

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

MAC Case No. 191 of 2012

Sri Dilip Hazarika
S/o: Biren Hazarika
Vill: Bordubia
P.S.: Tezpur,
District: Sonitpur, Assam

... Claimant

-Versus-

1) Mrs. Bhanu Das
W/O Late Lakhi Kt. Das
Vill : Bordubia
PO: Pithakhowa,
P.S.: Tezpur,
District: Sonitpur, Assam

2) Sri Ratul Nath
S/o Gunaram Nath
Vill : Tumuki Gabharu, Siva Mandir
P.S: Tezpur
District: Sonitpur, Assam
(Driver of Tata Magic No. AS-12E-3790)

3) Bajaj Allianz General Insurance Co Ltd.
Tezpur Branch, Tezpur
District: Sonitpur, Assam.
(Insurer of Tata Magic No. AS-12E-3790)

... OP Parties

Advocate for the claimant	:	Sri Debasish Borah
Advocate for OP No.1	:	Sri B Borthakur
Advocate for OP No.2	:	Exparte
Advocate for OP No.3	:	Sri S.K. Singh

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

Date of Argument	:	23-4-2015
Date of Judgment	:	22-5-2015

JUDGMENT

Claimant, Sri Beauty Hazarika, has instituted the present claim praying for award of compensation, on account of injuries sustained by her minor daughter, Miss Beauty Hazarika in a road accident on 26-08-2011. The brief case of the claimant is that on the said day at about 12.30-1 PM while the claimant's daughter was moving by the side of the road at Bordubia Jenger Chuburi and proceeding, towards her home, the Tata Magic No. No. AS-12E-3790 being driven in a rash and negligent manner, knocked the claimant's daughter from behind, as a result of which she sustained injuries on her person. The claimant has stated that her daughter was taken to Bihuguri PHC and then was immediately taken to Kanaklata Civil Hospital, Tezpur and thereafter to Skylark Nursing Home.

The OP No.1, owner of the Tata Magic, in its written statement denied that the vehicle was driven in a rash and negligent manner by the OP No.2 and stated that the OP No.2 had a valid driving license being DL No. 42942/S/T valid up to 28.12.2013. It has been further stated that liability arising of the said accident, if there be any, ought to be borne by OP No.3, with which the said vehicle was duly insured vide Policy No. OG-12-9995-1812-00000525 valid up to 30-5-2012.

The OP No. 2 Driver of the Tata Magic, did not participate in the present proceeding and hence the case proceeded ex-parte against the said opposite party.

The OP No. 3, insurer of Tata Magic No. AS/12E/3790 Policy No. OG-12-9995-00000525 valid up to 30-5-2012, 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 license and the conditions of Insurance Policy was not violated by the insured.

On the basis of pleadings of the parties, the following issues were framed for adjudication:-

- 1) Whether the accident occurred due to rash and negligent driving of the driver of vehicle/s no.AS-12E-3790 on 26.8.2011 at about 1 PM at NH 52 resulting in injury to Miss Beauty Hazarika the claimant?
- 2) Whether the claimant is entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount is to be paid?

During enquiry, the claimant examined himself as Claimant Witness No.1 and the mother of the injured as claimant witness No.2 (Smt. Munu Hazarika). The claimant has also adduced evidence of two other witnesses. 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.

Claimant witnesses No.1 and 2, have averred in the petition and also stated in their evidence that their minor daughter was grievously injured when on 26-8-2011, the Tata Magic No AS-12E-3790 knocked their daughter. The claimant witnesses have specifically deposed that accident occurred because the driver of the Tata Magic No. As-12E-3790 as the said vehicle was driven by the OP No.2 in a negligent manner.

The claimants have stated that their daughter sustained grievous injuries and was admitted in Bihuguri PHC and then taken to Kanaklata Civil Hospital and thereafter Skylark Nursing Home. In support of the oral evidence, the claimant has proved the Accident Information Report as Ext 1, FIR as Ext 2, charge sheet as Ext 3, Medical documents as Ext 4 to 12, 28, 29 and Cash memos Ext – 13 to 27.

Claimant Witness No.3 and 4 namely, Sri Naba Hazarika and Sri Bishnu Saikia have both filed evidence in support of the case of the claimant. The said witnesses too were cross examined by the OP.

Ext 1 is the Accident Information report which shows that Tata Magic No. AS-12E-3790 was involved in an accident in which the claimants' minor daughter sustained injuries. It has

been recorded in Ext 1 that the said Tata Magic was duly insured with the OP No. 3. In the said Exhibit No. 1, the age of the claimant's daughter has been reflected as 7 years. Charge sheet, Ext 3 has been filed against the OP No. 2.

From the evidence adduced, it is established that Tata Magic was involved in an accident in which the claimant's minor daughter sustained injuries. Thus, the oral evidence of the claimant witnesses, coupled with the documentary evidence mentioned above, establishes that claimants' minor daughter sustained injuries in the motor vehicle accident, due to rash and negligent driving of the offending Tata Magic No. AS-12E-3790. That Tata Magic No.AS-12E-3790, was insured with the opposite party, the Bajaj Allianz General 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- 4 is the Discharge Certificate of Kanaklata Civil Hospital which shows that the claimants' minor daughter was admitted on 26.08.2011 and discharged on 28.08.2011. She was advised X-Ray and treated for the injuries. Ext 17 shows that claimants' daughter was applied plaster of paris for the fracture injuries on her left leg.

The claimant has exhibited vouchers amounting to approximately Rs.11,885/-. The claimant is also entitled to some incidental expences for the treatment of his daughter as his daughter was given treatment as an indoor patient. Claimant is held to be entitled to the said amount for the medical expanses of his daughter. Besides the pecuniary damages claimant is also entitled to some amount of non-pecuniary damages on account of pain, shock and suffering of his daughter.

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	:	11,885.00
Incidental expences towards special diet, attendant etc	:	2,500.00
Pain, shock and suffering		5000.00
Total	:	19,385.00

Evidently, Tata Magic No. AS-12E-3790 was insured with the Bajaj Allianz General Insurance Co Ltd, the O.P. No.3. Hence, OP No.3, is liable to indemnify the owner of the vehicle and satisfy the award.

AWARD

Rs. 19,385/- (Nineteen Thousand Three Hundred and Eighty Five only) is awarded with interest @ 7.5% p.a. from the date of filing the claim petition, i. e. 16.06.2012, till payment. The OP No. 3, the Bajaj Allianz General 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 22nd May,2015

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