

**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. 341 OF 2008

1. Smti. Anjana Ghosh
W/O: Harekrishna Ghosh
Resident of : Natunpara, Tezpur
P.O. and P.S – Tezpur
Dist- Sonitpur, Assam. Claimant

-VERSUS-

1. Md. Abdul Haque
S/O- Late A. Rojij
Vill- Balipara
P.S. Rangapara
Dist- Sonitpur, Assam.

2. Md. Moqabul Hussain
S/O- Mohram Ali
R/O- Civil Road, Garuwanpatty
P.S- Tezpur
Dist- Sonitpur, Assam.

3. The New India Assurance Co. Ltd
Noonmati Branch, Guwahati, Assam. Opp. Parties

APPEARANCE

For the Claimant : Sri Anjan Rrajkhowa , Advocate

For the Opp. Party 1 : None appeared

For the Opp. Party 2 : None appeared

For the Insurance Company : Sri P. C. Shamah, Advocate

Date of Argument : 27-03-2015, 30-04-2015.

Date of Judgement : 26-05-2015.

JUDGEMENT

This claim case has been filed by claimant Smti. Anjana Ghosh 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 New India Assurance Co. Ltd. as the insurer of the vehicle.

The facts of the case are as under :

On 31-05-2008, at about 9.30 p.m. while the claimant and her husband were returning from Goriya Math Temple, near Tribeni Hall, Tezpur towards their house at Natun Para Tezpur by walking on the road the vehicle (LCV Mahindra Pick Up) bearing registration no. AS-12B/6174 driven by its driver in a rash and negligent manner from opposite direction knocked down the claimant and her husband near B.K. Memorial Hospital causing grievous injuries. They were taken to B.K. Memorial Hospital, Tezpur and admitted there in as indoor patient for two days and thereafter shifted to Popular nursing home Patna for better treatment. The claimant was admitted there on 04-06-2008 as indoor patient till 17-06-2008. The claimant stated that the treatment is still going on.

It is also stated in the petition that the injured claimant is a working women engaged in making curd, sweets etc for sale and also engaged in cutting and tailoring and earned Rs. 6,000/- P.m. After the accident the claimant faced financial problem as she was out of her job.

The Opp. No. 1 and 2 owner and driver respectively received notice in this case but did not appear and contest the case. Opp No. 3 New India Assurance Co. Ltd. made appearance and contested the case by filing W.S.

The Opp. no. 3 in its written statement raised usual plea such as, the claim case is not maintainable, that there is no cause of action for filing the case against this Opp that the claim is bad for non discloser of actual material facts. The Opp has denied the accident, the injuries due to the alleged accident and the

expenditure incurred by the claimant. According to Opp. the registered owner is liable to prove that the vehicle was plied by driver having valid licence at the relevant time. The Opp. has also denied that the vehicle involved in the alleged accident was insured with the Opp at the relevant time of the accident. It is submitted that the answering Opp is not liable to pay the compensation to the claimant and as such the claim petition is liable to be dismissed.

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-12B/6174 (LCV Mahindra Pick Up)
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?

The claimant side adduced evidence of 3 witnesses including the claimant and in support of its case. The answering Opp adduced evidence of one witness.

I have gone through the evidence on record both oral and documentary and heard arguments of both sides. The Opp party also filed written argument.

Discussion, Decision and reasons thereof :

Issue No. 1

The claimant in its claim petition as well as evidence stated that the accident took place on 31-05-2008, at about 9.30 p.m. while the claimant along with her husband was returning from Goriya Math Temple, near Tribeni Hall, Tezpur towards their house at Natun Para Tezpur on foot. It is also stated that offending vehicle bearing registration no. AS-12B/6174 driven by its driver in a rash and negligent manner from opposite direction knocked down the claimant and her husband near B.K. Memorial Hospital causing grievous injuries on different parts of their body.

In support of her case the claimant produced accident information report, Ext- 1 which contains necessary information relating to the accident; these are:

- a) Name of the Police Station – Tezpur P.S.
- b) G.R./Traffic accident report No./ PS case No./GDE No. – Tezpur P.S. 410/08 u/s 279/338/427 IPC.

- c) Date, Time and Place of accident – 31-05-08 at around 9.30 p.m. at near B.K. Memorial Hospital, Tezpur.
- d) Name of the injured – Mrs. Anjana Ghosh.
- e) Registration Number of vehicle – AS-12B/6174 (LCV Mohindra Pick Up)
- f) Driving Licence No. and date of expiry – 1590/S/NT/ valid up to 17-12-2012.
- g) Name of the Insurer Authority – New India Assurance Co. Ltd.
- h) No. of Insurance Policy and the date of expiry of the Insurance Policy – 530705/31/07/01/6000 6910, valid up to 04-01-2009.

The claimant also produced Medical certificates, bills and vouchers relating to injuries. However, in this issue we are concerned with as to whether the vehicle was involved in the accident and whether it was driven by driver of the offending vehicle in rash and negligent manner.

CW 1, the claimant, in her evidence on affidavit has also given same descriptions as regards the information contained in Ext – 1. CW 1 was cross examined by the Opp. party. In his cross also she stated that on 31-05-08 the offending vehicle coming from opposite direction knocked her down causing grievous injuries. On perusal of the evidence of CWs I find that the claimant is able to establish that on the relevant date and time the offending vehicle bearing no. AS-12B/6174 (LCV Mohindra Pick Up) being driven in rash and negligent manner knocked the claimant down. The Opp. though contended that the vehicle was driven by driver having no proper and affective driving licence, and that the accident took place involving the offending vehicle it is admitted that the vehicle was insured with the Opp. From the materials on record I find that the vehicle was being driven in a rash and negligent manner and it knocked down the claimant causing grievous injuries on her person.

This issue is accordingly decided in the affirmative.

Issue No. 2:

The opp. party, Insurance Company in its written argument contended that the driver of the offending vehicle at the relevant date and time did not possessed valid driving licence and as such the insurance *company* is not liable to pay compensation in this case. The specific case/plea of the Opp. party is that in the accident information report in column no. 9, the name of owner of the offending

vehicle is written as Abdul Haque, S/O- Late A. Raziz, Vill- Balipara, P.S- Rangapara. Whereas the name of the insured is mentioned as Aradhana Hazarika, R.G.B. Road, Guwahati, Assam. It is also contended that the driving licence No. 1590/S/NT/ shown to be in the name of the driver Moqubul Hussain is in fact issued in the name of one Umasankar Razzak. The Opp. in support of its case adduced evidence of DW 1 Bibhuti Bhusan Chanda administrative officer New India Assurance Company Ltd. According to said DW the Insurance Company/ Opp. engaged one Girindra Prasad Borah agent, unique investigation agency, Tezpur to make an enquiry regarding the authenticity of the driving licence no. 1590/S/NT. During the enquiry the said investigator contacted District Transport Officer, Tezpur via letter Ext. A and D.T.O. Tezpur furnished information in writing on the body of the said letter which is marked Ext. A(2). As per the information from D.T.O. the driving licence No. 1590/S/NT issued in the name of one Umasankar Razzak on 10-04-1992 valid up to 17-07-2013 and the original D.L. No. 20538 / S/NT .

On the other hand the Ld. Counsel for the claimant submitted that there is no dispute that the accident took place involving the vehicle bearing no. AS-12B/6174 (LCV Mohindra Pick Up). Further it is submitted that the vehicle is/was insured with Opp. No. 3 and the policy is valid up to 04-01-09. The Ld. Counsel for the claimant also submitted that the Insurance Company is liable to pay compensation in as much as the offending vehicle is insured with the company. So far as the question raised by the Opp. as regards the driver not having proper licence the Ld. counsel contended that the insurance company has failed to prove the contents of Ext- A by bringing official witnesses from D.T.O. Office. The claimant relies upon the decision/ observation in the case of ***Pepsu Road Transport Corporation Vs. National Insurance Company Ltd. (2013 ACJ 2440 SC)***.

In the said Judgement Hon'ble Supreme Court in para 8 held as follows :

8. In a claim for compensation, it is certainly open to the insurer under section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the Licensing Authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter

the insurance company requires the owner of the vehicle to have the licence duly verified from the Licensing Authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licence authority. That is what is explained in Swaran Singh's case, 2004 ACJ 1 (SC). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

In this case we find that the DW 1/ Opp. by exhibiting Ext- A has brought on record that the driving Licence No. shown in the name of the driver of the offending vehicle does not exist in his name. The Opp. relies upon the information furnished by the D.T.O., Tezpur. On examination of materials brought on record by way of defence evidence we find that though the Opp has not examined the concerned official from D.T.O Office I have no hesitation to come to a conclusion that the driver of the offending vehicle did not possess valid licence. Moreover, it may be noted that neither the driver nor the owner contested the case. The claimant has also failed to produce the driving licence.

Here in this case I have threadbare discussed the question regarding possession of licence by the driver of the offending vehicle. In view of what has been discussed above having regard to fact and law I have no doubt in my mind that this is case where the Insurance Company has been able to establish that the driver of the offending vehicle did not have valid driving licence at the relevant time.

Now coming to the next contention raised by the Opp. that the owner and the insured are two different persons I find that the Opp. has not denied that the offending vehicle was insured vide policy no. 530705/31/07/01/6000 6910, valid up to 04-01-2009. As the Insurance of the vehicle per se is not denied nor in dispute. I feel no hesitation to conclude that the vehicle was insured with the Opp. It has been amply proved that the accident took place involving the offending vehicle and the claimant sustained injuries.

In this regard I may refer to the decision/ observation in the case of **S. Iyyapan Vs. United India Insurance Co. Ltd. and another. (2013 ACJ 1944)** In the said Judgement Hon'ble Supreme Court in para 18 held as follows :

18. Reading the provisions of sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but any event the insurer has to pay

compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount under section 149 of the Motor Vehicles Act, the insurer can defend the action, inter-alia, on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Now I come to another vital question of computation of quantum of compensation. The claimant has produced medical bills, vouchers and certificates vide Ext- 4 to Ext- 84. The claimant produced and exhibited train and bus tickets. Over and above the claimant produced and exhibited disability certificate from concerned authorities which would show that the nature of disability 'post operative case of right femur fracture.'

According to the claimant an amount of Rs. 2,00,000 has been spend in medical treatment. However on calculation of the amount as reflected in the vouchers it is seen that an amount of Rs. 1,00,000 has been spend in medical treatment. It is also seen that the claimant suffered from permanent disability and the percentage is shown to be 50%.

Now I come to the income of the claimant. The claimant in her claim petition asserted that her monthly income is 6,000/-, which she earned by doing cutting and tailoring work. However, the claimant has not produced any certificate/document to show her income. This being the position I would like to assess the income of the claimant as housewife. In this regard I may refer to the discussion / observation made in the case of **Arun Kumar Agarwal & Anr vs National Insurance Co. Ltd. & Ors on 22 July 2010. (S.C)** where the Hon'ble Supreme Court referred to the decision in case of Lata Wadhwa Vs. State of Bihar in para 25 as follows:

25....." So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the

claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life.

So considering the materials on record and keeping in mind the law laid down in this regard, I am inclined to assess claimant's income at Rs. 3,000/- p.m. It appears from the record that the claimant is aged about 38 years and is still under treatment. This being the position the computation of quantum will be as per second schedule/ structured formula.

Now again coming to the legal aspect as to the liability of the Insurance Company or the owner, I have already come to the conclusion that the claimant has failed to prove that the driver of the offending vehicle possessed any valid licence at the time of accident. **I find that the vehicle was driven in violation of statutory provision regarding driving licence. So, I hold that the owner of the vehicle is liable to pay compensation to the claimant. However, having regard to the settled principles of law, I hold that the Insurance Company shall pay the compensation to the claimant and the Insurance Company is at liberty to recover the said amount from the owner of the vehicle Md. Abdul Haque.**

Now again coming to the computation of compensation, in this case we find that the claimant is suffering from 50 % permanent disability the calculation regarding loss of income will be as per the second schedule as provided under the Act even though it is a case u/s 166 of M.V. Act. The age of the claimant is 38 years and following the principles in **SARALA VERMA CASE** the multiplier will be 14.

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In view of the above the quantum of compensation is computed as follows :

1. Towards 50% permanent disability	:	Rs. 50,000/-
2. Towards loss of earning	:	Rs.2,52,000/-
3. Medical Expenses	:	Rs. 100,000/-
4. Pain and suffering	:	Rs. 30,000/-
5. <u>Towards future treatment</u>	:	<u>Rs. 20,000/-</u>
Total	:	Rs.4,52,000/-

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. 4,52,000/- (Rupees four lacs fifty two thousand) only is awarded to the claimant. New India Assurance Company Ltd., insurer of vehicle no. AS-12B/6174 (LCV Mohindra Pick Up) 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 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. Interim compensation of Rs. 25,000/- (Rupees Twenty Five Thousand) if received by the claimant be deducted from total compensation.

Given under my hand and seal of this court on this 26th day of May 2015.

(S. DAS)

26/5/15
Additional District & Sessions Judge,
Sonitpur :: Tezpur