

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

Present: **Smti Bobita Kshetry , AJS,**

Member, MACT, Sonitpur

Tezpur

MAC Case No: 02/ 2019 (PD)

1. Md. Hasan Ahmed
S/o: Abdul Kasim
Vill: Okcleek Pathar
P.O. & P.S: Murajhar
Dist: Nawgaon, Assam

-----Claimant

-Vs-

1. Md. Nobul Ahmed
S/O: Late Abdul Hasim
Vill- Dhekiajuli Gaon
P.O. & P.S.: Dhekiajuli
Dist- Sonitpur, Assam

--- Owner Cum Driver of the offending
vehicle(Pick up)

2. Tata AIG General Insurance Co. Ltd.

---- Insurer of the offending vehicle(Pick up)

----Opposite parties.

Date of argument: 14-10-2022, 14-11-2022

Date of Judgment: 21-11-2022

APPEARANCE:

Advocate for the claimant: Mr. S. Khan

Advocate for the opposite party No.1 : Miss P. Borah

Advocate for the opposite party No.2 : Mr. Diplu Baruah

J U D G M E N T

1. The claimant – Md. Hasan Ahmed has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs.7,00,000/- (Rupees Seven Lakhs only) for granting compensation on account of damage caused to hardware items in the Motor Accident that took place on 25/10/2018.

2. The claimant's case in brief is that on 24/10/2018, he was proceeding in the Pickup vehicle bearing Registration No. AS/12AC/8289 with his goods from Tezpur towards Bamming (Arunachal Pradesh) and on 25/10/2108 at about 0.100 hrs at 1 km in between Khuppi and Ramda, the vehicle met with an accident and it capsized. As a result, hardware items got fully damaged. The accident took place due to rash and negligent driving of the vehicle.

After the accident, Thrizino P.S. Case No.- 4/2018, U/S 279/337/338/304(A) IPC had been registered.

3. Notices were issued on the opposite party Nos. 1 & 2. Opposite Party No.1 i.e. owner/driver of the Vehicle bearing Regd. No. AS-12AC/8289(Pick up) filed the written statement and he stated that the accident took on 25/10/2018 and there was hardware items but not of 7(seven) lakhs. It is further stated that the vehicle was duly registered in the name of the owner and insured with Tata AIG General Insurance Co. Ltd. having policy No. 015867754400 valid from 22/08/2018 to 21/08/2019 and the policy was valid at the time of accident and third party property damaged is covered up to Rs. 7,50,000/- as per terms and condition. It is prayed that the instant claim case of the claimant against the answering opposite parties are liable to be dismissed.

4. Opposite Party No.2, Tata AIG General Insurance Co. Ltd. has submitted written statement and stated that the driver of the offending vehicle registration No. AS-12AC/8289(Pick up) was driven in proper manner and there was no rash and negligent on the part of the driver. The Insurance Company is not at all liable to pay any compensation to the claimant for damage of his hardware items in the said accident. The claim petition is filed malafide with the intention of making undue gain at the cost of public fund and for that reason, same is liable to be dismissed.

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 hardware items of the claimant got damaged in the motor accident, which took place on 25/10/2018 due to rash and negligent driving by the driver of the offending vehicle bearing registration No. AS-12/AC-8289(Pick up)?

(2) Whether the claimant is 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 No.2 adduced evidence of one witness as DW-1.

7. Heard arguments of Learned Counsels for both the parties. Perused the evidences on record as well as the documents submitted by the claimant and Insurance Company.

Discussion, Decision and Reason there of:

8. Issue No. (1) and (2) :

The Claimant in his evidence as CW-1 deposed that on 24/10/2018 while he was proceeding in a Pickup vehicle vide Registration No. AS/12AC/8289 which he took on rent for carrying goods from Tezpur towards Bamming (Arunachal Pradesh) then on 25/10/2108 at about 01.00 hrs about 1 km in between Khuppi and Ramda, the vehicle met with an accident and it

capsized. As a result, the Hardware items got fully damaged. It is alleged that the accident took place due to rash and negligent driving of the vehicle. CW-1 claimed that he purchased the said goods at an amount of Rs. 2,50,700/-

In support of his claim, CW1 exhibited certain documents. Ext.-1 is the First Information Report (Form 54), Ext.-2 is the Police report, Ext.-3 is the MVI Report. Ext.- 4 is the cash memo.

9. In his cross examination, CW-1 stated that he was travelling as a passenger in the Mahendra Pickup vehicle bearing Registration No.AS/12AC/8289 and was carrying the false ceiling article from Mission Chariali, Tezpur to Bamming, Arunachal Pradesh. CW-1 further revealed that he was not received any receipt from the owner of the vehicle for carrying the article. He also stated that he did not produce any witness to prove that he purchased the goods which was being carried in the offending vehicle from Tezpur.

10. Now, coming to the documents, Ext.1 which is the FIR reflects that a Thrizino P.S. Case No.- 4/2018, U/S 279/337/338/304(A) IPC has been registered against the driver of the offending vehicle. Ext.2 is the Inspection Report of the MVI. It comes out from his report that the vehicle (Bolero Pickup) is totally damaged and it is beyond economical repairable. Also, perused Ext.3 which is the Police Report of the I/O, Thrizino Police station,

West Kameng District(A.P.). As per the said report, One Bolero (Pick up) bearing Registration No. AS/12AC/8289 was proceeding to Bamming from Tezpur being driven by driver- Md. Nobul Ahmed boarded with 8(eight) labourers and on reaching 1 Km ahead from Khuppi in between Khuppi and Ramda, the vehicle met with an accident by falling into a deep gorge about 200 mtrs below from the road and 3(three) occupants died on the spot. While 4(four) others including driver sustained serious injuries and the vehicle got extensive damage. On receipt of the FIR, Thrizino P.S. Case No.- 4/2018, U/S 279/337/338/304(A) IPC has been registered, Ext.-4 is the Tax Invoice for SARS International showing purchase of goods amounting to Rs. 2,50,700/-

11. Upon going through the materials available, it is found that there is no documentary evidence to prove that the goods were being carried in the offending vehicle No. AS/12AC/8289. No document is there to show that the offending vehicle was taken on rent by the claimant to carry his purchased goods from Mission Charali, Tezpur to Bamming, Arunachal Pradesh. Claimant (CW-1) did not produce any receipt from the owner of the offending vehicle for carrying the goods on rent. No any contract entered into with the vehicle owner for carrying the purchased goods has been submitted by the claimant in this case. No any independent witness has been examined by the claimant to prove that he purchased the goods that was being carried in the

offending vehicle (Bolero Pickup) from Tezpur to Bamming, Arunachal Pradesh and that it got damaged in the accident which took place on 25/10/2018 and this fact is revealed by CW-1 himself in his cross examination. Even the owner/driver of the offending vehicle has not been examined by the claimant to prove the carriage of goods and damage of the same in the accident.

12. Furthermore, Ext.2 and Ext.3 i.e. Police Report and MVI Report does not disclose that the offending vehicle (Pickup) which met with the accident was carrying any goods and that the goods got damaged in the accident. No photograph of the damaged goods have been submitted by the claimant in this instant case in support of his claim for compensation for damage goods.

13. In view of above, it is found that the claimant has failed to prove the carriage of his goods in the offending vehicle (Pick up) which took place on 25/10/2018 and damage of his goods (hardware items) in the motor accident.

Hence, the claimant is not entitled to any compensation for damage of goods.

The issues are decided in negatives against the claimant.

ORDER

14. In the result, the claim petition is dismissed. There is no order as to cost.

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.

Given under my hand and seal of this Tribunal on this 21st day of November, 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:

(i) Hasan Ahmed

2. Witness of the Defence:

(ii) Debajani Deori

3. Claimant's Exhibits:

Ext. 1 First Information Report.

Ext. 2 MVI Report.

Ext. 3 Police Report

Ext. 4 Case Memo.

4. Exhibits of the defence:

Ext. A Copy of Insurance Policy.

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