

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

PRESENT : SRI S. DAS
Member, Motor Accident Claims Tribunal,
Additional District Judge, No. 1,
Sonitpur at Tezpur

M.A.C. CASE NO. 282 OF 2009

Md. Abdul Rahim @ Abdul Rahman
S/O- Late Subed Ali
Rt. Vill - Ghoramari
P.O. – Basbera
P.S- Missamari
Mouza - Missamari
Dist- Sonitpur, Assam. Claimant

-VERSUS-

1. Dr. Dhyan Jyoti Saikia.
Vill : Ward No. 9 , M.L.D
Dist – Darrang, Assam.
2. Sri Raju Das.
S/O- Late P. Das.
Vill – Kalibari
P.S – MLD
Dist- Darrang.
3. United India Insurance Company Ltd.

RECEIVED
MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR AT TEZPUR
10/11/2009

Insured at MLD Branch Office (through Tezpur Branch) Opp. Parties

APPEARANCE

For the Claimant : Sri S. K. Roy , Advocate
For the Opp. Party 1 : None appeared
For the Opp. Party 2 : None appeared
For the Insurance Company : Sri Sudesh Kr. Singh, Advocate

Date of Argument : 10-04-2015

Date of Judgement : 28-05-2015

JUDGEMENT

This claim case has been filed by claimant Md. Abdul Rahim u/s 166 of M.V. Act, 1988 claiming compensation for injuries sustained in Motor accident. The claimant claims compensation from the driver and owner of the offending vehicle and also United India Ins. Co. as the insurer of the vehicle.

The facts of the case are as under :

On 22-06-2008 the claimant came to Dhekiajuli to conduct his business and when he completed his business and returned home, on the way on N.H. 52, in Dhekiajuli near basti, an accident occurred involving vehicle bearing no. AS-13/6399 Maruti Wagoner and the said vehicle knocked him down and he became senseless. Police of the Dhekiajuli Police station admitted the claimant in the Dhekiajuli PHC in serious condition. Doctor at Dhekiajuli PHC immediately referred to Tezpur Kanaklata Civil Hospital. It is further stated that the claimant sustained grievous/fracture injuries. It is further stated that the claimant spent about 1,50,000.00 in his treatment. Hence, this case for compensation.

All the Opps received notice. However, Opp No. 1 and 2 did not appear to contest the case and Opp. No. 3 United India Insurance Company filed W.S.

The Opp. United India Insurance Company Ltd. took the usual plea that the case of the claimant is not maintainable. That the liability of the company if any is subject to terms and condition of policy of Insurance. It is also stated that there may be collusion between claimant and the owner of the vehicle.

The Opp denied that the claimant earn Rs. 6,000/- p.m. The Opp. also contended the amount claimed by the claimant is excessive.

It is submitted that the claim petition is liable to be discussed.

On the pleadings above the following issues were framed :

1. Whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle No. AS-13/6399 (Maruti Wagenor) ?
2. Whether the claimant is / are 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 ?

Claimant side adduced evidence of two witnesses. Opp. adduced no evidence. Both the side submitted written argument.

Decision and Reasons thereof:

Issue No. 1:

Claimant in its claim petition as well as evidence stated that On 22-06-2008 the claimant came to Dhekiajuli to conduct his business and when he completed his business and returned home, on the way on N.H. 52, in Dhekiajuli near basti, an accident occurred involving vehicle bearing no. AS-13/6399 Maruti Wagoner and the said vehicle knocked him down and he became senseless. Police of the Dhekiajuli Police station admitted the claimant in the Dhekiajuli PHC in serious condition. Doctor at Dhekiajuli PHC immediately referred to Tezpur Kanaklata Civil Hospital. It is further stated that the claimant sustained grievous/fracture injuries. In support of its case claimant produced and exhibited accident information report, Ext – 1 which contains the information regarding date and place of accident, the names of driver and owner, the D/L No. w-7140/NT/MLD/95 and Policy No. 30103/31/07/02/0000150316 valid up to 13-08-08 and the Insurance Company with whom the vehicle was insured.

The Opp. party resisted the claim of the claimant mainly on the ground that after the accident Dhekiajuli police register a GDE No. 2009/08 and no formal case was registered against the driver of the alleged vehicle. As such it can be concluded that there was no rash and negligent driving by the driver, the Opp added.

It is also contended on behalf of the Opp that this is case u/s 166 of MV Act and court is required to see if there is any contributory negligence on the part of the claimant.

I have carefully considered the materials and evidence on record. I find that the claimant has been able to prove that the relevant date and time the offending vehicle knocked down the claimant and he was taken to hospital for treatment. There is nothing on record to show that there was negligence on the part of the claimant except suggestion put to PW 1 in cross that PW 1 was at fault. However, PW 1 denied this suggestion put to him by the Opp.

In view of what has been discussed above I find no merit in the argument put forward by the Opp. side the alleging fault on the part of the claimant.

I find that the driver of the offending vehicle drove the vehicle in rash and negligent manner as a result of which accident took place. This issue is decided as affirmative.

Issue No. 2

The claimant alleged that as a result of the accident he sustained grievous injuries on various parts of his body and he took treatment in Kanaklata Civil Hospital. He also stated that he spent about Rs. 1,50,000/- in his treatment. Ext- 3 discharge certificate which shows that the injured was admitted on 21-06-08 and discharge on hospital on 26-06-2008. The claimant also produced medical bills and vouchers, Ext – 6 (1) to Ext- 6(6) and Ext- 8 to Ext- 15.

The Opp. side in cross examination of the PW 1 has elicited from him that Ext- 8, 9, 10 and 15, vouchers are not supported by prescriptions. Further it is elicited from PW 1 in cross that Ext- 14 stands in the name of one Sahidul.

I have perused the vouchers produced by the claimant side. I find that except Ext- 14 the vouchers are found to be genuine.

On calculation of the expenditure vide medical vouchers I find that the claimant spent Rs. 22,000/- in his treatment.

It is noticed that the injured did not suffer from any grievous injury.

Now coming to the income of the claimant it reveals from record that the claimant has asserted that his monthly income is /was Rs. 6,000/- which he earns from his business. However, the claimant has not brought any evidence on record to show his source of income or the job/business he was engaged in. So, I am inclined to bring him in to the category of unskilled worker and assess his income at Rs. 4,000/- p.m.

Now I may compute the quantum of compensation as follows :

1. Medical expenses	Rs. 22,000/-
2. Loss of earning	Rs. 8,000/-
3. Pain and suffering	Rs.10,000/-
4. <u>Misc. Expenditure</u>	<u>Rs. 5,000/-</u>
Total	Rs.45,000/-

In view of the above I find and hold that United India Insurance Company Ltd. is liable to pay the compensation to the claimant.

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. 45,000/- (Rupees Forty Five Thousand) only is awarded to the claimant. The United India Insurance company Ltd., insurer of vehicle no. AS-13/6399 (Maruti Wagoner) are liable to pay the compensation to the claimant and 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 payment

29/5/18
 A. K. Jaiswal
 Senior Clerk

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 28th day of May 2015.

(S. DAS)

Additional District & Sessions Judge,
Sonitpur :: Tezpur