

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.22 of 2019(I)

1. Sri Amulya Pandit,
Son of Late Anil Pandit,
R/O vill. Purona Alimur,
P.O. Panchmile,
P.S. Tezpur,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Mrs. Sangita Devi Dutta,
Wife of Sri Mausam Pratim Dutta,
R/O vill. Majgaon,
P.O. Panchmile,
P.S. Tezpur,
Dist. Sonitpur, Assam,
(Owner of the vehicle No.AS-12P/5912(Scooty))

2. Sri Mausam Pratim Dutta,
Son of Dulal Ch. Dutta,
R/O vill. Mazgaon Hatbhanga Chuburi,
P.S. Tezpur,
Dist. Sonitpur, Assam,
(Driver of the vehicle No.AS-12P/5912(Scooty))

3. New India Assurance Co. Ltd.
Tezpur Branch,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam,
(Insurer of the vehicle No.AS-12P/5912(Scooty)).....Opp. Parties.

ADVOCATES APPEARED

For the claimant :- N. Islam, Advocate.
For the O.P. No. 1&2 :- Ex-parte.
For the O.P. No.3 :- P. Sethi, Advocate.

Date of Argument :- **11-02-2021.**
Date of Judgment :- **18-02-2021.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by the claimant Sri Amulya Pandit, 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 on 18-07-2017 at about 9-00 P.M. while the claimant was proceeding from Panchmile market by following extreme left side of the road, at that time one scooty bearing No.AS-12P/5912 coming from opposite direction in a rash and negligent manner knocked down the claimant. As a result he sustained grievous injuries on his person. The injured was immediately taken to Tezpur Medical College & Hospital, Tezpur and thereafter he was shifted to GMCH, Guwahati for better treatment.

2. After the accident, one case was registered vide Tezpur P.S. case No.1440/2017 u/s- 279/338/304(A) IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with New India Assurance Co. Ltd.

3. O.P. No.3 New India Assurance Co. Ltd. i.e. insurer of the alleged offending vehicle bearing No. AS-12P/5912(scooty)has submitted written statement wherein it is stated that the accident occurred on 18-07-2017 but this claim case was filed by the claimant in the month of June, 2019 i.e. after the elapse of around two years from the date of accident and also no any explanation has been given by the claimant in his claim application for the said delay, as such the instant case is required to be dismissed. It is further alleged that there was a contributory negligence on the part of the claimant also which had lead to the said alleged accident. The claimant is equally liable for the said accident, as such O.P. NO. 3 is not liable to pay any compensation to the claimant and prayed to dismiss the claim petition with cost.

4. Though notices were served to O.P. No.1 and 2 but none has appeared to contest the case . Hence, case was proceeded ex-parte against O.P. No. 1 and 2.

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

I. Whether the accident took place on 18-07-2017 at about 9-00 P.M. due to rash and negligent driving by the driver of the vehicle bearing No.AS-12P/5912(Scooty) and whether claimant Sri Amulya Pandit has sustained injury due to the alleged accident?

II. Whether the claimant is 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

7. The claimant was examined in the case as CW-1 who deposed in his evidence that on 18-07-2017 at about 9-00 P.M while he was proceeding from Panchmile in his bi-cycle towards his house, he met with an accident when a scooty bearing No. AS-12P/5912(Scooty) coming in a rash and negligent manner knocked him down. As a result he sustained grievous injuries on his person. He was admitted to Kanaklata Civil Hospital, Tezpur but he was referred to GMCH, Guwahati wherein he was treated as an indoor patient.

8. CW-1 has exhibited the following documents-

Ext. 1 Form 54 (accident information report).

Ext. 2 to 7 are the documents relating to criminal case.

Ext. 8 to 11(70) are medical documents/cash memo/bills etc.

9. In his cross-examination, CW-1 has replied that his wife Sikha Pandit had filed the FIR. He lodged FIR after 6 days from the date of accident vide Ext. 2. After the accident he was brought to the Kanaklata Civil Hospital, Tezpur.

10. Ext. 1 is the accident information report which reveals that an accident occurred on 18-07-2017 at about 9-00 P.M. at Purana Alimur under Tezpur P.S. and Amulya Pandit has sustained injury due to the alleged accident. The vehicle bearing No. AS-12P/5912(Scooty) was shown to be the offending vehicle. Ext. 2 is the FIR lodged by one Sikha Pandit alleging involvement of the vehicle bearing No. AS-12P/5912(Scooty) causing injury to her husband Amulya Pandit due to rash and negligent driving by the driver of the said vehicle. Ext. 3 is the charge sheet submitted against the driver of the scooty bearing No. AS-12P/5912(Scooty) Mausam Pratim Dutta u/s- 279/338/304(A) IPC. Ext. 4 is the seizure list of seizing the vehicle bearing No. AS-12P/5912(Scooty) and its documents. Ext. 5 is the MVI report of the vehicle bearing NO. AS-12P/5912(Activa Scooty) having following damages-- front mudguard, front show, front suspension, steering system and meter assembly.

11. *To determine the negligence, I am being 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.*

12. **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"

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 aforesaid legal proposition as well as documents relating to criminal case, it can be said that the claimant is able to prove that he sustained injury due to rash and negligent driving by the driver of the offending vehicle bearing No. AS-12P/5912(scooty).Hence, issue No. 1 is decided in favour of the claimant.

Issue No. 2

15. It is an admitted fact that the offending vehicle bearing No. AS-12P/5912(scooty) was duly insured with New India Assurance Co. Ltd. vide policy No. 53110031160100008404 valid upto 19-12-2017. The accident occurred on 18-07-2017. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e. New India Assurance Co. Ltd. is liable to pay compensation to the claimant.

16. According to the claimant, due to the alleged accident he has sustained grievous injuries on his person but it is not specifically mentioned in the claim petition or in evidence on affidavit on which part of the body the claimant has sustained injuries. One medical report of the victim(claimant) is available in the record vide Ext. 6(1) which reveals that the claimant has attended Kanaklata Civil Hospital, Tezpur on the date of accident i.e. on 18-07-2017 with alleged history of RTA. On examination doctor found CLW 3 X 2 cm seen over right knee, Exposed underlying bony structure. Tenderness over left hip joint and abrasion over left forehead and left elbow. The patient was referred to Tezpur Medical College & Hospital, Tezpur/ GMCH, Guwahati for further treatment. Ext. 8 is discharge certificate which reveals that the claimant was admitted to GMCH, Guwahati on 26-07-2017 and discharged on 16-08-2017. On examination doctor found type II compound fracture schatzker's on left tibia. Plaster left acetabular with pubic. Operation was done by inserting a plate. From the medical documents available in the record it reveals that the claimant sustained grievous injuries due to the alleged accident i.e. compound fracture tibial.

17. As per claim petition the claimant was Manager of a shop but it cannot be ascertained in whose shop he was working as Manager. It is not reflected either in a claim petition or in the evidence of the claimant. The claimant stated that he was earning Rs. 15,000/- per month. As there is no document available in the record regarding income and occupation of the claimant, under such backdrop, income of the claimant be considered under minimum rates of wages of the State of Assam.

As per Govt. notification, the present minimum rates of wages of the State of unskilled worker is Rs. 7,950/- which be taken into consideration in this case.

18. The claimant has sustained fracture injury on his left leg as such definitely it requires some time to recover. From the injuries sustained by the claimant as well as his treatment in the hospital also show that he had to confine in bed for 2/3 months for his treatment, as such definitely there was loss of income which can be assessed as Rs.7,950/-X 3 = Rs. 23,850/-. However, the claimant is also entitled to get the amount of expenditure incurred for his treatment. The claimant has submitted cash memos/vouchers amounting to Rs. 81,302/-. So, the total pecuniary damage comes to Rs.81,302./- +Rs. 23,850/- =Rs.1,05,152/-.

19. In regard to non pecuniary damage, the claimant has suffered definitely pain and agony at the age of 47 years due to the alleged accident. So, an amount of Rs.15,000/- is awarded for pain and agony and another amount of Rs. 15,000/- is also awarded for loss of amenities.

20. Therefore, total compensation comes to Rs. 1,05,152/- ++Rs.15,000/-+ Rs.15,000 = **Rs. 1,35,152/- (Rupees one Lakh thirty five thousand one hundred fifty two)only.**

21. Hence, issue No. 2 is decided accordingly.

O R D E R

In the result, the claim petition is allowed, awarding **Rs. 1,35,152/- (Rupees one Lakh thirty five thousand one hundred fifty two)only** with interest thereon @ 6% per annum from the date of filing of the case i.e. on 29-07-2019 till full and final realization. The O.P. No. 3 i.e. New India Assurance Co. 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 the Savings Account of the claimant Amulya Pandit through NEFT. Claimant is directed to furnish his Bank details of any Nationalized Bank to this Tribunal. On receipt of the same, office of Motor Accident Claims Tribunal, Tezpur will do the needful in sending the required documents to the Insurance Company for payment of compensation to the claimant.

Insurance Company is directed to furnish compliance report accordingly.

Given under my hand and seal on this 18th day of February, 2021.

Dictated and corrected by me

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

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

ANNEXURE

1. Witness of the Claimant:

(i) Amulya Pandit.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2 to 7 are the documents relating to criminal case.

Ext. 8 to 11(70) are medical documents/cash memo/bills etc.

4. Exhibits of the defence

NIL.

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