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

PRESENT: SMTI. M.R. SHARMA
Member, Motor Accident Claims Tribunal
Addl. District Judge
Sonitpur, Tezpur



JUDGMENT IN MAC CASE NO. 467 OF 2008

Sri Kushal Nath,
Son of Late Tarun Nath
Vill: Dekachuk, Mouza- Chilabandha
P.O/P.S: Jamuguri,
Dist: Sonitpur, Assam **Claimant**

Versus

1. The G.M. of APST, Govt. of A.P, Naharlagun
(Owner of the vehicle No. AR-02/0285..... APST Bus)
2. Sri Dhaniram Deka
(Driver of the vehicle No. AR-02/0285..... APST Bus)
3. The Oriental Insurance Co. Ltd.
(Insurer of the vehicle No. AR-02/0285..... APST Bus)
4. The Secretary, Medical & Health Department, Govt. of Assam
(Owner of the vehicle No. AS-01-AF/0078 ...Tata Sumo Ambulance of Assam Government)
5. Sri Lalmohan Borah
(Driver of the vehicle No. AS-01F/0078.....(Tata Sumo Ambulance of Assam Government)

ADVOCATES WHO APPEARED

For the claimant : Sri Girindra Borah, Advocate

For the O.P. No. 1 : Smti. Indrani Duroah, Advocate

For the OP No. 3 : Sri N.K. Mishra, Advocate

For the OP No 4 : Sri M.K. Das, Smti. S.Das, Advocates

Date of argument : 02.05.14,

Date of judgment : **19.05.14**

J U D G M E N T

1. This claim petition has been submitted under Section 166 of M.V. Act, 1988 by the claimant Sri Kushal Nath claiming compensation on account of injuries sustained by him in a Motor Vehicle Accident on 11.08.2008.

2. The facts of the above mentioned case, may, in brief, be stated as follows:

On 11.08.2008, at about 5.50 pm, while the claimant was going from Jamuguri to Kanak Lata Civil Hospital, Tezpur along with pregnant wife Smti. Bulu Devi and her other family members to admit in the hospital for delivery of baby of his wife by an Ambulance of Health Department, Govt. of Assam bearing Reg. No. AS-01/AF-0078. At that time, a passenger Bus of APST bearing Regd. AR-02/0285 was also coming from same direction with excessive high speed and suddenly knocked down at the back side of the Ambulance at Borjhargaon under Tezpur P.S. over N.H. was way 52.

The driver of the offending vehicle No. AR-02/0285 droved the vehicle (Bus) in a very rash and negligent manner for which he fail to control the vehicle and the accident occurred. As a result, the claimant sustained multiple grievous injuries into several parts of his body including right arms, chest, right leg with fracture, which leads to partially disabling the injured and become incapable for doing his day to day work. After the accident, the doctors of the hospital considering the gravity of the injuries patient and then after as outdoor patient for long days under supervision of Dr. Kulen Deka and other local doctors. The injuries have caused the claimant huge pain, agony, suffering, make him partially disabled, physically unfit, shortened his expectancy of life, which ought not to have

been suffered otherwise than due to the accident took place for the rash and negligent driving of the driver of the offending vehicle No. AR-02/0285(APST Bus). The claimant is still under medical treatment. Hence, under the above facts and circumstances, the claimant as claimed in the claim petition claiming an amount of Rs. 3,70,000/- as compensation from the Opposite Parties.

The O.P. No.1 and OP No 2 are the owners of the vehicle bearing Registration No. AR-02/0285 (APST Bus) and AR-01-AF/0078 (Tata Sumo Ambulance of Assam Government), the OP No 3 and OP No 4 are the drivers of the vehicle and the vehicle No. AR-02/0285 (APST Bus) was insured with O.P. No. 5, The Oriental Insurance Co. Ltd.

In the written statement filed by O.P. No. 1, the owner of the offending vehicle has denied the cause of action and also the maintainability of the case. The OP denied each and every allegation averment and statement made in the claim petition and the claim is barred under the principles of estoppels, waiver and acquiescence. The amount claimed by the compensation is much too excessive, vague and imaginary. The OP also stated that the claimant has suppressed and not disclosed the material facts about the accident. Infact, on the date and time of the accident, the bus No. AR-02/0285, driven by the OP No 2 was on its way back to Tezpur from Kalaktang through the hilly region and roads of West Kamang District of Arunachal Pradesh and near Borjhargaon on the NH 52 and the bus was overtaken by the speeding Ambulance No. AS-01 AF/0078 carrying a pregnant woman and her escorts. A loaded tuck was coming from the opposite direction and suddenly the speeding ambulance swirled

to the left side and stopped in front of the bus after hitting a cow. He stated that everything happened in a fast so he could not control the bus and the bus hit the ambulance behind back side causing minor damages in the front of the grill and bumper of the bus and saved the passengers of the bus and the ambulance harmless. The accident occurred solely due to the rash and negligent driving of endangering human lives on the part of ambulance driver and without any fault or negligence on the part of the driver of the bus. So, the OP 1 has prayed to dismiss the claim petition.

5. The O.P. No. 2 has filed a written statement and has denied the cause of action and also maintainability of the case and also stated that the claim petition is hit by the principles of waiver, and estoppels. It is also contended in the claim petition that the claimant has not joined all the necessary parties as his claims failed due to non-joinder of necessary parties. The OP No 2 also denied that the vehicle No. AR-02/0285 (Bus) was not the same which was involved in accident on 11.08.08 at about 5.50 pm. The OP No 2 denied the allegation of the claimant that the alleged date and time of the accident drove the vehicle No. AR-02/0285 (Bus) in controlled speed, by observing due care and caution without violating the rules of MV Act. It is also admitted that the vehicle No. AR-02/0285 (Bus) was owned by the Govt. of A.P. which is under the full control of the Commissioner and Secretary Transport Department at the time of the accident. It is also submitted that the OP No 2 had a valid driving licence at the relevant time of the accident and the accident took place due to fault negligence, careless and rashness of the driver of OP No 4 of the vehicle No. AS-01/AF/0078 (Ambulance). The OP denied and

disputes the age and income of the injured as being falsely mentioned in the claim petition. The OP No 2 also submits that on 11.08.08 at about 5.50 pm the OP was coming from Kalektang (AP) driving the APST Bus bearing No. AR-02/0285 with passengers towards Tezpur. On the way at N.H. 52 when the Opp. had arrived near Borjhar Gaon, the Ambulance bearing registration No. AS-01-AF/0078 driven by the OP no 4 Sri Lalmoohan Bora who also came from the same direction towards Tezpur at a very high speed in a rash and negligent manner tried to overtake the bus No. AR-02/0285 of OP No 2. The OP No 2 immediately gave side to the ambulance looking in its side glass, taking a view of emergence of patients which tries to over take the OP No 2. The ambulance suddenly came in front of the bus negligently without any indication, and stopped the ambulance just ahead of the bus OP No 2 as a result the OP No 2 could not control the bus and had to knock at the back of the ambulance, and there was nothing wrong on the part of the OP No 2 but the accident took place due to the negligent driving of the OP No 5 Lalmohan Bora who drove the ambulance and grossly contributed the occurrence. Under the circumstances, the OP No. 2 has prayed to absolve the claim petition.

6. The OP No. 4 has filed a written statement and has denied the cause of action and also maintainability of the case and also stated that the claim petition is hit by the principles of waiver, acquiescence and estoppels and the claim petition is bad for non-joinder of necessary party and mis-joinder of unnecessary party. The OP also denied all the allegations made in the claim petition and stated the claimant is put to the strictest proof of each and every averment made there. The OP admitted that

allegations of negligence and rash driving with excessive high speed are alleged against the vehicle No. AR-02/0285 owned by the OP No 1 and no allegation is made against the ambulance bearing no. AS-01/AF-0078 in the claim petition, so both the OP No 2 and the OP No 3 shall have no liability of whatsoever. The OP also submits that the vehicle no. AS-01.AF/0078 , Tata Sumo Ambulance was driven by the OP with normal speed and smoothly and the OP had got a valid driving licence. Amount claimed by the claimant is highly exaggerated and excessive. The OP also stated that the driver of the offending vehicle drove the vehicle No. AR-02/0285 in a very rash and negligent manner and it dashed against the vehicle (Ambulance) driven by the OP from behind and the accident took place solely due to rash and negligent driving of the vehicle No. AR-02/0285. Therefore, the O.P. No. 4 has prayed for dismissing of the claim petition.

7. Upon the pleadings of the parties, the following issues were

framed.

ISSUES

1. Whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle No. As-01-AF/0078 (Ambulance) or vehicle No. AR-02/0285 (APST Bus) ?
2. Whether the claimant is/ are entitled to any compensation and if yes, to what will be the quantum of compensation and by which of the respondents this amount shall be paid?

8. This claimant side has examined the claimant himself and also his supported witness has also produced certain documents.

9. The learned counsel for the OPs have submitted their written argument. I have also gone through the evidence and other materials on record.

A discussion on materials on record is required to come to a conclusion on the claim in this case.



DISCUSSION DECISION & REASONS THEREOF

ISSUE NO. 1

10. This issue is whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle No. AS-01-AF/0078 (Ambulance) or vehicle No. AR-02/0285 (APST Bus) ?

The evidence of the claimant and his supported witnesses have adduced that on that day of the accident, on 11.08.2008, at about 5.50 pm, while the claimant was going from Jamuguri to Kanak Lata Civil Hospital, Tezpur along with his pregnant wife Smti. Bulu Devi and other family members to admit in the hospital for delivery of baby of his wife by an Ambulance of Health Department, Govt. of Assam bearing Reg. No. AS-01/AF-0078. At that time, a passenger Bus of APST bearing Regd. AR-02/0285 was also coming from same direction with excessive of high speed and suddenly knocked down at the back side of the Ambulance at Borjhargaon under Tezpur P.S. over N.H. was way 52. The driver of the offending vehicle No. AR-02/0285 drove the vehicle (Bus) in a very rash and negligent manner for which he fail to control the vehicle and the accident occurred. As a result, the claimant sustained multiple grievous injuries into several parts of his body including right arms, chest, right leg with fracture, which leads to partially disabling the injured and become

1. Name
2. Date
3. Place
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5. Name of Judge
6. Name of Officer

incapable for doing her day to day work. After the accident, the doctors of the hospital considering the gravity of the injuries patient and then after as outdoor patient for long days under supervision of Dr. Kulen Deka and other local doctors. The injuries have caused the claimant huge pain, agony, suffering, make her partially disabled, physically unfit, shortened his expectancy of life, which ought not to have been suffered otherwise than

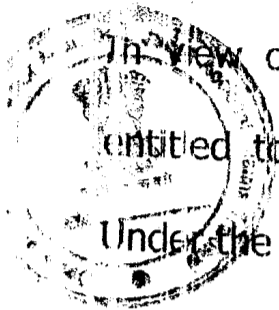
due to the accident took place for the rash and negligent driving of the driver of the offending vehicle No. AR-02/0285(APST Bus).

In the cross-examination of CW 1 Sri Kushal Nath and CW2 Sri Ratneswar Borah, they stated that the offending vehicle i.e. the AR-02/0285(APST Bus) dashed against the Ambulance from the back side and they also stated that the ambulance was not coming in a very high speed and overtake the bus.

From the evidence in record deposited by the CW 2 Ratneswar Borah and the claimant CW 1 Kushal Nath, it is proved that due to rash and negligent driving of the driver of the offending vehicle No. AR-02/0285 (Bus). The OP No. 1 i.e. Commissioner & Secretary Transport Department APST during cross-examination has failed to established the plea stated in the written statement and disprove the actual fact that the said accident took place on 11.08.08 due to the rash and negligent driving of the driver of the offending vehicle No. AR-02/0285 (APST Bus) by adducing defence witness. So, this issue is decided in favour of the claimant and the OP No 1 i.e the APST, is liable to pay the compensation to the claimant.

ISSUE NO 2

11. Whether the claimant is entitled to any compensation and if yes, to what will be the quantum of compensation and by which of the respondents this amount shall be paid.



In view of the above discussion made in Issue No. 1, the claimant is entitled to get compensation. So, this issue is not discussed in details. Under the provisions of Motor Vehicle Act and Rules, when the claimant got injuries due to rash and negligent driving of the vehicle which was duly insured at the time of the accident and at that time the driver of the offending vehicle also had a valid driving licence, the claimant is entitled to get compensation. So, now we have to see what will be the just and reasonable compensation. The claimant has exhibited documents Ext. 1 is the Accident Information Report and Ext. 3 to Ext. 4 are the prescriptions and the cash memos and money receipts which are exhibited as Ext 5 to Ext 8, it is found that an amount of Rs.4,538.75/- was incurred by the claimant for medical treatment of the injured. There are not sufficient medical document submitted by the claimant and from the record, it shows that the injuries are minor. Considering all documents, evidence on record as well as for the discussions made above I am of the opinion that the following amount awarded to the claimant will meet the ends of justice.

Therefore, the just and reasonable compensation will be as follows:-

- | | |
|--|-----------------|
| 1. Medical Expenditure incurred in his treatment, including medicine | 4,538.75/- Only |
| 2. Pain and Sufferings | 20,000/-Only |

.....
Rs. 24,538.75/- Only

(Rs: 24,600/- only rounded up)

12. Accordingly, the claimant is entitled to total amount compensation of Rs. **24,600/-** only with an interest at the rate of 9% per annum and the amount will be paid by the G.M. of Arunachal Pradesh State Transport within one month from the date of filing judgment.

13. Accordingly, the Opp. Party No. 1 G.M. of Arunachal Pradesh State Transport is directed to pay the above amount the compensation to the claimant.

ORDER

14. The claim petition is allowed awarding an amount of **Rs 24,600/-** only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid by the G.M. of Arunachal Pradesh State Transport, within one month from the date of the judgment.

15. The O.P. No. 1 i.e. the G.M. of Arunachal Pradesh State Transport, is hereby directed to pay the compensation amount of **Rs 24,600/-** only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid by the Insurance Company within one month from the date of the judgment.

16. Send a copy of this judgment to the OP No. 1 i.e. the G.M. of Arunachal Pradesh State Transport, at free of cost.

17. Given under my hand and seal of this Court on this **19th** day of May, 2014 at Tezpur.

M. Sharma
19/5/14
(Smti.M.R.Sharma)
Member, M.A.C.T (Addl. Dist. Judge)
Sonitpur, Tezpur

Member
Motor Accident Claims Tribunal
Assam District Judge
Sonitpur, Tezpur