is entitled to compensation.

21/5/15

Now, it is to be decided what will be the just and reasonable compensation and who is to pay this compensation. The claimant has claimed Rs. 45 Lacs as compensation on the grounds that he has suffered from permanent disability / amputation of left leg. The claimant produced disability certificate, vide Ext. No. 2, showing 50% disability (amputation of left thigh). From the medical document, marked as Ext. No. 345, it is also seen that an amount of Rs. 1,30,000/- was spent by the claimant towards fitment of TF prosthesis with 3R106 Pneumatic Knee joint with suction valve. Apart from that, he has also produced medical bills and vouchers from Ext No. 3 to Ext. No. 376 (including expenditure vide Ext. No. 345), which have been scrutinized and it is found that the claimant spent about Rs. 6,70,000/- (approx.) including conveyance. In the claim petition as well as in the evidence, the claimant has asserted his income is Rs. 10,000/- per month. According to claimant, he earns the said amount by rendering his service as software expert. However, the claimant has not produced any documents to show his earning. It may be noted that the OP No. 1 in his WS has not disputed the income of claimant. The claimant is aged 22 years at time of accident. He is young and has the capacity to earn Rs. 10,000/- as software expert. But, there is nothing on record that he has obtained any degree or diploma from any recognized institution.

Be that as it may, in the absence of any evidence to the contrary, I am inclined to hold that the claimant engaged himself as skilled worker. As per decision in **Sarla Verma** case, the notional wage or income of skilled worker may be taken at Rs. 5,000/- per month. The claimant has produced permanent disability certificate (Ext. No. 2) from concerned authorities, which would show that the percentage of permanent disability is 50%. At this stage, before coming to determine the compensation amount under different heads let me see what would be the multiplier for the person aged about 22 years. It is well settled that the claimant being permanently disable, the structured formula under 2<sup>nd</sup> schedule will apply.

Now, again applying the principle laid down in **Sarla Verma** case as regards use of multiplier, we find that upto the age of 25 years, the multiplier

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will be 18. However, the claimant suffering 50 % disability, he will get 50% of the total amount in regard to the said calculation.

In view of the discussion and reasons above, I am inclined to compute the quantum of compensation as follows :-

1. Towards 50% permanent disability : Rs. 50,000/-
2. Towards loss of earning / earning Capacity by applying the multiplier 18 : Rs. 5,000/- x 12 x 18 x 1/2 = Rs. 5,40,000/-
3. Medical expenses : Rs. 6,70,000/-
4. Pain and suffering : Rs. 30,000/-
5. Towards future treatment : Rs. 70,000/-

**IN TOTAL : Rs. 13,70,000/-**  
**( Rupees thirteen lacs and seventy thousand )**

Now, it is to be seen who is to pay the compensation. The offending vehicle stood insured with the National Insurance Co. Ltd. at the time of accident. The Ext. No. 1 would show that the vehicle was insured with the National Insurance Co. Ltd., Tezpur Branch at the time of alleged accident and the Policy No. 200201 / 31 / 07 / 6200003267 was valid up to 12-12-2008. The claimant also submitted photocopy of the said insurance policy as Annexure – 1, which tallies with the information in Ext. No. 1 in this regard. None of the terms and condition of the insurance policy has been proved to be violated by the owner of offending vehicle bearing registration No. AS-12D-4786. Therefore, I hold that OP No. 2 National Insurance Co. Ltd. is liable to pay the compensation to the Claimant.



In view of my discussion and finding above, a sum of total Rs. 13,70,000/- (Rupees thirteen lacs & seventy thousand) only is awarded as compensation to the claimant.

This issue is decided accordingly.

**ORDER**

In the result, the claim petition is partly allowed. The total amount of compensation as computed on different heads to the tune of Rs. 13,70,000/- (Rupees thirteen lacs & seventy thousand) only is awarded to the claimant. The O.P. No. 2 National Insurance Co. Ltd., Tezpur Branch shall pay the total compensation together with simple interest @ of Rs. 6% P.A. from the date of presentation of claim petition within 60 (sixty) days from the date of this order. Failure to make payment of compensation, within the stipulated period of 60 (sixty) days, an interest @ Rs. 8% P.A. shall be calculated on the amount of compensation until payment.

Given under my hand and seal of this court on this 2nd day of May, 2015.

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**( S. DAS )**

Member,  
Motor Accident Claims Tribunal,  
Additional District Judge,  
Sonitpur at Tezpur