

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

**Present : Sri R. Goswami,
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur**

MAC Case No.48 of 2019(I)

1. Sri Sankar Deka,
S/O Sri Dhiren Deka,
Vill. Ward No. 5 Dhekiajuli Town,
P.O. & P.S. Dhekiajuli,
Dist. Sonitpur, Assam.....claimant.

-Versus-

1. Smti. Chandrama Medhi Deka,
Wife of Sankar Deka,
Vill. Bhalukdhara, Dhekiajuli,
P.O. & P.S. Dhekiajuli,
Dist. Sonitpur, Assam
(Owner of the vehicle No.AS-01BK/9406 (Maruti Swift
Dzire)

2. Sri Daneswar alias Baneswar Deka,
Son of Late Late Bohidhar Deka,
Vill. Nagaon,
P.O. & P.S. Baihata Chariali,
Dist. Kamrup(R), Assam,
(Owner of the vehicle No.AS-AS-25AC/2599 (Star
Bus)

3. Md. Mahib Ali Ahmed,
Son of Fazir Ali,
Vill. Boge,
P.S. Baihata Chariali,

Dist. Kamrup(R), Assam,
(Driver of the vehicle No.AS-25AC/2599 (Star Bus).

4. National Insurance Co. Ltd.
Through Tezpur Branch
(Insurer of the vehicle No.AS-25AC/2599 (Star Bus)
5. ICICI Lombard General Insurance Co. Ltd.
(Insurer of the vehicle No.AS-01BK/9406 (Maruti
Swift Dzire).....Opp. Parties.

ADVOCATES APPEARED

For the claimant :-Doli Ojha, Advocate.
For the O.P. No. 1 :- D. Gogoi, Advocate.
For the O.P. No. 2 & 3 :-Ex-parte.
For the O.P. No. 4 :-T. Gosh, Advocate.
For the O.P. No. 5. :- K.Kr. Bordoloi, Advocate.

Date of Argument :-**22-12-2021.**
Date of Judgment :-**10-01-2022.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by one Sri Sankar Deka, hereinafter shall be referred to as the claimant, praying for grant of compensation on account of injuries sustained by him in a motor vehicle accident.

1. The case in brief is that on 11/5/2014 at about 4-25 P.M. the claimant was driving a Swift Dzire on his way back home on NH-15 from Guwahati along with his wife and her brother. On the way near Jhargaon bifurcation under

Rowta Police Station a star bus bearing registration No. AS-25AC/2599 coming up from the opposite direction due to rash and negligent manner it had been driven had hit the claimant's vehicle along with another who was standing by the side of the road with his motor cycle. All three occupants of the vehicle had sustained serious injuries. Hence this prayer for Rs.5,50,000/- in compensation.

2. O.P. No. 1 Smti. Chandrama Medhi Deka in her written statement contended about the present claim being not maintainable in law. The answering O.P. denied that the alleged RTA in which the claimant had sustained injuries had resulted from the negligence of the vehicle Swift Dzire. Thus according to answering O.P. any compensation, if allowed by the tribunal, is to be borne by the insurer of the offending star bus. Thus the answering O.P. prays for exoneration from the case.

3. The case proceeded ex-parte against O.P. No. 2 and O.P. No. 3, owner and driver respectively of the alleged offending star bus bearing registration No. AS-25AC/2599.

4. O.P-4, National Insurance Co. Ltd. the insurer of the alleged offending vehicle No. AS-25AC/2599 in its written statement inter alia denied the contention raised by the claimant. The answering O.P contended about the present claim petition not being maintainable in law for failure of the driver/owner of the insured vehicle to communicate the information with regard to the date, time and place of RTA, the name of the driver, particulars of his driving license,

particulars of persons injured or killed in the accident and failure of the officer in charge of the police station concerned to communicate a copy of the report prepared following information regarding the accident involving death or bodily injury to any person within 30 days to claim tribunal, insurer and the owner of the offending vehicle under section 134(C) and 158(6) of the M.V Act respectively. According to answering O.P. since alleged RTA had resulted from head on collision between two vehicles, the claimant is called upon to substantiate the sole negligence of the driver of the bus bearing registration No. AS-25AC/2599. The answering O.P. further contended that since indemnifying the insured, with regard to payment of compensation to the third party, is subject to insured not violating specific conditions of the insurance policy, the answering O.P. reserves its right to avail defence available u/s- 149(2) a (ii) by adducing evidence. The answering O.P. thus prays for dismissal of the claim petition.

5. O.P. No. 5 ICICI Lombard General Insurance Co. Ltd., the insurer of the Maruti Swift Dzire involved in the RTA, claimed the present claim petition not being maintainable in law as the alleged occurrence had taken place on 11-05-2014 and the present claim has been filed on 07-09-2019 almost after a gap of 5 years 4 months 27 days same being barred u/s 2(i) and 3 of the Limitation Act 1963 as per M V Amendment Act 2019. According to answering O.P. the driver of the alleged offending vehicle

bearing registration No. AS-25AC/2599 (star bus) did not have a valid driving license and the vehicle was plied on the road without a effective route permit. The answering O.P. thus contended that since indemnifying the insured, with regard to payment of compensation to the third party, is subject to insured not violating specific conditions of the insurance policy, the answering O.P. reserves its right to avail defence available u/s- 149(2) a (ii) by adducing evidence. The answering O.P. thus prays for dismissal of the claim petition.

6. Upon pleadings above following issues have been framed.

a) Whether the claimant Sri Sankar Deka had sustained injuries in the RTA on 11-05-2014 at about 4-25 P.M. that had been caused due to rash and negligent driving by the drivers of the vehicle No. AS-25AC/2599(Star Bus) and AS-01BK/9406 (Maruti Swift Dzire)?

b) Whether the claimant is entitled to get any compensation as prayed for? If so, from whom and to what extent?

7. The circumstances discussed in the affidavit filed in the evidence of the CW-1, the claimant suggest that on 11/5/2014 along with his wife CW-1, the claimant, was on his way back home from Guwahati, driving a swift Dzire bearing registration No.AS-01BK-9406 owned by his wife. On the way near Jhargaon Tinali a star bus bearing registration No. AS-25AC-2599, due to rash and negligent

manner it was driven had collided head on with the vehicle CW-1 was driving. All occupants of CW-1's vehicle had sustained serious injuries.

8. CW-1 in the course of his deposition had exhibited following documents:

1. Ext. 1 is the accident information report in Form 54.
2. Ext. 2(i) to 2(iv) are the certified copies of the FIR, charge sheet, and seizure list and injury report respectively.
3. Ext. 4(1) to 4(28) are documents relating to medical treatment of the claimant.
4. Ext. 5(1) to 5(20) are cash memos, money receipt amounting to Rs. 34,035/-.

Cross by O.P. No. 5.

9. In his cross examination CW-1 deposed having claimed the compensation from the insurer of the alleged offending vehicle bearing registration No.AS-25AC/2599. CW-1 admitted to his wife being the registered owner of the swift Dzire he was driving and involved in the accident. CW-1 admitted not being a paid driver. CW-1 also admitted to having been charge sheeted in the criminal case registered by Rowta P.S. on the FIR lodged by one Intaj Ali at Rowta P.S. on 26-5-2014. CW-1 also admitted that the Swift Dzire he was driving is a new vehicle and was not registered on the day of the alleged occurrence. CW-1 admitted to his vehicle first striking at a motorcyclist on the way and then colliding head on with the bus coming up

from the opposite direction. CW-1 denied the suggestion that his vehicle had hit the alleged offending bus on its right side. CW-1 admitted to content in the FIR, ext-2(1) indicating Maruti swift Dzire that he was driving due to his negligence had first hit a motorcycle, throwing the rider off his seat on the road and then had run in to the upcoming bus. CW-1 admitted to facing trial in the court of J.M.1st Class Udalguri in the criminal case registered following the accident against him and charge sheeted. CW-1 denied the suggestion that he is not entitled to claim any compensation as the RTA had resulted due to his negligence and not due to negligence of the driver of the star bus.

10. The circumstances being discussed in the affidavit filed in the evidence of CW-2 also suggest that she had accompanied her husband, the claimant in the swift desire owned by her, from Guwahati. On the way near Jhargaon Tinali under Rowta P.S. a star bus coming up from the opposite direction due to negligence of its driver had collided head on with their vehicle, causing injuries to all its occupants including herself.

11. In her cross examination CW-2 deposed her husband claiming compensation from the insurer of the alleged offending bus. CW-2 admitted to being the registered owner of the Swift Dzire involved in the accident. CW-2 had also admitted to her husband driving the same on the day of the alleged occurrence. CW-2 also admitted to her husband not being a paid driver. CW-2 admitted to her

husband facing trial in the court of J.M.1st Class Udalguri in the criminal case registered following the accident against him and charge sheeted. CW-2 denied the suggestion that the RTA in which her husband had sustained injuries had been caused due to her husband's negligence and as such is not entitled to claim any compensation from the insurer of the starbus.

12. *To determine the negligence, I am being guided by the judgment reported in 2009 ACJ 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.*

13. In Sunita & others Vs Rajasthan SRTC & others as reported in (2020)SCC 486 two judges bench of Hon'ble Supreme Court had held that the approach in examining the evidence in accident claim cases is not to find fault with non-examination of some "best" eye witnesses in the case but to analyze the evidence already on record to ascertain whether that is sufficient to answer the matter in issue on the touch stone of preponderance of probability.

14. In his evidence as well as in the claim petition the claimant has deposed about claiming compensation from the insurer of the alleged offending Star bus. It is admitted fact that three vehicles were involved in the RTA in which the claimant had sustained injuries, one a two wheeler and other two were four wheelers. However whether it was the sole negligence of the claimant Driving the Maruti Dzire, involved in the accident, that had caused the RTA or it was an accident of composite negligence, where the drivers of other two vehicles had their respective complicity.

15. Coming to the evidence of CW-1 he admitted to being the driver of the Swift Dzire involved in the RTA on the day of the alleged RTA. Also admitted to his wife being the owner of the same. It is also admitted by the CW-1 that no FIR was lodged at Rowta Police Station alleging negligence of the driver of the Bus being the cause of the RTA immediately following the RTA. No reason would suffice the claimant's laxity on this count since he has claimed compensation for injuries sustained in the RTA from the insurer of the alleged offending bus. CW-1 had also admitted to the FIR ext-2(i) lodged by one Intaj Ali indicating his negligence as the driver of the Swift Dzire being the sole cause of the RTA as the Swift Dzire he was driving after hitting the informant's son standing with his motor cycle by the side of the road had struck the upcoming Star bus. Now CW-1 admitting to the charge sheet having been filed against him as the driver of the Swift Dzire involved in the RTA and admitting to facing trial

in the charge sheeted case in his evidence is an indication of admission of implication of his complicity in causing the RTA. Besides the CW-1 having not related the alleged fact the Swift Dzire he was driving hitting the motorcyclist standing by the side of the road in the affidavit furnished in his evidence is an indication of an attempt to suppress material truth with regard to the actual cause of the RTA. This deliberate attempt to conceal material facts as to the cause of the accident has raised scope for suspicion with regard to alleged fact of the negligence of the driver of the alleged offending bus being the cause of the RTA.

16. Thus having analyzed the evidence already on record on the touchstone of preponderance of probability and in the light of legal propositions in the decisions cited, the claimant has failed to substantiate the alleged fact of the RTA, in which he had sustained injury, had been caused due to negligence of the driver of the alleged offending bus.

Issue No. 2

17. Now coming to the submission of the Id counsel for the O.P-5 the insurer of the offending Maruti Swift Dzire, I am inclined to hold that the claimant has not claimed any compensation for damage from the OP-5, the insurer of Swift Dezire involved in the accident. Any way such claim for damage by the claimant from O.P.No.5 would not be feasible under section 147 and 165 of the Act.

18. Coming to legal propositions arrived at in Ram Khiladi & another Versus the United India Insurance Company Ltd, cited by learned counsel for O.P. No.5 insurer of Swift Dzire, the Hon'ble Supreme court ultimately concluded that the liability under section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as is also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of section 163A of the Act. It is further observed that for the said purpose, only the terms of the contract of insurance could be taken recourse to.

19. In New India Assurance Co. Ltd. Vs Sadanand Mukhi and others and in Nigamma and another Vs United India Insurance company Ltd, relied upon by the Id counsel for OP-5, are taken up together as facts related in both these decisions are similar apart from legal propositions arrived at in both these decisions. In the former it was the son of the insured who died riding a motor cycle belonged to his father in an accident while confronting a stray dog and in the later the rider of the two wheeler is the borrower from the original owner and had died striking a bullock cart. The claimant in the former is the father, the insured and in the later are the legal representatives of the deceased claiming compensation on the structured formula u/s 163A of the M.V. Act from the insurers of the vehicles involved in the accident. I am inclined to refer to para 19 of Nigamma Vs United India Insurance Co. Ltd as it answers the issue in question in both cases. Hon'ble Supreme Court held as

such ".....But if it is proved that the driver is the owner of the motorcycle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on reading of section 163A of the MV Act. Accordingly, the legal representatives of the deceased who have stepped in to the shoes of the owner of the motor vehicle could not have claimed compensation u/s 163-A of the MV Act."

20. Now coming to the present case the claimant having filed the claim u/s 166 of the MV act claiming compensation for injuries sustained from the insurer of the alleged offending bus is a third party with regard to the insurer of the Bus. the legal proposition arrived at in both the above decisions are in respect of claim of compensation for damages by owner of the insured vehicle involved in the accident from the insurer under structured formula u/s- 163(A) of M.V. Act and as such not applicable in the present case.

21. It is evident from issue No. 1 that the claimant has failed to substantiate that the RTA in which the claimant claimed to have sustained injuries had been caused due to negligence of the driver of the bus bearing registration No. AS-25AC/2599 (star bus) and as such the claimant is not entitled to any compensation for personal injury caused to him in the RTA on 11-05-2014 from the insurer of the vehicle bearing registration No. AS-25AC/2599 (star bus).

O R D E R

In the result, the claim petition stands disposed as no claim.

Given under my hand and seal on this 10th day of January, 2022.

Dictated and corrected by me.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

(R. Goswami.)
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

ANNEXURE

Witnesses of the Claimant:

1. Shankar Deka.
2. Chandrima Medhi Deka

Witness of the Defence:

None.

Documents Exhibited in evidence by CW-1:

Ext. 1 is the accident information report in Form 54.

Ext. 2(i) to 2(iv) are the certified copies of the FIR, charge sheet, and seizure list and injury report respectively.

Ext. 4(1) to 4(28) are documents relating to medical treatment of the claimant.

Ext. 5(1) to 5(20) are cash memos, money receipt amounting to Rs. 34,035/-.

Exhibits of the defence:

NIL.

(R. Goswami.)
Member
MACT, Sonitpur, Tezpur