

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR**

MAC Case No. 100 of 2010

Smt Haren Kalita
W/o Late Molan Kalita
Vill: Sangia Majorchuk, PO : Salaguri
P.S.: Jamugurihat
District: Sonitpur, Assam. ... Claimant

-Versus-

1) Md Johural Islam
S/o Late Rosul Ali
Vill & PO: Balipara
PS Rangapara
District: Sonitpur, Assam.
(Owner of Auto Pick Up Van No. AS-12-E-1827)

2) Sri Amrit Karmakar
S/o Late Sukur Karmakar
R/o Adabari Tea Estate, Balipara
PS Rangapara
District: Sonitpur, Assam.
(Driver of Auto Pick Up Van No. AS-12-E-1827)

3) The National Insurance Co Ltd.
Tezpur Branch, Tezpur
District: Sonitpur, Assam.
(Insurer of Auto Pick Up Van No. AS-12-E-1827) ... Opp Party

Advocate for the claimant	:	Sri P.P. Hazarika
Advocate for OP No.1 & 2	:	Sri Dhiraj Medhi
Advocate for OP No.3	:	Sri S.C Acharjee

PRESENT
Ms. A. AJITSARIA, AJS,
Member, Motor Accidents Claim Tribunal
/Addl District Judge No.2, Sonitpur, Tezpur

Date of Argument	:	2.04.2014
Date of Judgment	:	3.05.2014

J U D G M E N T

Claimant, Sri Haren Kalita has instituted the present claim praying for award of compensation, on account of injuries sustained by him in a road accident on 3.3.2009. The brief case of the claimant is that on the said day at about 6 PM while the claimant was proceeding from Kanchantala towards his residence at Sangiamajorchuk by riding his bicycle, the offending Auto Pick Up Van No. AS-12-E-1827 coming from the opposite direction and being driven in a rash and negligent manner, knocked the claimant as a result of which he sustained greivous injuries on his person. The claimant has stated that he was immediately taken to Dhalaibil PHE and thereafter admitted at Kanaklata Civil Hospital, Tezpur from 3.3.2009 to 8.3.2009 and Skylark Hospital, Tezpur.

The OP No. 1 and 2 filed their written statement denying the averments made in the claim petition and stating that liability, if there be any ought to be borne by the Insurance Co, as the vehicle /Auto Pick Up Van was duly insured.

The OP Nos. 3, insurer of Pick Up Van No. AS-12-E-1827 vide Cover Note No.20070704 valid upto 23.11.2009, in its written statement denied all material averments of the claim petition and pleaded inter-alia that the amount of compensation claimed by the claimant is highly exaggerated and speculative. That the insurer is not liable to pay any compensation until and unless it is proved that the driver of the offending vehicle had valid driving licence and the conditions of Insurance Policy was not violated by the insured.

On the basis of pleadings of the parties, my learned predecessor, framed the following issues for adjudication :-

ISSUES

- 1) Whether the accident took place due to rash and negligent driving of the driver of the offending vehicle?
- 2) Whether the claimant is entitled to compensation as prayed for?

During enquiry, the injured claimant examined himself as Claimant Witness No.1 and one eye-witness. The contesting respondent, however, declined to adduce any evidence.

I have carefully perused the entire materials brought on record, heard submissions made by the learned counsels for the parties. Both the issues are taken up together for the sake of convenience and brevity.

The claimant has averred in the petition and also stated in his evidence that he was grievously injured when on 3.3.2009, the Auto Pick Up Van No. AS-12-E-1827 knocked the bicycle which he was riding. The claimant has specifically deposed that accident occurred because the driver of the Auto Pick Up Van No. AS-12-E-1827 as the said van was driven by the OP No.2 in a negligent manner.

The claimant deposed that he sustained injuries of fracture in his right arm and multiple injuries on other parts of the body. After being given first aid at Dhalaibil PHE, the petitioner was admitted at Kanaklata Civil Hospital and thereafter operated at Skylark Hospital on 8.9.2009. In support of the oral evidence, the claimant has proved the Accident Information Report as Ext 1, Medical documents as Ext 2 to Ext 16. Cash memos Ext -17 to Ext 27.

Ext 1 is the Accident Information report which shows that Auto Pick Up Van No. AS-12-E-1827 was involved in an accident in which the claimant sustained injuries. It has been recorded in Ext 1 that Thelamara PS Case No. 27/2009 was registered pursuant to the said accident.

From the evidence adduced, it is established that Auto Pick Up Van No. AS-12-E-1827 was involved in an accident in which the claimant sustained injuries. Thus, the oral evidence of the claimant, coupled with the documentary evidence mentioned above,

establishes that claimant sustained injuries in the motor vehicle accident, due to rash and negligent driving of the offending Auto Pick Up Van No. AS-12-E-1827. That Auto Pick Up Van No. AS-12-E-1827, was insured with the opposite party, the National Insurance Co Ltd, is not in dispute.

In view of the discussion aforesaid, the claimant is held entitled to compensation.

Claimant has proved various medical documents. Ex- 11 is the Xray Report dated 4.3.09 which shows that the claimant suffered from fracture in the outer 1/3rd of right clavicle. Ext 12 is the xray report dated 6.3.2009 which shows that the claimant suffered from "fracture base of the 1st meta carpal bone with intra articular extension and radial and proximal displacement of the distal fragment. It was further noted that Bennett's fracture dislocation of the base of right thumb was also seen.

Ex-13 is the Discharge Certificate of Kanaklata Civil Hospital which shows that the claimant was admitted on 3.3.2009 and discharged on 8.3.2009. The claimant was diagnosed to have suffered from multiple injuries and fracture of right clavicle and dislocation of right thumb. Clavicular Belt was applied and medicines prescribed and the claimant was referred to the Surgery Department, Guwahati Medical College Hospital for treatment.

Ext 14 is the Discharge Summary of Skylark Hospital, Tezpur which shows that the claimant was admitted in the hospital on 8.3.2009 and after treatment, discharged on 9.3.2009.

Though the claimant has stated that he suffered from permanent disability but there is nothing on record to support the said contention of the claimant. Hence this Tribunal is not inclined to consider the same.

The claimant has stated that he earns his livelihood by supplying sand, brick etc but due to the accident he has not been

able to continue to run around and work hard, thus resulting in loss of income. No doubt that the claimant has suffered from fracture injuries on his hand but the same would not entitle him to loss of future income in absence of any proof placed before this Tribunal. However since the claimant was hospitalized for about six days and operated for fracture injuries, it can be safely concluded that the claimant could not have earned for about a month. In absence of any cogent proof of the claimant earning Rs.6000/- to Rs.7000/- per month, his monthly income is taken to be Rs.3000/- per month and the claimant held entitled to loss of income for a month.

The claimant has exhibited vouchers amounting to approximately Rs.17,107/-. Claimant is held to be entitled to the said amount. Besides the pecuniary damages claimant who was about 55 years at the time of accident, is also entitled to some amount of non pecuniary damages on account of pain, shock and suffering.

Thus, having considered the nature of injury sustained by the injured, expenditure incurred thereof and the facts and circumstances of the case, just and reasonable compensation to which the claimant would be entitled in the instant case is assessed as under :-

Medical expences	:	Rs. 17,107.00
Incidental expences towards special diet, attendant etc	:	3,000.00
Loss of income (1 month)	:	3,000.00
Pain, shock and suffering		20,000.00
Total	:	43,107.00

(Rounded off to Rs. 43,110/-)

Evidently Auto Pick Up Van No. AS-12-E-1827 was insured by The National Insurance Co Ltd. Hence the O.P. No.3, The National Insurance Co Ltd is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

Rs. 43,110/- (Forty three thousand one hundred and ten only) is awarded with interest @ 7.5% p.a. from the date of filing the claim petition, i. e. 12.3.2010, till payment. The opposite party No. 3, the National Insurance Co Ltd, is directed to pay the award to the claimant, within one month from the date of order.

Judgment is pronounced in open court, written on separate sheets and enclosed with the case record.

Given under my hand & seal of this Court on this 3rd day of May, 2014.

Member
Motor Accident Claims Tribunal
/Addl District Judge No.2
Sonitpur, Tezpur