

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR

MAC Case No. 246 of 2011

Smt Pompe Saikia Deka
W/o Sri Bhagya Deka
Vill: Hazarapar, Ward No.18.
P.O & PS. Tezpur
District: Sonitpur, Assam. ... Claimant

-Versus-

1) Md Lutfur Rahman
S/o Md Abdur Rahman
Nuruddin Path
Ward No.3, Rangia
Kamrup
Assam.
(Owner of Swift Car No. AS-01-AQ-0257)

2) Sri Bikash Das
S/o Babul Ch Das
Vill: Alisinga, Urianguri, Panchmile
PS : Tezpur
District: Sonitpur, Assam.
(Driver of Swift Car No. AS-01-AQ-0257)

3) The New India Assurance Co Ltd.
Tezpur Branch, Tezpur
District: Sonitpur, Assam.
(Insurer of Swift Car No. AS-01-AQ-0257) ... Opp Party

| | | |
|---------------------------|---|---------------------|
| Advocate for the claimant | : | Sri Girin Borah |
| Advocate for OP No.1 | : | Smt Nafiza Islam |
| Advocate for OP No.2 | : | Smt Nafiza Islam |
| Advocate for OP No.3 | : | Sri Ashim Choudhury |

PRESENT

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

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| Date of Argument | : | 5.04.2014,26.5.14 |
| Date of Judgment | : | 28.05.2014 |

J U D G M E N T

Claimant, Smt Pompei Saikia Deka has instituted the present claim praying for award of compensation, on account of injuries sustained by her in a road accident on 21.2.2011. The brief case of the claimant is that on the said day she along with others were returning from Dibrugarh and proceeding towards Tezpur in the Swift Car No. AS-01-AQ-0257 after attending a marriage. However when the car reached Bagari under Jakhalaband PS at about 8.20 AM, the driver lost control of the car and because of his rash and negligent driving, the car hit a tree near the roadside resulting in greivous injuries to her person.

The OP No. 1 and 2 filed their written statement stating inter alia, that the owner is liable to be indemnified by the OP No.3, Insurer, in as much as, the OP No.2 had a valid driving license and the car was duly insured with OP No.3 at the relevant time.

The OP Nos. 3, insurer has placed on record the Policy No. 400056805 issued in respect of the Maruti Swift Desire, the vehicle involved in the accident in the case at hand.

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

ISSUES

- 1) Whether the accident occurred due to rash and negligent driving of the driver of vehicle/s No.AS-01-AQ-0257 on 21.2.2011 at about 8.20 AM at NH 37 resulting in injury to Smt Pompei Saikia Deka?

- 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 injured claimant examined herself 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 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 21.2.2011, the Swift Car No. AS-01-AQ-0257 in which she was travelling from Dibrugarh to Tezpur, hit a tree Bagari under Jakhlaband PS. The claimant has specifically deposed that accident occurred because of the rash and negligence of driver of the Swift Car No. AS-01-AQ-0257.

The claimant deposed that she sustained multiple injuries and was treated at Jakhlabanda PHE, EMM Hospital & Research Centre and GNRC Guwahati. In support of the oral evidence, the claimant has proved the Accident Information Report as Ext 1, Medical documents as Ext 2 to Ext 33. Cash memos Ext -34 to Ext 103. In cross examination, CW 1 denied the suggestion that her gynecological problems were not related to her accident.

Claimant witness No.2, Sri Biran Chandra Bora deposed that on the said day, he too was coming from Dibrugarh to Tezpur in the Swift Car No. AS-01-AQ-0257 along with the claimant and Byasdeb Sharma after attending the marriage ceremony of Sri Pinku Bora. CW 2 stated that the accident occurred because of the rash and negligence of the OP No.2 and in the said accident, the claimant was severely injured. It has been further stated that the driver of the car/OP No.2 and one girl named Jyoti too, sustained injuries in the said accident. CW 2 has stated that he along with Byasdeb and

the local police shifted the injured to Jakhlabanda CHC and later the family member's of the claimant took her to EMM Hospital and Research Centre, Tezpur. She was also treated at GNRC Hospital at Guwahati as indoor patient.

In cross examination, CW 2 stated the claimant is her neighbour and all of them had gone to attend his son's marriage at Dibrugarh. He stated that the Swift Car No. AS-01-AQ-0257 belonged to his son's friend and that they had not paid any rent for the car.

Ext 1 is the Accident Information Report which shows that Swift Car No. AS-01-AQ-0257 was involved in an accident in which the claimant sustained injuries.

From the evidence adduced, it is established that Swift Car No. AS-01-AQ-0257 was involved in an accident in which the claimant sustained injuries. Thus, the oral evidence of the claimant witnesses, coupled with the documentary evidence, establishes that claimant sustained injuries in the motor vehicle accident, due to rash and negligent driving of the offending Swift Car No. AS-01-AQ-0257. That the Swift Car No. AS-01-AQ-0257, was insured with the opposite party, the New India Assurance 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. Ext 4 is the Advice Slip/prescription dated 21.2.2014 of Jakhlaband CHC. Ex 5 is the Advice Slip/prescription dated 21.2.2014 of EMM Hospital, Tezpur.

Ex- 2 is the Discharge Summary of GNRC which shows that the claimant was admitted at GNRC on 21.2.2011 and discharged on 2.3.2011. She was diagnosed to have suffered from (i) head injury and (ii) fracture of 2nd and 4th rib. In the case history column of the Summary it has been recorded that the claimant suffered injuries in a Road Traffic Accident and was initially treated at

Jakhalaband CHC and EMM Hospital, Tezpur and then brought to GNRC.

Results of various xrays have been recorded in the Summary which shows that the claimant suffered from (i) right temporal possible extra-cerebral hematoma (ii) multiple left side upper rib fractures (iii) 2nd and 4th rib fracture (iii) loss of cervical lordosis (iv) lung contusions. On discharge after treatment, she was prescribed medicines, advised rest for 6 weeks and review after 6 weeks.

Ext 6 to 28 are various prescriptions of the three hospitals. Ext 29 to Ext 33 are reports of various tests including CT Scan and xrays.

Ext 34 to 83 are the original cash memos. Ext 84 is the cash memo for consultancy dated 11.4.2011 of GNRC indicating that the claimant carried out her review as advised earlier. Ext 86 is cash memo for consultancy dated 27.6.2011 of GNRC.

Ext 87, 88, 95, 96 and 97 dated 30.7.2011, 27.7.2011 and 29.7.2011 respectively are memos of Central Nursing Home, Guwahati wherein the claimant has been billed, inter alia, towards payment of charges of Surgeon, Asst Surgeon and Anaesthetist. Since no prescriptions have been exhibited in support of the said exhibits this Tribunal is not inclined to reimburse the claimant for the expences incurred against the said exhibits.

Again Ext 89, Ext 90, Ext 91, Ext 92, Ext 93- charges for Ultra Sonography (USG) charges for trans vaginal Doppler, Ext 94, Ext 95, Ext 98, Ext 99, Ext 100 are all of the year 2013 and apparently related to gynecological treatment undertaken by the claimant. There being nothing on record to remotely suggest that the said problem was suffered by the claimant because of the accident which occurred in the year 2011, this Tribunal therefore holds that the said exhibits are not related to the injuries suffered by the claimant in the accident in question and thus the claimant is not entitled to claim reimbursement of the same.

Perusal of the vouchers of GNRC reveals that Ext 78, 79, 80, 81, 82 and 83 are Return Memos indicating and accounting for the unused medicines returned to the hospital after treatment, hence the claimant is not entitled to be reimbursed for the amounts shown in the said exhibits.

Thus the cash vouchers amounting to Rs. 84,074/- is accepted to be the expenditure incurred by the claimant for treatment of the injuries suffered by her in the accident.

Since the claimant had to take prolonged treatment as indoor patient, he had certainly incurred some incidental expenses on account of maintaining attendants, nursing, special food etc. and as such the claimant is also entitled to some amount as pecuniary damages, along with the medical expenses. Besides the pecuniary damages claimant is also entitled to some amount of non pecuniary damages on account of pain, shock and suffering.

Being under treatment as indoor patient for a considerable long time, it is clear that the claimant could not earn during the period of her hospitalization and it is unlikely that the claimant was able to earn immediately on being discharged from hospital, hence the claimant is also entitled to some amount towards loss of earning. From last of the GNRC consultancy fee cash memo, it is apparent that the claimant consulted the doctors at GNRC in the month of July, 2011. Accident having occurred in the month of February, 2011 and the claimant was advised rest for six weeks. The claimant having suffered from, amongst others, fracture of ribs it can be safely held that the claimant could not earn for about three months. The claimant has stated that she was earning Rs.10,000/- per month from her salary as a teacher in Dhekiajuli and from private tuitions. In absence of any cogent proof of the claimant earning Rs.10,000/- per month as a teacher in private school and tuitions, the monthly income of the claimant is taken to be Rs.3000/- per month. Be it noted that in the cross examination it has been revealed that at present the claimant is working as a

teacher in Guru Nank School and earlier she was working in L.O.K.D, M E School, Dhekiajuli.

Besides the pecuniary damages claimant 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 :-

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|---------------------------------------------------------|---|---------------|
| Medical expences | : | Rs. 84,074.00 |
| Incidental expences towards special diet, attendant etc | : | 15,000.00 |
| Loss of income (3 month) | : | 9,000.00 |
| Pain, shock and suffering | : | 50,000.00 |
| Total | : | 1,58,074.00 |

(Rounded off to Rs. 1,58,075/-)

Learned Counsel for the Insurance Company, OP No.3 has strenuously argued that the OP No.3 is not entitled to indemnify a gratuitous passenger in a private car.

In order to appreciate the contention of the Ld Counsel for the Insurance Company it is essential to ascertain the nature of the Insurance Policy. From the Policy No. 400056805, placed on record by the Ld Counsel for the OP No.3, it is seen that the said policy is a Package/Comprehensive Policy.

Confirming the verdict of the Hon'ble Delhi High Court in *Yashpal Luthra and Anr. V. United India Insurance Co. Ltd.* and Another reported in [2011 ACJ 1415] , the Hon'ble Supreme Court in ***Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba reported in [AIR 2013 SC 483]*** held that "..... *it is clear that the comprehensive/package policy of a two wheeler covers a*

pillion rider and comprehensive/ package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case..'

In the instant case, as stated hereinabove, the Policy was a Comprehensive/Package Policy, hence in view of the judgment of the Hon'ble Supreme Court of India, the OP No.3, The New India Insurance Co Ltd, insurer of Swift Car No. AS-01-AQ-0257, is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

Rs. 1,58,075/- (One Lakh fifty eight thousand seventy five only) is awarded with interest @ 7.5% p.a. from the date of filing the claim petition, i. e. 14.7.2011, till payment. The opposite party No. 3, the New India 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 28th day of May, 2014.

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