

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

Present : Smti. M. Nandi.,  
Member,  
Motor Accident Claims Tribunal,  
Sonitpur, Tezpur

MAC CASE NO. 11 of 2017 (I)

1. Sri Parash Nath, @ Parash Nath Kanu,  
Son of Late Rai Briaj Kanu,  
R/O. Vill. Wokha Nagar,  
P.O. Tezpur,  
P.S. Tezpur,  
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Gurbhej Singh,  
Son of Late Pohla Singh,  
R/O Vill. Near NST station,  
P.O. & P. S. Kohima,  
Dist. Nagaiand, Kohima,  
( Owner of the vehicle No. NL-01G/5895 (truck)

2. Oriental Insurance Co. Ltd.  
Tezpur Branch,  
P.O. & P. S. Tezpur,  
Dist. Sonitpur, Assam.  
( Insurer of the vehicle No. NL-01G/5895 (truck)  
...Opposite party.

ADVOCATES APPEARED

For the claimant :-R. Bharali, Advocate.  
For the O.P. No.1 :-Ex-parte.  
For the O.P. No. 2 :-A.K. Paul, Advocate.

**Date of Argument :-10-05-2019**

**Date of Judgment :-14-05-2019**

## **J U D G M E N T**

This is an application u/s- 166 of M.V. Act filed by the claimant Sri Parash Nath @ Parash Nath Kanu praying for grant of compensation on account of injuries sustained by him in a motor vehicle accident.

1. The brief fact of the case is that the claimant being driver of a truck bearing No. AS-12A/0452 (truck) while proceeding from Tezpur towards Sarupathar in Golaghat District and when the said truck reached near Haragaon, suddenly another vehicle bearing No. NL-01G/5895 (truck) turned down from the road without any indication and hit front side of the vehicle, in which the claimant was travelling. As a result, the claimant sustained grievous injuries on his person. He was immediately taken to Golaghat Civil Hospital and thereafter he was shifted to Kanaklata Civil Hospital, Tezpur and then he was brought to Institute of Medical Science & S.S. Hospital Varanasi and the doctor diagnosed him fracture femur right side and distal radius of left side of leg. The claimant also took treatment at EMM Hospital, Tezpur.

2. On receipt of the information regarding accident, one GDE was recorded vide Golaghat P.S. GDE No. 110 dtd. 03-04-2014. At the relevant time of accident, the alleged offending vehicle was duly insured with Oriental Insurance Co. Ltd.

3. Against the claim petition, O.P. No.2 Oriental Insurance Co. Ltd. i.e. insurer of the alleged offending vehicle has submitted written statement wherein it is stated that from a bare reading of the claim application which reveals that alleged accident took place due to head on collision between two vehicles bearing No.AS-12A/0452 (truck) and NL-01G/5895 (truck). Therefore, the owner and insurer of the vehicle bearing No. NL-01G/5895 in which the claimant was travelling as driver is a necessary party in a claim case. The claimant as a driver being entitled to claim compensation under the Workmen's Compensation Act from his own employer and insurer and there is every likelihood that he has already received compensation for the alleged accident from his employer and insurer of the vehicle bearing No. AS-12A/0452 and therefore, intentionally and deliberately they have not been impleaded in the instant claim case. Hence, claim application is not maintainable. It is further stated that the claimant has filed the instant claim application after 3 years of the alleged accident. Admittedly no police case was registered against the driver of the alleged offending vehicle

showing that the accident took place due to rash and negligent driving by the driver of the alleged offending vehicle. The extract copy of the relevant GDE dtd. 03-04-2014 has also not been filed by the claimant. Therefore, O.P. No. 2 denies the accident as stated by the claimant and prayed to dismiss the claim petition.

4. Though notice was served to O.P. No. 1 but he did not appear during trial. Hence, the case was proceeded ex-parte against the O.P.1.

5. On the pleadings aforesaid, following issues were framed-

1. Whether the accident took place on 03-04-2014 at about 5-30 P.M. due to rash and negligent driving by the driver of the Vehicle No. NL-01G/5895 (truck) and whether the claimant Parash Nath @ Parash Nath Kanu has sustained injuries due to the alleged accident?
2. Whether the claimant is/are entitled to get any compensation, as prayed for, and if so, from whom and to what extent?

6. I have heard argument advanced by Learned Counsel of both sides. I have also perused the documents available in the record.

**Issue No. 1 and 2**

7. The claimant was examined in the case as CW-1 , who deposed in his evidence that on 03-04-2014 at about 5-30 P.M. he drove his vehicle bearing No.AS-12A/0452 (truck) and while proceeding from Tezpur towards Sarupathar in Golaghat District he met with an accident near Saragaon when another vehicle bearing No. NL-01G/5895 (truck) coming in a rash and negligent manner hit front side of the vehicle in which he was travelling. As a result he sustained grievous injuries on his person. He was immediately brought to Golaghat Civil Hospital and later on, he was treated and admitted at Kanaklata Civil Hospital, Tezpur.

8. CW-1 has exhibited the following documents-

Ext. 1 accident information report (Form 54)

Ext. 2 disability certificate.

Ext. 3 to 24 are medical documents/cash memos/bill /vouchers etc.

9. In his cross-examination, CW-1 has replied that he is a driver by profession. He was driving a truck bearing No. AS-12A/0452 at the time of accident of some Bhuyan and he did not know his actual name but the owner resides at Jahajghat, Tezpur. He has a D/L but he has not submitted the D/L

along with the claim petition. The accident occurred at Harigaon of Golaghat District and the accident took place due to head on collision.

10. Ext. 1 is the accident information report which reveals that an accident occurred on 03-04-2014 at about 5-30 P.M. at Saragaon and Parash Nath Kanu has sustained injuries due to the alleged accident. The vehicle bearing No.NL-01G/5895 (truck) was shown to be the offending vehicle. From Ext. 1 it also reveals that after the accident one GDE was recorded vide Golaghat P.S. GDE No. 110 dtd. 03-04-2014. Except Ext. 1 no other document regarding the accident is available in the record. It is also not known whether any formal Ejahar was lodged in connection with the accident. No police report is available in the record whether any case was registered against the driver of the offending vehicle.

11. As per claim petition as well as accident information report (AIR) the accident occurred on 03-04-2014. The claimant stated that immediately after the accident he was taken to Golaghat Civil Hospital and thereafter he was treated at Kanaklata Civil Hospital, Tezpur. But the claimant has not furnished any document for his treatment at Golaghat Civil Hospital. The only document submitted by the claimant regarding his treatment at Kanaklata Civil Hospital is Ext. 3 which is the money receipt dtd. 08-04-2014 from which it cannot be ascertained that the claimant was treated at Kanaklata Civil Hospital, Tezpur for his accident which occurred on 03-04-2014. The claimant has submitted discharge certificate of Tezpur Medical College Hospital which reveals that the claimant was admitted to Tezpur Medical College Hospital on 06-02-2016 and discharged on 20-04-2016 for fracture of his distal femur. It is seen that Ext. 24 (1) is discharge certificate of Tezpur Medical College Hospital which shows the treatment of the claimant after two years of the accident. The accident occurred on 03-04-2014 for which the claimant has filed the present claim case. Ext. 6 is the prescription of one doctor of EMM Hospital, Tezpur which shows that the claimant was examined by the doctor of EMM Hospital, Tezpur on 15-12-2014 i.e. after 8 months of the accident. It is seen that the claimant has failed to submit any medical document showing his treatment immediately after the accident i.e. on 03-04-2014.

12. The claimant has furnished one disability certificate which reveals that the claimant was examined by the Medical Board on 27-07-2017 to assess his disability. Ext. 4 is the OPD card of Sir Sundarlal Hospital Kashi Hindu

Viswavidyalaya. From Ext. 4 it reveals that the claimant was treated for fracture of his right femur on 11-11-2014 i.e. after seven days of the accident. The medical document shows that the claimant was admitted to hospital for fracture of his right leg in the year 2016. It transpires that the medical documents including disability certificate submitted by the claimant are not related to the accident which took place on 03-04-2014.

13. In view of the above, I am of the opinion that the claimant has not come with clean hands and the claimant is not entitled to get any compensation as prayed for.

14. Hence, issue No. 1 and 2 are decided accordingly.

### **O R D E R**

In the result, claim petition is dismissed. There is no order as to cost.

Given under my hand and seal on this 14<sup>th</sup> day of May, 2019.

Member,  
Motor Accident Claims Tribunal,  
Sonitpur, Tezpur.

( M. Nandi.)  
Member,  
Motor Accident Claims Tribunal,  
Sonitpur, Tezpur.

## A N N E X U R E

### 1. Witness of the Claimant:

(i) Sri Parash Nath Kanu.

### 2. Witness of the Defence:

Nil

### 3. Claimant's Exhibits:

Ext. 1 accident information report (Form 54)

Ext. 2 disability certificate.

Ext. 3 to 24 are medical documents/cash memos/bill /vouchers etc.

### 4. Exhibits of the defence

NIL.

(M. Nandi.)  
Member  
MACT, Sonitpur, Tezpur