

**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. 388 OF 2008

1. Sri Hare Krishna Ghosh
S/O: Late Jogesh 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

A P P E A R A N C E

For the Claimant : Sri Dibosh Saikia , Advocate

For the Opp. Party 1 : None appeared

For the Opp. Party 2 : None appeared

For the Insurance Company : Sri Promod Sarmah, Advocate

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

Date of Judgement : 26-05-2015

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MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR AT TEZPUR
ASSAM

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 2 witnesses including the claimant 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. I have also gone through the written argument submitted by both sides.

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 his wife 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 his wife near B.K. Memorial Hospital causing grievous injuries on different parts of their body.

In support of his 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 – Sri Hare Krishna 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 his 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 he stated that on 31-05-08 the offending vehicle coming from opposite direction knocked him 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 his 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 possess 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 Moqbul Hussain but in fact it was 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. appointed 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 latter 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- 2 to Ext- 60. The claimant produced and exhibited train and bus tickets.

From the Medical bills and vouchers it appears that the claimant got fracture in his right leg and right elbow joint. Ext- 5 would show the following medical opinion :

- Healing fracture shaft right femur. Interlocking intramedullary nail seen in situ.
- Healed fracture proximal shaft right radius. Plate and screws seen in situ.
- Right elbow joint space is normal.

So I find that though the claimant got the above fracture injury it was healed later on, however, there was no permanent disability as such.

According to the claimant an amount of Rs. 4,00,000 has been spent in medical treatment. However on calculation of the amount as reflected in the vouchers it is seen that an amount of Rs. 1,10,000 has been spent in medical treatment.

Now I come to the income of the claimant. The claimant in his claim petition asserted that his monthly income is/was Rs. 10,000/-, which he earned by selling sweets. However, the claimant has not produced any certificate/document to show his income.

So considering the materials on record and keeping in mind the principles of law as discussed in various judgements of Hon'ble High Court and Hon'ble Supreme Court, I am inclined to assess claimant's income at Rs. 5,000/- p.m. It appears from the record that the claimant is aged about 50 years and is still under treatment.

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.

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

1. Medical Expenses	:	Rs. 1,10,000/-
2. Towards loss of earning	:	Rs. 1,00,000/-
3. Pain and suffering	:	Rs. 30,000/-
4. <u>Misc. Expenses</u>		<u>Rs. 30,000/-</u>
Total	:	Rs. 2,70,000/-

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. 2,70,000/- (Rupees Two lacs seventy 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 not to be deducted from total compensation.

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

(S. DAS)

Additional District & Sessions Judge,
Sonitpur :: Tezpur