

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

Present: **Smti Bobita Kshetry , AJS,**
Member, MACT, Sonitpur
Tezpur

MAC Case No: 71/ 2019 (Injury)

1. Smti Kangkana Hazowary
D/o : Sri Biren Hazowary
R/o Vill : Ushanagar, Bye lane No.3
PO & PS : Tezpur
Dist.: Sonitpur, Assam

----- Claimant

-Vs-

1. Managing Director,
Assam State Transport Corporation,
Paltan Bazar, PO: Guwahati-1
Dist : Kamrup(Metro), Assam
2. Superintendent,
Assam State Transport Corporation,
Tezpur, Mouza: Mahabhairab
Dist: Sonitpur, Assam

3. Sri Putul Sangmai
S/o Molan Sangmai
R/o Vill: Lahangaon, Jorhat
Dist: Jorhat, Assam

-----Opposite parties.

Date of argument: 07-11-2022

Date of Judgment: 09-11-2022

APPEARANCE:

Advocate for the claimant : Mr. Ajoy Kr. Paul

Advocate for the opposite party No.1 to 3 : Mr. Diplu Baruah

J U D G M E N T

1. The claimant– Smti Kangkana Hazowary has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs.8,72,500/- (Rupees Eight Lakh seventy two thousand five hundred only) for the injuries sustained in the motor vehicle accident .

2. The claimant’s case, in brief, is that on 12-04-2018 at about 3.00 a.m., she was travelling by ASTC Bus bearing registration

No. AS-20-1616 as a passenger, from Guwahati to Dhemaji and when the said bus reached village Bokagaon through N.H. 15, the driver of the offending vehicle due to his rash and negligent driving lost the control of the vehicle and capsized on the road. As a result, the claimant sustained grievous injuries on her person. Her right patella got fractured in the said accident. She was immediately shifted to National Health Mission, Dhalaibil, Jamuguri by the police personals with the help of local people. After taking first aid, in the morning her family members brought her to Baptist Christian Hospital, Mission Chariali, Tezpur. There, too, she took first aid after doing X-Ray. As per advice of doctor she was admitted to Anup Institute of Orthopedic & Rehabilitation, Patna on 14/04/2018 and treated there operatively. She was discharged on 27/04/2018. After her operation on 17/04/2018 TENSION BAND WIRING OF RIGHT PETELLA has been implanted. As per advice of her consulting doctor she visited Anup Institute of Orthopedic & Rehabilitation twice for further checkup and treatment on i.e. on 09/06/2018 and 24/08/2018. On her last visit, she has been advised to remove TENSION BAND WIRING OF RIGHT PETELLA implanted to patella within two years and further advice to follow medicines and physiotherapy. The claimant is doing physiotherapy at Guwahati. But she is yet to recover from the injuries. She would not be able to bend her knee till removable of the TENSION BAND WIRING OF RIGHT PETELLA implanted to patella. The claimant all the times has to suffer pain and she is unable to do any hard

labour nor travel in public vehicle. The claimant is now about 30 years of age, but she could not settle her marital life.

At the time of accident, claimant was working as Assistant Manager, in IDBI Bank, at Dhemaji Branch. Due to the injuries, she had to be on leave from her duty for 4 months. Out of that 4 months, her service authority granted the leave with salary for 15 days only and remaining 3 months 15 days leave granted without salary. Therefore, she suffered loss of salary to the tune of Rs. 1,22,500/- only. The claimant's promotion has been affected. It is alleged that the accident occurred due to the rash and negligent driving of the bus by the driver (OP No.3) and all the Ops are jointly and severally liable to pay the compensation.

3. Notices were issued on the opposite party Nos. 1, 2 & 3. But the case proceeded ex-parte against opposite party Nos.1, 2 & 3 i.e. the Managing Director, Superintendent, ASTC and Sri Putul Sangmai, as they failed to appear and contest the case even after due service of notices. Thereafter, vide order dated 09.12.2021, the ex-parte order was set aside and written statement submitted jointly by OP Nos. 1, 2 and 3 was accepted.

4. In their written statement, the opposite parties denied any of its liabilities and stated that the present claim is not sustainable either in the eyes of the law as well as in facts and there is no any cause of action for the claim petition. It is further alleged that the claimant was herself responsible for the alleged accident. Moreover, it is claimed that the driver of the vehicle bearing No. AS-20/1616

(ASTC Bus) was holding a valid driving licence at the time of accident. Hence, prayed for dismissal of the claim petition.

5. On perusal of the pleadings and after hearing from the Learned Counsels for both the parties, the following issues are framed :-

(i) Whether the injured sustained injury in a road traffic accident, which had taken place on 12-04-2018, due to rash and negligent driving of the driver of the offending vehicle bearing registration No. AS-20-1616(ASTC Bus)?

(ii) Whether the claimant is entitled to compensation as prayed for? If so from whom and to what extent?

6. During the course of hearing, the claimant examined herself as CW-1 and one official witness. The Opposite party did not adduce any evidence.

7. Heard arguments of Learned Counsels appearing for both the parties. Perused the case record as well as the documents submitted by the claimant.

Discussion, Decision and Reason there of :

8. I have considered the evidences on record and after hearing the arguments advanced by the Learned Counsels for the claimant and the Opposite Party, passed the judgment on the above issues.

Issue No. 1 :

9. The claimant in her evidence as CW-1 deposed that on 12-04-2018 at about 3.00 a.m., she was travelling in the ASTC Bus bearing registration No. AS-20-1616, as a passenger, from Guwahati to Dhemaji and when the said bus reached village. Bokagaon through N.H. 15, the driver of the offending vehicle due to his rash and negligent driving lost the control of the vehicle and capsized on the road. As a result, the claimant sustained grievous injury on her person. Her right patella got fractured in the said accident. She was immediately shifted to National Health Mission, Dhalaibil, Jamuguri by the police personals with the help of local people. After taking first aid, in the morning her family members brought her to Baptist Christian Hospital, Mission Chariali, Tezpur. There too she took first aid after getting X-Ray. As per advice of doctor she was admitted to Anup Institute of Orthopedic & Rehabilitation, Patna on 14/04/2018 and treated there operatively. It is alleged that the accident occurred due to the rash and negligent driving of the Bus driver OP No.3 . CW-1 confirmed that the accident case was duly registered as Chariduar Police Station, Vide GDE No. 257 dated 12/04/2018. She also disclosed that at the time of accident, she was 31(thirty one) years old and she was employee of IDBI Bank. To prove the accident and her medical treatment, the claimant has submitted Form-54 as Exhibit-1, Medical Prescription, Advice Slip, Discharge vouchers, reports and Cash Memos marked as Exhibit-2 to Exhibit-32, Bank Documents

marked as Exhibit-33 to Exhibit-38. In her cross-examination CW-1 stated that she did not lodge the FIR following the RTA in which she sustained injuries. She denied that during her treatment, she has been receiving her salary regularly.

10. CW-2 Sri Harekrishna Saikia who is the Branch Manager, IDBI Bank, Tezpur proved the leave periods of his staff i.e. claimant- Kankana Hajowary, Asstt. Manager of IDBI Bank, presently posted at Guwahati. Ext.37 is the leave period of the claimant w.e.f. April 2018 to August 2018. As per Ext. 37 she was on sick leave from 21/05/2018 to 19/06/2018 and the aforesaid leave was taken for her surgery. During the aforesaid period she was paid half salary. Thereafter, she had availed extra ordinary leave w.e.f. 20/06/2018 to 17/07/2018. She again availed extra ordinary leave period from 19/07/2018 to 10/08/2018. During the extra ordinary leave period she was not entitled to any salary. Her gross salary in the month of June, 2018 was Rs 45,877/-. Ext.- 38 is the computer generated salary certificate. CW-2 also confirmed that in general when a person takes such type of extra ordinary leave, it affects in her day to day work/service period.

11. Perused the documents submitted by the CW-1 Exhibit-1, which is the Accident Information report (Form-54) clearly shows that on 12-04-2018 at about 3.00 a.m. at NH-15, Bokagaon under Chariduar Police Station, an accident had taken place and in the said accident, vehicle bearing Registration No. AS-20-1616 (ASTC Bus) was involved.

12. To disprove the fact of the claimant, the opposite party did not adduce any evidence. So, the evidence of CW-1 remained intact.

13. In order to prove that injuries sustained by the claimant, she has exhibited prescriptions, reports and registration form marked as Exhibit-2 to Exhibit- 29 and Exhibit-31 to Exhibit- 32 and Cash Memos marked as Exhibit-30(1) to Exhibit-30(44). From the exhibited documents, it is clearly found that the claimant sustained injuries in the said accident.

14. *To determine the negligence, I am being guided by the judgment reported in 2009 ACI 287, National Insurance company Limited vs. Pushpa Rana wherein it was held that "in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under section 279/304 A IPC or the certified copy of the FIR or in addition the recovery memo and the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent."*

15. **In the case of Ranu Bala Paul & Ors. v. Bani Chakraborty & ors.** reported in 1999 ACJ 634, it was observed as under:

"In deciding a matter tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case.

In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accidents Claims Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case, No doubt before the Tribunal there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation' But the tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary inquiry and this is a legislation for the welfare of the society"

16. *In Bimla Devi and ors. vs. Himachal Road Transport Corporation and ors (2009) 13 SC 530, Hon'ble Supreme Court held that-*

" In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

17. Admittedly no FIR was registered. The claimant did not file any criminal case against driver of the offending vehicle bearing Registration No. AS-20/1616 (ASTC Bus). However, the scope of criminal proceedings and civil proceedings is entirely different. In a

criminal case, the proceedings are penal in nature whereas in proceedings before Claims Tribunal only compensation is to be assessed and the test of preponderance of probability of negligence is sufficient to award compensation.

18. In the case of DTC Vs. B.P. Singhal 2008(101) DRJ 460 it was held that "non registration of complaint or FIR cannot have any adverse effect if the claimant are otherwise able to establish the negligence on the part of the driver of the offending vehicle".

19. Therefore from the above discussion, it is held that the Claimant – Kangkana Hazowary sustained injury in a road traffic accident, which had taken place on 12-04-2018 due to rash and negligent driving of the driver of the offending vehicle bearing Registration No. AS20/1616 (ASTC Bus). Hence, issue no.-1 is decided in favour of the claimant.

Issue No. 2:

20. It. Is admitted fact that the offending vehicle bearing Registration No. No. AS20/1616 (ASTC Bus) is a Govt. vehicle which had no insurance coverage. So, O.P. Nos. 1 & 2 are liable to pay compensation to the claimant.

21. In this regard, the claimant has submitted Cash Memos (Exhibit-30(1) to Exhibit- 30(44)) amounting to Rs. 1,87,269/- only relating to the expenses in her treatment. Exhibit-2 to Exhibit- 29 and Exhibit-31 to Exhibit- 32 are the prescriptions against these

Cash Memos. As such , these Cash Memos i.e. Exhibit-30(1) to Exhibit-30(44) are considered as the valid and cogent documents regarding the expenses incurred by the claimant towards her injuries sustained in the alleged accident. Except Ext.-30(22) which bears no seal and signature. While the claimant (CW-1) had revealed in her cross examination that the payment made in advance vide Ext-30(42), Ext-30(43) and Ext.-30(44) has been adjusted in the final bill. So the same are not considered.

22. Regarding the compensation, the claimant has claimed that she has spent an amount of Rs.2,00,000/- for her medical treatment.

23. On careful scrutiny of bills and vouchers, it is found that the injured had actually incurred expenditure of Rs.1,27,989/- during the treatment.

24. Ext.-5 is the Discharge Certificate which shows that claimant sustained injury to Right Knee due to R.T.A. on 12.04.2018. The claimant has not submitted any Disability Certificate.

25. Now coming to the question of income and occupation of the claimant, she has stated that she was working as Assistant Manager, IDBI Bank, Dhemaji Branch and her monthly salary was Rs. 35,000/-. CW-2 is the Branch Manager, IDBI Bank, Tezpur and Ext.-38 which is the Computer generated salary certificate confirmed the monthly salary of the claimant.

Thus, the income of the injured/claimant has been duly proved by adducing cogent and reliable evidence.

26. In her evidence, the claimant (CW-1) stated that due to her injuries, she had to be on leave from her duty for 4 months. Out of that 4 months, her service authority granted leave with salary for 15 days only. While for the remaining leave period, she was granted leave without salary. So, she had to suffer loss of salary to the tune of Rs.1,22,500/- and loss to her future prospect. In her cross examination, CW-1 confirmed that she received salary upto June 2018. Ext.-37 is the leave period w.e.f. April 2018 to August 2018 and the leave was taken by the claimant for her surgery. CW-2 confirmed that during that period, claimant was paid half salary. He stated that from 20.06.2018 to 10.08.2018 claimant availed extra ordinary leave and during this period, she was not entitled to any salary. CW-2 also confirmed that the gross salary of the claimant in the month of June, 2018 was Rs.45,877/-. Ext.-38 is the Computer generated salary certificate.

27. Now, the question is as to who is liable to pay the compensation to the claimant. It is revealed from the Accident information Report (Form-54) that the offending vehicle bearing Registration No.AS-20/1616 (ASTC Bus) was a Government vehicle. Accordingly the OP No.1, the Managing Director, who represents the Assam State Transport Corporation, the owner of the offending vehicle is liable to pay the compensation to the claimant.

This issue is decided accordingly.

28. Having considered the injury sustained by the injured claimant, expenditures incurred thereof and the fact and circumstances of the case, the claimant would be entitled to just and reasonable compensation in the instant case which is assessed as under:-

Thus, total amount of compensation is as follows:

1.	Medical expenses and incidental expenses (Rs. 1,27,989/- + Rs. 10,000/-	Rs. 1,37,989/-
2.	Pain and suffering	Rs. 1,00,000/-
3.	Loss of amenities	Rs. 1,00,000/-
4.	Future medical expenses	Rs. 50,000/-
5.	Loss of income (For 2 months 15 days.)	Rs. 1,14,692/-
	Total	Rs. 5,02,681/-

Total Rupees Five lakhs two thousand six hundred eighty one only.

ORDER

29. Accordingly, The Managing Director, Assam State Transport Corporation is directed to make payment of **Rs. 5,02,681/- (Rupees Five lakhs two thousand six hundred eighty one only)** with interest @ 7.5% per annum from the date of filing the claim petition i.e. 02.09.2019 till its realization.

30. The OP. No.-1, Managing Director, Assam State Transport Corporation is directed to release the awarded amount with interest in favour of the claimant within one month from the date of the order to this Tribunal only by RTGS/NEFT for onward disbursement to the claimant.

31. Let a free copy of judgment be furnished to the parties concerned as provided u/s 168(2) of MV Act within 7 days from the date of judgment.

32. Accordingly, this instant case is disposed of a contest.

Given under my hand and seal of this Tribunal on this 9th day of November, 2022, at Sonitpur, Tezpur.

Dictated and corrected by me.

Member, MACT
Sonitpur, Tezpur.

(Smti Bobita Kshetry)
Member, MACT
Sonitpur, Tezpur.

ANNEXURE

1. Witness of the Claimant:

Smt. Kangkana Hazowary

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Accident information report (Form 54).

Ext. 2 to Ext. 32 Medical Prescriptions, Advice Slip,
Discharge vouchers, Reports and
Cash Memos

Ext. 33 to Ext. 38 Bank Documents.

4. Exhibits of the Defence:

NIL.

(Smti Bobita Kshetry)
Member,
MACT, Sonitpur, Tezpur