

**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.21of 2019(I)

1. Deepak Rai Khan @Deepak Ray Khan
S/O Param Hans Rai
Village: Dhekeri gaon.
PO. Chariduar.
P.S. Chariduar,
Dist. Sonitpur, Assam.....claimant.

-Versus-

1. Bikash Logun
S/O Koilan Lagun
Village:Paniputa
PO. Chariduar.
P.S. Chariduar,
Dist- Sonitpur, Assam,

2. Bikash Logun
S/O Koilan Lagun
Village: Paniputa
PO. Chariduar.
P.S. Chariduar,
Dist- Sonitpur,

3. Bharati AXA General Insurance Company Ltd.
Second Floor, Mile store Building, sixth mile,
G.B.Road.PIN-781022Opp. Parties.

ADVOCATES APPEARE

For the claimant :-Advocate. Md Salim Khan.

For the O.P. No. 1 & 2 :-Ex-parte.

For the O.P. No. 3 :-Advocate. Sudesh Singh.

Date of Argument : **07.08.2021**

Date of Judgment :- **17.08.2021**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by one Deepak Rai Khan, 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 07-11-2018 at around 9-00 P.M. the claimant on his way back home from Balipara Market had been hit by a motor cycle bearing registration No.AS-12-Q-8175, coming from the opposite direction. The claimant in his application claimed to have sustained grievous injuries and attributed the cause of his injuries in the RTA to rash and negligent manner the person on the seat of the said two wheeler was riding it at the relevant

point of time. The claimant thus claims Rs.7,00,000/- (Rupees seven lakhs) in compensation.

2. Following the accident Chariduar P.S. case No.331/2018 u/s- 279/338 IPC had been registered on the FIR lodged by one Pakija Khan, the wife of the claimant. Charge sheet had been filed against Bikash Lagun, the owner cum rider of the offending two wheeler (TVS Apache RTR 160) bearing registration no. AS-12Q /8175.

3. O.P No.1 and OP No.2, owner-cum-driver of the offending two wheeler did not put in his appearance and the case proceeded ex-parte against him. The answering OP-3, the insurer contested the case and submitted written statement. Answering OP in his written statement holds the present claim not being maintainable for noncompliance of section 134 (c) and section 158(6) of M.V. Act, 1988. The answering OP contends that information with regard to the RTA, injured person, particulars of the insurance cover and report of the Chariduar P.S. case No.331/2018 u/s- 279/338 IPC that had been registered by the police following the RTA had not been communicated to him by the insured and the police in that order. The answering OP reserves its right to defend itself from the liability to satisfy the award for compensation in case of breach of specified conditions of the policy, protection contemplated in section 149 (2)(a)ii of the Act. Thus according to the answering OP its liability to indemnify the insured with regard to satisfying the

award money allowed by the tribunal is subject to fulfilling conditions of the policy cover.

4. Upon pleadings above following issues have been framed.

1) Whether on 7/11/2018 at around 9-00 PM the claimant Deepak Rai Khan @ Deepak Ray Khan had sustained grievous injuries in a RTA caused due to rash and negligent manner the OP no.1 was riding the two wheeler (TVS Apache RTR 160) bearing registration no. AS-12Q /8175.

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

5. I have heard argument advanced by Learned Counsels on both sides. I have also perused the documents available on record.

Issue No.1.

6. Coming to the evidence of the claimant in the affidavit submitted by him as CW-1 he has claimed having been hit from behind his back by a two wheeler (TVS Apache RTR 160) bearing registration no. AS-12Q /8175 on 7/11/2018 at around 9-00 PM when he was on his way back home from Jarakhar. He had been admitted in to EMM hospital with comminuted Fracture of the right leg and fractured jaw on 7/11/2018 and was discharged on 17/11/2018. CW-1 had attributed the cause of his injuries

to the rash and negligent manner the respondent no.1 was riding his two wheeler at the relevant point of time. The injuries sustained by him in the accident has rendered him unfit to take up any avocation. CW-1 claimed to have spent around Rs.2,00,000/-(Rupees two lakhs) in his treatment and claims Rs.12,99,900/-(Rupees twelve lakhs ninety nine thousand nine hundred) only in award in compensation. CW-1 exhibited following documents in support of his claim; ext-1 is the form 54, ext-2 FIR, ext-3 charg-sheet, ext-4 sketch map, ext-5seizurelist, ext-6MVI report, ext-7 medical report, ext-8 discharged certificate, ext-9 to ext.9(1) medical reports, ext-10 to ext-10(1), income certificate, ext-11(1) to ext-11(3) are photographs, ext-12 to ext-12(85) are bill and cash memos and ext-13 to ext-13(10) are x-ray plates.

7. In his cross CW-1 admitted to having not mentioned in his affidavit as to how he was going towards his sister's house on the road on the Jarashar Bridge on the day of the alleged occurrence and not being able to recollect the registration no. of the offending two wheeler. The CW-1 denied the suggestion that there was no accident as claimed by him.

8. CW-2 Pakija Khan, wife of the claimant, claimed in her affidavit submitted in evidence of having filed the written FIR on 19/10/2018.

9. In her cross cw-2 admitted not having seen the alleged occurrence. CW-2 denied the suggestion that

injuries sustained by her husband did not result in a RTA on 7/11/2018.

10. Having discussed the evidence available above as to the cause of the RTA in which the claimant had sustained injuries I come down to submission of Ld counsels.

11. The Ld counsel for the claimant in the course of his argument put reliance on few decisions by our Apex court and Gauhati High court which are looked in to as the trial proceeds to its conclusion. In one of the decisions cited, **Dulcina Fernandes and others Vs Joaquim Xavier Cruz and another as reported in 2013 (4)T.A.C.827(S.C.)** the Supreme court had set aside in appeal the decision of the Tribunal fractionalizing the award in compensation by drawing adverse inference against the deceased for non-examination of the pillion rider as witness by allowing the fractionalized award sum in compensation in favour of the claimants.

12. Apex court in its decision in **Sunita Vs Rajasthan SRTC as reported in (2020)19SCC486** has reiterated its above view by holding that the approach in examining the evidence in accident claim case is not to find fault with non-examination of some "best" eyewitness in the case but to analyse 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.

13. The claimant in his evidence CW-1 has specifically attributed the cause of his injuries to the rash and

negligent manner, the respondent No.1 was riding his two wheeler that had hit him from behind on the Jarashar Bridge. The FIR, in the criminal case, the seizure list in respect of the offending two wheeler, the MVI report, which have been exhibited by the claimant in his evidence above coupled with the certified copy of the charge sheet, ext-3, submitted in the criminal case registered by Chariduar PS against the respondent -1 following the RTA on 7/11/2018 are an indication of the circumstances related to by the claimant in his evidence being probable. In my findings as such I am also 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. Thus summing up the entire discussion above the issue No-1 is accordingly decided in favour of the claimant.

Issue No. 2

14. Ext-5, the certified copy of the seizure list in the criminal case, exhibited by CW-1 in his evidence, reveals that the offending two wheeler (TVS Apache RTR 160) bearing registration no. AS-12Q /8175 was insured with

Bharati Axa General Insurance Co.Ltd on the day of the alleged occurrence i.e.7/11/2018 and was valid up to 05/05/2019. Although in the written statement the insurer pleaded breach of policy condition, the respondent No-1, the insured Bikash Logun not being in possession of a valid license on the day of the alleged occurrence and claimed the availability of the defence as envisaged u/s 149 (2) (a)(ii) of the Act but has not adduced any evidence in this respect.The position of law in this respect has been made clear in **National Insurance Co. Ltd Vs Swaran Singh,(2004)3SCC 297** that the defence to the effect that the license held by the person driving the vehicle was a fake one, would be available to insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not whether the insured did not take reasonable and adequate care and caution to verify the genuiness or otherwise of the license held by the driver, would be a question which will have to be determined in each case.

15. Coming to awarding just compensation, in the catena of successive decisions our Apex court contemplated just compensation which is just and equitable rather than a bonanza or source of profit.

16. In the present case the assessment of compensation being in respect of personal injury, the discharge certificate, ext-8 issued by EMM Hospital & Research Centre is an indication that the claimant had undergone treatment for injuries comprising comminuted fracture of

the right leg, head injury and fracture of jaw w.e.f 7/11/2018 to 17/11/2018 and was discharged in improved condition. Thus the assessment has to be done in respect of grievous injuries as permanent disability in respect of any limb is not suggested in the discharge certificate.

17. In his submission, with regard to different heads of damages for which compensation is to be assessed, the Id counsel for the claimant has put reliance on the **Apex court's decision in Kajal Vs Jagadish Chand and others as reported in 2020(1)TAC 705(S.C)** wherein Apex court had laid down principles of assessment in a case of personal injuries such as loss of earning, transportation, special diet, attendant charges, loss or diminution to pleasures of life and loss of future earning capacities in addition to expenses incurred by the injured on medical treatment.

18. The Id counsel also claimed that injuries have rendered the claimant incapacitated in resuming his usual vocation, cultivation and running grocery shop. The claimant has not submitted any disability certificate in this regard in evidence but his counsel in support of his submission put reliance upon the law laid down by **Gauhati High Court in Shafiar Rahman Versus United India Insurance Co. as reported in 2013(1)GLD 413(Gau)** where in it was held that if from the medical evidence it is found that some destruction or permanent impairing of the powers of any member or joint

have been caused from the injuries that can be treated as permanent disablement.

19. Since the report in the discharge certificate of the claimant, ext-8, the orthopedist concerned has not suggested any further treatment or for that matter of permanent disability in respect of any limb it is less likely that the claimant would be rendered incapacitated to resume his usual vocation after recuperation.

20. Now coming to assessment of compensation on damages, both pecuniary and non pecuniary, the hospital bill and cash memos in respect of purchase of medicines in connection with medical treatment received by the claimant, ext-12(1) to ext-12(85) sum up to Rs. 91,329. In addition the claimant is awarded Rs.1000/- on transportation charge, Rs.10,000/- on the expenditure relating to extra nourishment and attendant during stay in the Hospital. Apart from the expenses relating to medical treatment, the claimant is awarded a sum of Rs. 20,000/- on pain and suffering, Rs.20,000/- on loss of amenities and convenience and coming to awarding a sum on the head of loss of earnings during treatment, I am inclined to consider ext-10, the certificate issued by circle officer reflecting the annual income of the claimant, Rs.80,000/- per annum and allow a lump sum of Rs.13,000/- on this head, totaling Rs.1,55,329/- (Rupees one lakh fifty five thousand three hundred twenty nine) only.

21. Thus the claimant is awarded a sum of Rs. 1,55,329/- (Rupees one lakh fifty five thousand three hundred twenty nine)only from OP-3, Bharti AXA general Insurance Company Ltd in compensation. Hence, issue No. 2 is decided accordingly.

O R D E R

In the result, the claim petition is allowed, awarding Rs.1,55,329/- (Rupees one lakh fifty five thousand three hundred twenty nine) only with interest thereon @ 6 % per annum from the date of filing of the case i.e.26/7/2019 till full and final realization. The O.P. No. 3 Bharti AXA general Insurance Company Ltd is directed to make payment of the aforesaid amount within a period of 30 (thirty) days from the date of receipt of order in to the account of the Member MACT through NEFT. Claimant is directed to furnish his Bank details of any Nationalized Bank to this Tribunal.

Given under my hand and seal on this 17th day of August, 2021.

Dictated and corrected by me.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

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

A N N E X U R E

1. Witnesses of the Claimant:

1. Sri Deep Kumar Rai @ Deepak Rai Khan.
2. Pakija Khan.

2. Witness of the Defence

None.

3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2 to 6 are documents relating to criminal case.

Ext.7 to 13(10) are medical documents/cash memo/bills etc.

4.Exhibits of the defence.

NIL.

(R. Goswami.)

Member

MACT, Sonitpur, Tezpur