

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

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

**MAC Case No: 14/2021 (Injury)**

1. Lecho Dhanuwar @ Less Dhanuwar  
@ Lesso Dhanuwar  
S/o : Atowa Dhanuwar  
Vill : Thakurbari T. E. (Naharbari)  
P.O. : Thakurbari  
P.S. : Rangapara  
Dist.: Sonitpur, Assam

---- Claimant

-Vs-

1. Sri Hiren Dutta  
S/o Lt. Boloram Dutta  
R/o- Ward No. 03, Rangapara Town  
P.O. & P.S.: Rangapara  
Dist : Sonitpur, Assam  
----Owner of the offending vehicle

2. Sri Rajesh Boro  
S/o Lt. Nipen Boro  
Vill. : No.1 Namani Gaon  
P.O. & P.S. : Rangapara  
Dist. : Sonitpur, Assam  
----Driver of the offending vehicle

3. New India Assurance Co. Ltd.  
---- Insurer of the offending vehicle  
---- Opposite parties.

Date of argument: 14-11-2022, 16-11-2022, 12-12-2022

Date of Judgment: 17-12-2022

**APPEARANCE:**

Advocate for the claimant: Mr. R. Baruah

Advocate for the opposite party No.2: Mr. A. Borah

Advocate for the opposite party No.3: Mr. P. S. Sethi

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

**1.** The claimant– Lecho Dhanuwar @ Less Dhanuwar @Lesso Dhanuwar has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs.2,00,000/- (Rupees two Lakhs) only for the injuries sustained by him in the motor vehicle accident .

**2.** The case, in brief, is that on 02-07-2020, at about 3.30 P.M. claimant- Lecho Dhanuwar @ Less Dhanuwar @ Lesso Dhanuwar was coming on his bicycle from Rangapara Town to his home at Thakurbari after marketing. Then, at Thakurbari Road near Greenland English School, the claimant met with an accident as the offending vehicle bearing Registration No. AS-01 H/5259(709 Bus) which was coming from same direction from Rangapara to Tezpur, hit him from the backside with rash and negligent driving. As a result, claimant sustained grievous multiple injuries on his whole body. And he spent more than 1.5 lacs in his treatment which is still continuing.

It is claimed that the claimant is only earning member of his family and he has three minor children including his wife namely, Lakhi Dhanuwar. Now, the claimant is physically disabled at his right arm and thereby unable to work with his right hand. He is unable to earn his livelihood for a long period and also his future prospects of earning livelihood for himself and his family has been hampered. The Injured claimant has applied for physically disabled certificate before the concern Authority. It is alleged that the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. AS-01 H/5259 (709 Bus).

**3.** The case proceeded exparte against OP No. 1. While the O.P. NO 2 i.e. driver of the offending vehicle bearing registration

No. AS-01 H/5259(709 Bus) filed the written statement stating that the vehicle bearing Registration No.- AS-01H-5259(709 Bus) is insured with the New India Assurance co. Ltd, Tezpur Branch vide policy No. 53110031180210003595 and date of expiry is 24-07-2020. It is further stated that the offending vehicle was driven by the OP No.2 and there is no question of rash and negligent driving by the Opp. Party No.2, who is having a valid Driving Licence, vide DL. No. AR-0420090006195 Valid till (Non Transport) 09-05-2035 (Transport) 29-01-2022. Hence, prayed for dismissed of the claim petition.

**4.** Opposite Party No.3 i.e. the New India Assurance Company Ltd. also submitted written statement. It is stated that the alleged accident is the result of the contributory negligent on the part of the claimant himself while riding his bi-cycle in a very negligent manner and the OP No.3 insurance company should not be solely burdened with any intended compensation amount by this Tribunal. It is stated that the offending vehicle bearing registration No. AS-01-H/5259 (709 Bus) was not duly and comprehensively insured with the O.P. No.3 the New India Assurance Co. Ltd. on the said relevant date and time of the accident and also the O.P. No.2 driver was not having a valid driving licence to drive the said vehicle (709 Bus). Hence, the O.P. No.3 i.e. has got no any liability to pay for any compensation amount to the claimant for the alleged accident.

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

**(1)** Whether the claimant Lecho Dhanuwar Ray sustained injuries in a RTA at about 3.30 P.M. on 02/07/2020 due to rash and negligent manner of the driving the vehicle bearing No. AS-01H/5259(709 Bus), by its driver?

**(2)** Whether the claimant is/are entitled to get any compensation as prayed for and if so, from whom and to what extent?

**6.** During the course of hearing, the claimant side examined himself as CW-1. The Opposite party has not adduced any evidence.

**7.** Heard arguments of Learned Counsels for both the parties. Perused the case record as well as the documents.

**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 Parties passed the judgment on the issues so framed.

**Issue No. (1) :**

9. The claimant- Lecho Dhanuwar @ Less Dhanuwar @ Lesso Dhanuwar adduced his evidence as CW-1 and stated that on 02-07-2020, at about 3.30 P.M. while he was coming on his bicycle from Rangapara Town to his home at Thakurbari after marketing, then at Thakurbari Road near Greenland English School, he meet with an accident as the offending vehicle bearing Registration No. AS-01 H/5259(709 Bus) which was coming from same direction from Rangapara to Tezpur, hit him along from the backside due to rush and negligent driving. As result, CW-1 sustained grievous multiple injuries on his whole body. Thereafter, he was taken to Rangapara PHC at Rangapara for Primary treatment and then he was admitted to Times Hospital, Deorigaon, Mission Charali, Tezpur for better treatment. CW-1 alleged that the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. AS-01 H/5259(709 Bus). The concerned police authority of the Rangapara police station was informed about the incident and a case was registered vide Rangapara P.S. Case No. 56/2020, u/s 279/338/427(A) IPC was registered against the driver/ owner of the offending vehicle(709 Bus), Ext.1 is the Certified copy of FIR, lodged against the driver of the offending bus bearing Registration No. AS-01 H/5259(709 Bus). Ext.2 is the Accident Information Report (Form 54) showing involvement of the offending vehicle bearing Registration No. AS-01 H/5259(709 Bus) in the accident while took place that on 02-07-2020, at about

3.30 P.M. at Thakurbari Road in which the claimant sustained injuries.

**10.** In his cross examination, CW-1 stated that the accident took place on 02-07-2020 at about 3 P.M. at Thakurbari Road, near Greenland English School. The distance between the Rangapara P.S. from the place of occurrence is about 2 K.M. and the Ejahar(Ext.1) was lodged on 04-07-2020 at 5P.M. at Rangapara P.S.

**11.** *To determine the negligence, reliance is placed on the judgment reported in 2009 ACJ 287, National Insurance Company Limited vs. Pushpa Rana & ors. 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."*

**12.** *In the case of Kaushnumma Begum and others v/s New India Assurance Company Limited, 2001 ACJ 421 SC, it was held that the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or*

*damage to property would made the petition maintainable under sections 166 and 140 of the Act. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act. dealing with compensation is a benevolent legislation and not a penal one.*

**13.** *In Bimla Devi and ors. vs. Himachal Road Transport corporation and ors (2009) 13 SC 530, 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."*

**14.** In view of the evidence of CW-1 as well as the documents relating to criminal case, it is held that the claimant has been able to prove that he sustained injuries on 02-07-2020 due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. AS-01 H/5259(709 Bus).

Issue No.1 is decided in favour of the claimant.



**Issue No. (2) :**

**15.** As the claimant sustained injuries due to rash and negligent driving by the driver of the vehicle registration No.- AS-01 H/5259(709 Bus), as such he is entitled to get the compensation. Now the question is what would be the just and reasonable amount of compensation and from whom the compensation is recoverable.

**16.** Perused Ext.2 which is the Accident Information Report (Form 54), it reflect that the offending vehicle was insured with OP No.3 i.e. New India Assurance Co. Ltd. vide policy No. 53110031180200003595, valid up to 24-07-2020 in the name of the Sri Hiren Dutta, OP No.1 owner of the offending vehicle bearing registration No.- AS- 01 H/5259(709 Bus). And driver(OP No.2) was driving the offending vehicle (709 Bus) on the date of accident with a valid driving licence No. AR-0420090006195 renewed upto 19-01-2022. As the offending vehicle bearing Registration No. AS- 01 H/5259(709 Bus) was having valid insurance on the date of accident i.e. 02-07-2020, so the OP No.3, the insurer of the offending vehicle is liable to pay the compensation to the claimant.

**17.** Regarding the compensation, the claimant has claimed that he has spent an amount of Rs. 2,00,000/- for his medical treatment. In this regard, the claimant has submitted Cash Memos (Exhibit-5 to Exhibit-8, Exhibit-11 & Exhibit-14) amounting to Rs. 42,138/- only relating to the expenses incurred in his treatment. Exhibit-9, Exhibit-10 and Exhibit-12 are the Medical

Reports. Exhibit-13 is the Ambulance charge. Exhibit-15 and Exhibit-16 are the Payment Receipts of Times Hospital, but these are not medical bills and prescription by doctors concerned and, as such, are discarded. Ext.-10 which is the Discharge Certificate of Times Hospital shows the date of admission as on 03-07-2020 and date of discharge is mentioned as 05-07-2020. Therefore, the Cash Memos i.e. ( Exhibit-5 to Exhibit-8, Exhibit-11 & Exhibit-14 ) are considered as the valid and cogent documents regarding the expenses incurred by the claimant towards his injuries sustained in the alleged accident.

**18.** Upon careful scrutiny of the bills and vouchers, it is found that the injured had actually incurred expenditure of Rs. 42,138/- (Forty two Thousand One Hundred and Thirty eight ) for his medical treatment and he is entitled to get the said expenses. So, pecuniary damage comes to Rs. 42,138/-(Forty two Thousand One Hundred and Thirty eight).

**19.** Now coming to the question of income and occupation of the claimant, he has stated that he was working as Labour and his monthly income was Rs. 15,000/-. But, no income certificate is produced by him to show that he was earning Rs. 15,000/- per month. However, notional income of Rs. 5000/- be considered as monthly income of the claimant.

**20.** With regards to non-pecuniary damage, the injured claimant has definitely suffered pain and agony at the age of 32 years due to injuries sustained in the alleged accident.

So, an amount of Rs. 15,000/- awarded for pain and agony. An amount of Rs. 10,000/- is awarded for loss of income and also an amount of Rs. 15,000/- is awarded for other incidental expenses including conveyance, accommodation, diet etc.

Therefore, total compensation comes to Rs. 42,138/- + 15,000/- + Rs.10,000/-+ Rs. 15,000/-= **Rs. 82,138/- (Rupees Eighty two Thousand One Hundred and Thirty eight) only.**

Hence issue No.2 is decided accordingly.

### **ORDER**

In the result, the claim petition is allowed. Accordingly, the OP No.3 i.e. New India Assurance Co. Ltd. is directed to pay an amount of **Rs. 82,138/- (Rupees Eighty two Thousand One Hundred and Thirty eight) only** with interest @ 6% per annum to the claimant from the date of filing of the case i.e. 22-02-2021 till full and final realization.

The OP No.3 i.e. New India Assurance Co. Ltd. is directed to deposit the awarded amount within a period 30(thirty) days from the date of receipt of this order to this Tribunal only by RTGS/NEFT, for transfer of the same to the account of the claimant.

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.

Accordingly, this instant case is disposed of a contest.

Given under my hand and seal of this Tribunal on this 17<sup>th</sup> day of December, 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:

Mr. Lecho Dhanawar @ less Dhanuwar  
@ Lesso Dhanuwar

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

- Ext. 1 Certified copy of FIR.
- Ext. 2 Accident information report (Form 54).
- Ext. 3 Copy of PAN Card of the Claimant.
- Ext. 4 Copy of Aadhar Card of the Claimant.
- Ext. 5 to 8 Medical Cash Memo.
- Ext. 9 Medical Report .
- Ext. 10 Discharge Certificate of Times Hospital.
- Ext. 11 Medical Cash Memo.
- Ext. 12 Medical Report.
- Ext. 13 Ambulance Charge.
- Ext. 14 Medical Cash Memo.
- Ext. 15 to 16 Medical Payment Receipt.

4. Exhibits of the Defence:

NIL.

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