

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR

MAC Case No. 250 of 2009

Smt Tuntun Das
W/o Sri Robin Das
Vill: L.B.Road
P.O & PS. Tezpur
District: Sonitpur, Assam. ... Claimant

-Versus-

1) Sri Kesab Nath
S/o Lt J.R Nath
R/O Murhateteli
PO and PS : Tezpur
Dist: Sonitpur
Assam.

2) United India Insurance Co Ltd.
Tezpur Branch, Tezpur
District: Sonitpur, Assam. ... Opp Party

Advocate for the claimant : Sri N Islam
Advocate for OP No.1 : Sri S Bora
Advocate for OP No.2 : Sri S Bora
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 : 2.05.2014
Date of Judgment : 29.05.2014

J U D G M E N T

Claimant, Smt Tuntun Das has instituted the present claim praying for award of compensation for the injuries sustained by her minor son, namely, Sri Amrit Das in a road accident on 21.5.2007. The brief case of the claimant is that on the said day she was

proceeding to Silver Jubilee School with her son at about 9.15 AM, when the vehicle No. AS-12-C-4611, being driven in a rash and negligent manner, capsized and, as a result of which, the claimant and her son sustained grievous injuries to her person.

The OP No. 1 filed his written statement stating inter alia, that at the relevant time, the OP No.1 was driving the vehicle, when suddenly a rickshaw puller overtook his vehicle and hit the claimant. It is the contention of the OP No.1 that the accident did not occur because of the OP No.1, rather it was the OP No.1 who, on humanitarian ground picked up the claimant and her son and took them to Kanaklata Civil Hospital. The OP No.1 has further stated that notwithstanding that the accident did not occur because of his negligence, the said vehicle being duly insured vide Policy No. 13070031/06/00003911 valid upto 22.12.2007, the OP No.1 is liable to be indemnified by the OP No.2, in the event of any award being passed by this Tribunal.

The OP Nos. 2, insurer of AS-12-C-4611, 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. The OP No.3 also filed an additional written statement stating that the vehicle No. AS-12-C-4611 was not involved in the accident and it was a rickshaw puller who hit the claimant and her son. It has been further stated that the OP No.1 had taken both the persons who suffered simple injuries to hospital on humanitarian ground only.

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

- 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 herself as Claimant Witness No.1. The contesting respondent summoned OP No.1, the owner of the maruti car as witness.

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 she and her son were grievously injured when on 21.5.2007, the Maruti Car No. AS-12-C-4611 hit them.

The claimant deposed that her son was treated at Kanaklata Civil Hospital and thereafter at ENT Hospital, Baraholia. In support of the oral evidence, the claimant has proved the Accident Information Report as Ext 1, Medical documents as Ext 2, 3, 4, 5 and 6, Cash Memos Ext – 7 series.

The claimant was extensively cross examined by the OP No.2. In cross examination, CW 1 denied the suggestion that the accident occurred when the rickshaw puller hit them and that the maruti car was not involved in the accident.

OP No.1, in his examination-in-chief reiterated the averments made by him in his written statement and stated that he had only taken the claimant, who sustained minor injuries to the Civil Hospital on humanitarian grounds and that he was not involved in the accident.

Sri Harin Ch Deka, O/C Tezpur PS (Sadar) proved the GDE No. 1233 dated 23.5.2007 as Ext B and stated that except the said GDE, no further record of the occurrence was available.

Having laid down the evidence adduced, this Tribunal now proceeds to analyse the documentary evidence placed on record by the claimant.

Ext 1 is the Accident Information report which shows that Car No. AS-12-C-4611 was involved in an accident in which the claimant and her son sustained injuries. From the evidence of the OC, Tezpur (Sadar PS), it is apparent that the said Ext 1 was prepared and issued on the basis of the GDE No. 1233 since no other record in respect of the occurrence could be traced.

In the said GDE , Exhibited as Ext B, it has been stated that the claimant went to the police station and informed about the alleged accident caused by the OP No.2 on 23.5.2007.

What is striking is the absence of any medical document showing that the claimant was prevented from approaching the investigating authority because of the injuries sustained by her or her son in the accident alleged.

Ext 1 is the OPD prescription of Kanaklata Civil Hospital dated 21.5.2007 issued in respect of the petitioner's minor son, Amrit Das. The corresponding advice/slip and bill appears to be Ext 3 and Ext 3(1) and Ext 7 amounting to Rs.79/-. From Ext 1 it is apparent that the claimant's son suffered from minor injuries as he was only prescribed few medicines as an Out Patient and he was not admitted in the hospital nor advised as such. It is pertinent to mention herein that no serious injuries or problem was detected in respect of the claimant's minor son on 21.5.2007.

Ext 2, 4, 5, 6 series, 7 and cash memos vide Ext 7 (1), 7 (2), 7 (3) and 7 (4) are all of ENT Hospital, Baraholia, Tezpur. Ext 2 is a Discharge Slip which shows that the claimant's son was admitted on 23.5.2007 and discharged on 24.5.2007. In the said Ext 2 claimant's minor son has been diagnosed with facio maxillary injury and is shown to have been treated with skin grafting. As already noted by this Tribunal, no such injury was recorded in the

prescription of Civil Hospital, Tezpur where the claimant's son was immediately taken after the accident. That injury in and around the facial region requiring skin grafting would not be ascertainable by the doctors where the minor was first taken, is doubtful. Thus in absence of any material on record that the claimant's son actually suffered from such serious injuries requiring skin grafting and the said medical documents exhibited by the claimant is held to have no nexus with the accident in hand. Therefore, the cash memos exhibited by the claimant amounting to Rs.17,233/- which relate to her son's facial maxillary treatment, is held to be inadmissible.

From the evidence of OP No.1, the owner of the Maruti car No. AS-12-C-4611 it is seen that OP No.1 took the claimant and her son to K.C.Hospital on 21.5.2007 and ensured that they get treatment for the minor injuries suffered by them. As stated earlier, OP No.1 has contented that the accident was caused by a rickshaw puller and not by his car. OP No.1 has further stated that in the evening on the same day, the claimant came to his residence and he purchased the medicines which were prescribed for the claimant's son.

OP No.1's contention that his vehicle was not involved in the accident and that he assisted the claimant only on humanitarian grounds does not inspire the confidence of this Tribunal, in as much as, OP No.1 would not have gone to the extent of further purchasing prescribed medicines for the claimant, on the evening of the date of accident, without any fault on his part.

Hence, on the basis of the evidence on record, this Tribunal holds that the claimant's son suffered injuries due to the involvement of the Maruti car No. AS-12-C-4611. The claimant having failed to prove that her son suffered any serious injuries, it is held that the claimant's son suffered minor injuries in the said accident.

Claimant is thus held to be entitled to compensation for the minor injuries suffered by her minor son.

From the evidence on record, it is seen that the OP No.1 , as the owner of the Maruti Car No. AS-12-C-4611, duly purchased medicines for the claimant on the date of the accident for the minor injuries suffered by her son. Hence, the claimant is not entitled to be re-imbursed for the expences of medicines purchased for her son, for which payment has already been made by the OP No.1. Claimant is also not entitled to any other pecuniary damages as her son suffered from simple injuries.

Thus the claimant is held entitled to some amount of non - pecuniary damages on account of pain, shock and suffering of her minor son.

Thus, having considered the nature of injury sustained by the son of the claimant, which have been held to be simple 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 :-

Pain, shock and suffering		4,000.00
Total	:	4,000.00

Evidently, the Maruti Car No. AS-12-C-4611 was insured with the United India Insurance Co Ltd. Hence the O.P. No.3, The United India Insurance Co Ltd is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

Rs. 4,000/- (Four thousand only) is awarded with interest @ 6% p.a. from the date of filing the claim petition, i. e. 9.7.2009, till payment. The opposite party No. 3, the United 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 29th day of May, 2014.

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