

**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. 120 of 2019(I)

1. Mrs. Juthika Dutta @ Jyotika Dutta,
Wife of Sri Habul Dutta,
Vill.- Narayanpur (Mijibari)
P.O.- Alisinga
P.S.- Dhekiajuli
Dist.- Sonitpur, (Assam)
Pin.- 784112
Caste- General
Phone No.- 9435222073.....claimant.

-Versus-

1. Sri Prodip Kr. Nath,
S/O Pitambar Nath,
Vill.- Naharbari Bangali,
P.O.- Maz-Rowmari
P.S.- Dhekiajuli
Dist.- Sonitpur, Assam,
Pin-784117
[(Owner of the vehicle No. AS-12-L-4862, (Centuro
M.Cycle)

2. Sri Kumardeed Nath
S/O Sri Prodip Kr. Nath
Vill.- Naharbari Bangali,
P.O.- Maz-Rowmari

P.S.- Dhekiajuli

Dist.- Sonitpur, Assam,

Pin-784117

[(Driver of the vehicle No. AS-12-L-4862, (Centuro M.Cycle)

3. United India Insurance Co. Ltd.

Branch Office, Dhekiajuli,

Abala Bhawan, Main Road Dhekiajuli, Sonitpur,
Assam,

[(Insurer of the vehicle No. AS-12-L-4862, (Centuro M.Cycle)

.....opposite parties.

ADVOCATES APPEARED

For the claimant :- Najrul Islam, Advocate.

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

For the O.P. No. 3 :- Paramananda Kakoty, Advocate.

Date of Argument :- 28-12-2021.

Date of Judgment :- 20-01-2022

J U D G M E N T

This is an application u/s- 166 of M.V. Act, 1988 filed by one Mrs. Juthika Dutta, praying for grant of compensation on account of her personal injuries sustained in a road traffic accident.

1. The case in brief is that on 19-04-2019 at about 6.45 P.M. the claimant accompanied by her minor daughter

were on their way back home from Narayanpur chowk on NH-15. On the way a two wheeler bearing registration no. AS-12-L-4862 (Centuro motor cycle) had hit the claimant and her minor daughter, Mallika Dutta. The claimant had fractured her left leg and her minor daughter succumbed to her injuries sustained in the RTA on the spot. Hence the claim for compensation on account of personal injuries of the claimant.

2. Following the RTA, Dhekiajuli P.S. Case No. 283/2019 U/S 279/338/304A of IPC had been registered on 23/04/2019 against Kumardeed Nath, the rider of alleged offending motor cycle.

3. The case proceeded ex-parte against OP No.-1 and OP No.-2, owner and rider respectively of the alleged offending motor cycle.

4. O.P. No. 3, the insurer of the alleged offending motor cycle United India Insurance Co. Ltd 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. 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.

5. On the pleadings aforesaid, following issues have been framed-

1. Whether on 19-04-2019 at about 6.45 PM the claimant Juthika Dutta had sustained injuries in the RTA that had been caused due to negligence of the person riding the two wheeler bearing registration No.AS-12-L-4862, (Centuro motor cycle) on that day?
2. 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 the Learned Counsel on both sides. I have also perused the documents available on record.

Issue No. 1

7. The evidence of CW-1, claimant Juthika Dutta suggest that she has claimed Rs. 15,000,00/- on account

of personal injuries sustained in a RTA involving a two wheeler bearing Registration No.AS-12-L-4862, (Centuro motor cycle). The evidence of CW-1 further reveals that on 19-04-2019 at about 6.45 PM CW-1 accompanied by her minor daughter Mallika Dutta were on their way back home from Narayanpur Chowk. On their way on NH-15 the above two wheeler had struck her and her minor daughter accompanying her causing serious injuries to both. According to CW-1 her daughter had succumbed to her injuries at TMCH immediately thereafter. CW-1 claimed having fractured her left leg in the said RTA. According CW-1 the alleged RTA had resulted due to negligence of the person riding the alleged offending two wheeler.

8. The CW-1 exhibited following documents in course of her evidence; ext. 1 AIR in Form 54, ext. 2 Adhar card, ext. 3(1) to 3(28) are prescriptions and diagnostic reports, ext. 3(29) to 3(71) are cash memos, money receipts, and hospital bills.

09. In her cross examination CW-1 claimed knowing the owner of the alleged offending motor cycle. CW-1 admitted to the alleged offending motorcycle not being insured on the day of the alleged occurrence. CW-1 also admitted having noticed in para 10 of ext-1 AIR about the validity period of the insurance policy in respect of alleged offending vehicle expiring on 16-02-2019. CW-1 denied the suggestion that she is not entitled to receive any compensation from OP No-3, the insurer of the alleged offending two wheeler.

10. CW-2 an eye witness claimed having witnessed the alleged occurrence on 19-04-2019 at around 6.45 PM at Narayanpur Chowk. CW-2 saw a motor cycle bearing registration no.AS-12-L-4862, (Centuro Motor Cycle) hitting both Mallika Dutta and her mother. According to CW-2 the RTA had resulted due to negligence of the person riding the above motor cycle at the relevant point of time.

11. Now coming to the standard of proof in a case with regard to negligence, that is summery in nature and the basic objective being payment of compensation on account of death of third person in a RTA, I am being guided by the judgment reported in **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 make the petition maintainable under [section 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.

12. I am also inclined to refer to the observation of our Apex court with regard to appreciation evidence in a MAC case in **Sunita & others Vs Rajasthan SRTC & others as reported in (2020)SCC 486** where in two judges bench of Hon'ble Supreme Court had held in para 34 of the said decision as such "..... 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 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. Coming to the present case both CW-1 and CW-2 are eye witnesses to the alleged RTA and both of them categorically held the rash and negligent manner of the person riding the motorcycle being the sole cause of the RTA in which CW-1 minor daughter had succumbed to her injuries. Cross examination of both these witnesses failed to weaken the evidentiary value of their respective evidence. Besides the evidence of both CW-1 and CW-2 is in conformity with the content of the FIR ext.-3 which points to the complicity of the person riding the motor cycle in causing the RTA in which CW-1 and her minor daughter, both pedestrians, had sustained injuries. I find the circumstances related to by both CWs resulting in the RTA coupled with the content of the FIR, ext-3, which is prima facie proof of happening of the RTA is sufficient evidence on the touch stone of preponderance of

probability to come to conclusion that the RTA in which CW-1 and her minor daughter had sustained injuries and later died had been caused due to negligence of the rider of the offending two wheeler.

Issue No. 2

14. Now coming to allowing compensation on the head of pecuniary damage, there is no evidence on record of permanent disability of any limb suffered by the claimant following injuries sustained in the RTA on 19-4-2019 and resulting loss of future income due to injuries sustained. Thus compensation to be paid to the injured is primarily confined to pecuniary damage, the expenditure incurred on her medical treatment and ancillary expenditure incurred during treatment and non-pecuniary damage relating to pain and agony suffered following injuries suffered due to negligence of others, tortfeasor.

15. Now coming to expenditure incurred on medical treatment by the claimant and following scrutiny of the cash memos money receipts and hospital bills, ext.-3(29) to ext.- 3(71) produced by the claimant in respect of payment made from time to time during treatment at TMCH at Tezpur, GMCH, Guwahati and at GNRC Guwahati, the claimant is on record to have incurred a sum of Rs.56,279/- on her medical treatment. In addition Rs.5,000/- is allowed on Transportation, Rs.4,000/- on attendant charge, Rs.5,000/- on extra nourishment, Rs. 5,000/- for loss of income towards ancillary expenditure during hospital stay.

16. Coming to payment of compensation for non-pecuniary damage, Rs.15,000/- is allowed the head of pain and suffering and Rs.15,000/- on loss of amenities. Thus a total sum of Rs.1,05,279/- is awarded in compensation to the claimant for personal injury.

17. Now the insurance policy cover in respect of the offending vehicle, motorcycle bearing registration no. AS-12-L-4862 had expired on 16/2/2019 as per informations reflected in ext-1 AIR in form 54 and the RTA in which the claimant had sustained injuries and her minor daughter had died occurred on 19/4/2019, beyond the validity period of the insurance cover. Thus the owner of the offending vehicle is held liable to pay the awarded compensation to the claimant.

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

ORDER

In the result, the claim petition is allowed, awarding **Rs.1,05,279/- (Rupees one lakh five thousand two hundred seventy nine)** only in compensation. The O.P-1 Prodip Kumar Nath the owner of the offending vehicle, motorcycle bearing registration no. AS-12-L-4862 is directed to make the payment with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 01-10-2019 till full and final realization within a period of 30(thirty) days from the date of receipt of order through NEFT in to the Bank Account of MACT, Tezpur.

Given under my hand and seal on this 20th day of
January, 2022.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

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

ANNEXURE

1. Witness of the Claimant:

- (i) Smti. Juthika Dutta alias Jyotika Dutta
- (ii) Sri Parush Nath Orang.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

- 1. Ext. 1 AIR in Form 54,
- 2. Ext. 2 Adhar card,
- 3. Ext. 3(1) to 3(28) are prescriptions and diagnostic reports,
- 4. Ext. 3(29) to 3(71) are cash memos, money receipts and hospital bills.

4. Exhibits of the defence

None.

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