

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

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

Member, MACT, Sonitpur

Tezpur

MAC No. (I) Case No: 50/ 2020

1. Sri Naren Baruah
S/o : Late Manmohan Baruah
Vill.: Murhadol
P.O.: Bakola, P.S.: Jamuguri
Dist.: Sonitpur, Assam
----- Claimant

-Vs-

1. Sri Hem Ch. Sarmah
S/o Late Bhadra Sen Sarmah
Vill.: Tamuli Chuburi, Mazgaon
P.S.: Tezpur
Dist.: Sonitpur, Assam
---- Owner of the offending vehicle

2. Sri Hem Ch. Sarmah
S/o Late Bhadra Sen Sarmah
R/o Vill: Tamuli Chuburi, Mazgaon
P.S.: Tezpur
Dist.: Sonitpur, Assam
---- Driver of the offending vehicle

3. National Insurance Co. Ltd.

---- Insurer of the offending vehicle

----Opposite parties.

Date of argument: 29-11-2022

Date of Judgment: 21-12-2022

APPEARANCE:

Advocate for the claimant : Mr. P. Hazarika

Advocate for the opposite party No.1 : Mr. M. Ch. Baruah

Advocate for the opposite party No.2 : Mr. M. Ch. Baruah

Advocate for the opposite party No.3 : Mr. D. Bose

J U D G M E N T

1. This is a claim for compensation arising out of a petition, filed by the claimant-Sri Naren Baruah under section 166 of MV Act praying for granting compensation of Rs.10,00,000 (Rupees ten lakhs) only on account of injury sustained by him in Motor Vehicle Accident which occurred on 04-02-2018.

2. The brief facts of the claim petition filed by the claimant is that on 04-02-2018 at about 12.25 PM, while he was proceeding by one Hyundai i10 vide registration No.AS-01/AR-6939 from Guwahati to Tezpur as a occupant along with some other

occupants, then when the offending vehicle reached near Bagariguri under Raha P.S , the driver of the offending vehicle due to rash and negligent driving with high speed failed to control the said offending vehicle and dashed one bridge with great force at Bagariguri on N.H.37 . As a result of the said accident, the claimant sustained grievous injuries in his whole body. Immediately after the accident, he was taken to G.D. Hospital and Research Centre, Nagaon but his injury was so grievous that he was taken to Apollo Hospital, Guwahati on the same day of accident and admitted there till 07-02-2018 . On 08-02-2018, the injured claimant was taken to Patna and admitted at Popular Nursing Home , Patna for better treatment. According to claimant, he had already spend an amount of Rs. 4,00,000/- (Rupees four lakhs) only for his treatment. He also suffered mental shock, physical pain and financial losses. The claimant further submitted in his claim petition that aforesaid accident occurred due to the rash and negligent driving of the driver cum owner of the Hyundai i10, namely, Sri Hem Ch. Sarmah and the aforesaid vehicle was duly insured with National Insurance Company Ltd, and hence both of them are jointly liable to pay the compensation to the claimant for the injuries sustained by him in RTA.

3. Opposite party No. 1 i.e. owner cum driver of the offending vehicle bearing registration No. AS-01/AR-6939 namely, Sri Hem Ch. Sarmah, after receiving the notice from the Tribunal, appeared before this Tribunal and contested the proceeding by

filing written statement. In his written statement, Opposite party No. 1 took the usual plea that claim petition is not maintainable in the present form, claim petition is bad for non-joinder and mis-joinder of necessary parties. Opp party No. 1 denied that the aforesaid accident took place due to the rash and negligent driving of the driver of the offending vehicle. Opp party No.1 further submitted in their written statement that the vehicle No. AS 01-AR-6939 was duly registered and vehicle was insured with the National Insurance Company Ltd, Tezpur with valid insurance policy vide policy number 200900311710000858 which was valid upto 23-01-2019 and the driver of the alleged vehicle had valid driving licence vide DL No. AS12 19990037160 valid upto 05-07-2025. Hence, this opposite party is not liable to pay any compensation to the claimant. Accordingly, opp party No.1 prays to dismiss the claim petition filed by the claimant.

4. Opposite party No:3 i.e. National Insurance Company Ltd also contested the proceeding by filing written statement and took the usual plea of defence. Opposite party No.3 denied in their written statement that on 04-02-2018, the vehicle bearing registration No. AS-01/AR-6939 was involved in any accident as alleged. According to the insurance company, the amount of compensation is excessive, baseless, unreasonable and unbelievable. Accordingly Opposite party No.3 prays to dismiss the claim petition filed by the claimant .

5. My learned predecessor, after going through the claim petition as well as the written statements of the opposite parties, has framed the following issues for proper adjudication of the matter-:

(1) Whether the accident took place on 04-02-2018 at about 12.25 P.M due to rash and negligent driving by the driver of the vehicle No: AS-01/AR-6939 (Hyundai i10) and whether Sri Naren Baruah was injured due to the alleged accident ?

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

6. In the instant case, the claimant- Sri Naren Baruah examined himself as CW-1, besides one Dipu Hazarika as CW-2 and exhibited certain documents. They were duly cross examined by the Insurance company, but the insurance company has not adduced any evidence in support of their contention taken in their written statement.

7. I have heard the arguments placed by the Learned counsels for both sides. I have perused the evidences on record of the claimant side.

DISCUSSION, DECISION AND REASON THEREOF:

Issue No: (1)

8. In the instant case, the claimant – Sri Naren Baruah (CW-1) deposed in his evidence that on 04-02-2018 at about 12.25 PM,

while he was proceeding by one Hyundai i10 vide registration No.AS-01/AR-6939 from Guwahati to Tezpur as a occupant along with some other occupants, then when the offending vehicle reached near Bagariguri under Raha P.S , the driver of the offending vehicle due to rash and negligent driving with high speed failed to control the said offending vehicle and dashed one bridge with great force at Bagariguri on N.H.37 . As a result of the said accident, the claimant sustained grievous injuries in his whole body. CW-1 further specifically deposed that the aforesaid accident was caused due to the rash and negligent driving of the driver of the offending vehicle bearing registration number AS-01/AR-6939.

9. In his cross-examination, CW-1 stated on the date of accident, he along with Hem Ch. Sarmah and Dipu Hazarika were proceeding from Guwahati to Tezpur in the vehicle of Hem Ch Sarmah. On the way, the driver/owner-Hem Ch Sarmah collided with the railing of the bridge of National Highway. He became unconscious. At the time of the accident , he was 41 years old.

10. CW-2 Sri Dipu Hazarika is the eye witness of the instant case and he deposed in his evidence that on the date of occurrence i.e. 04/02/2018, he was proceeding from Guwahati to Tezpur via Nagaon in the offending vehicle bearing Registration No. AS-01/AR-6939 along with other occupants, namely, Sri Naren Baruah (CW.-1) and Sri Bikash Baruah. At the time of accident , CW.-2 stated that he was sitting on the back seat of the vehicle .

Then, at about 12.30 PM, while the offending vehicle reached near Bagariguri under Raha P.S., the driver of the offending vehicle due to rash and negligent driving with high speed lost control over the said offending vehicle and dashed on the left side of a bridge at Bagariguri on N.H. 37 with great force. CW-2 further stated that CW-1 (claimant) who was sitting on the front seat of the offending vehicle, sustained grievous injuries on his person. CW-1 and other occupants were immediately taken to the G. D. Hospital, Nagaon , wherefrom CW-1 was shifted to Guwahati for better treatment. This witness stated that he also sustained minor injuries on his person and was taken to G.D. Hospital, Nagaon. CW-2 further deposed in his evidence that the aforesaid accident was caused due to the rash and negligent driving of the driver of the offending vehicle bearing registration No AS-01/AR-6939(Hundai i10).

11. In his cross-examination, by the opposite party/ insurance company, CW-2 has specifically deposed that the offending vehicle was driven by Hem Ch Sarmah . CW-2 also stated that he sustained injury on his head and right leg and after the accident , all the injured were taken by the police personal in 108 Ambulance to Nagaon Civil Hospital and the attending doctors gave them preliminary treatment. He did not file any claim case for compensation. Although the Insurance company on length cross-examined CW-2, but failed to rebut the evidence of CW-2 on the point of rash and negligent driving of the driver of the offending vehicle bearing registration No. AS-01/AR-6939(Hundai i10).

12. Now, question is whether the claimant side has to prove the rash and negligent driving of the offending vehicle in a strict manner, as required under a criminal case filed against the driver under section 279 of IPC?

13. In this regard Hon'ble Apex Court in the case of **Bimla Devi and others v. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]**, in which the relevant observation on this point has been made and which is very pertinent and is quoted below:-

"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. Hon'ble Delhi High court in **2009 ACJ 287, National Insurance Company Limited vs. Pushpa Rana** wherein the Hon'ble High Court held that *in case the petitioner filed 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 on the mechanical inspection report of the offending vehicle, these documents are*

sufficient proof to reach to the conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard.

15. In another Judgment i.e. in **Kaushnumma Begum & Ors. vs. New India Assurance Company Limited, 2001 ACJ 421 SC**, *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 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.*

16. In the instant case, while appreciating the evidence of the claimant side, it reveals that on the date of occurrence while claimant was coming to Tezpur from Guwahati on the offending vehicle bearing Registration No. AS-01/AR-6939 (Hundai i10), the aforesaid accident had occurred. It also reveals from Ext-1 (accident information report) that the aforesaid accident had occurred on 04.02.2018 at about 12.25 PM at Bagariguri N.H.37

and the name of the injured is mentioned in Exhibit 1 as Sri N. Baruah. It also reveals from Ext-1, the registration number of the offending vehicle is mentioned as AS-01AR-6939 (i10), and at the relevant time of accident, the driver cum owner of the aforesaid vehicle was one Hem Ch Sarmah. From Ext-2 , the extract copy of GD entry of Raha police station being number 64 dated 4.2.18, it reveals the officer in charge of Raha police station after receiving the information about the accident had made the GD entry and send one 108 Ambulance and police seized the offending vehicle from the place of occurrence and kept the same at the police station.

17. Defence side / Insurance company have not disputed regarding the filing of ejarah in connection with the instant case by the injured. So, prima facie on the basis of the evidence of the claimant side and the exhibited documents (Ext-1 & Ext-2) and on the spirit of the judgments discussed above, it is clear that the accident was caused due to rash and negligent driving of the driver of the offending vehicle bearing registration No AS-01/AR-6939 (Hundai i10).

18. From the documents submitted by claimant side, Ext-4, Discharge certificate of APOLLO HOSPITALS GUWAHATI reveals that the claimant was admitted in the hospital on 04-02-2018 and was discharged on 07-02-2018, with a history of the injury to right hip joint & amp; Left 5th metatarsal and abrasion over forehead. As per Ext-5 on 08-02-2018, the injured was again admitted at

Popular Nursing Home and he was discharged on 28-02-2018 and as per the discharge certificate of (Ext-5), it was a case of fracture posterior wall of acetabulum Rt hip.

19. From the medical documents (Exts 3 to 11) submitted by the injured claimant , it is prima-facie proved that the injured sustained grievous injury in the accident caused by the driver of the offending vehicle due to the rash and negligent driving.

20. Accordingly, issue number (1) is decided in affirmative and in favour of the claimant.

Issue No: (2):

21. In the instant case, let me first decide whether the offending vehicle at the relevant time of accident had valid insurance coverage or not.

22. In the instant case ,the claimant has impleaded the owner cum the driver of the offending vehicle namely Sri Hem Ch Sarmah as opposite party No: 1 & 2. Opposite party No: 1 & 2 filed the joint written statement and the owner Sri Hem Ch Sarmah in his written statement specifically deposed that he is the owner of the vehicle bearing registration No AS-01/AR-6939(Hundai i10) and same was duly insured with National Insurance Company Ltd, Tezpur at the relevant time of accident vide policy number valid upto 23-01-2019. On careful perusal of the Ext-1 Accident Information Report, it reveals that the aforesaid insurance policy no was valid upto 23-01-2019 . From the evidence of the claimant

side, it is proved that the accident occurred on 04-02-2018 and hence it can safely be said that at the time of accident, the offending vehicle bearing registration No AS-01/AR-6939(Hundai i10) has valid insurance coverage under opposite party No. 3.

23. Opposite party No.3 i.e. National Insurance Company Ltd, Tezpur also could not deny the fact that they had not issued any insurance policy in favour of the owner of the offending vehicle bearing registration number . Hence, considering all this aspect it can safely be said that at the relevant time of accident the offending vehicle bearing registration No. AS-01/AR-6939 (Hundai i10) had valid insurance coverage under National Insurance Company Ltd, Tezpur (Opposite party No: 3).

24. Now let me see, whether the present claimant is entitled to compensation for the injury sustained by him in a road traffic accident which occurred on 04-02-2018 at N.H.37 and from whom?

25. As discussed earlier, after the accident injured was initially admitted at G.D. Hospital and Research Centre, Nagaon for medical treatment , but his injury being grievous, he was taken to Apollo Hospitals Guwahati on the same day and admitted there till 07-02-2018 and on his discharge from the aforesaid hospital, again on 08-02-2018, he was admitted at Popular Nursing Home, Patna for better treatment and discharged from the aforesaid hospital on 28-02-2018. Claimant has claimed that he has spent more than Rs 4,00,000/- (Four Lakhs) for his treatment and he submitted

various cash memos, vouchers, money receipts bills etc marked from Exts-12 to 70.

26. In the instant case, the claimant submitted in his claim petition that he is in service in 12 APBN, Govt. of Assam and his monthly salary is Rs 24,000/-. But no salary certificate is submitted in this regard.

27. As has come out, Cw-1 has not adduced any oral as well as documentary evidence in regard to his income. Again, Cw-1 has clearly disclosed in his cross-examination that there is no any financial loss regarding his monthly salary due to the injury sustained by him in the accident. So, there is no loss of income of the claimant.

28. From the scrutiny of the medical bills / vouchers, it reveals that injured has spent an amount of Rs.1,58,800/- , as medical expenditure. Besides this claimant is also entitled an amount of Rs.30,000/- for pain and suffering.

Pecuniary & Non pecuniary loss of the claimants

Cost of medical expenses including the conveyance	Rs. 1,88,800/-
Pain and suffering	Rs.30,000.00
Total= Rs 2,18,800/-	
(Rupees Two Lakhs Eighteen thousand eight hundred) only.	

29. As the offending bearing registration No. AS-01/AR-6939 (Hundai i10) was duly insured with National Insurance Company Ltd, Tezpur Branch / opposite party No: 3, hence they are liable to pay the compensation amount to the claimant.

Hence issue No.2 is decided accordingly.

ORDER

30. In the result, the claim petition is allowed awarding **Rs.2,18,800/- (Rupees Two Lakhs Eighteen thousand eight hundred)** only to the claimant with interest thereon @ 6% per annum, from 23-12-2020 till realization.

31. The opposite party No.3 i.e. National Insurance Company Ltd, is directed to deposit the awarded amount within a period of 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 claimants.

32 Furnish a free copy of this judgment to parties concerned as provided u/s 168(2) MV Act within 7 (seven) days from the date of judgment.

33. Given under my hand and seal of this Tribunal on this 21st 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:

(i) Sri Naren Baruah

(ii) Sri Dipu Hazarika

2. Witness of the Defence:

Nil

3. Claimant's Exhibits:

Ext. 1 Accident Information Report (Form 54).

Ext. 2 Extract Copy.

Ext. 3 to 11 Medical Documents

Ext. 12 to 66 Medical Cash Memo.

Ext. 66(A) to 70 Railway Tickets.

4. Exhibits of the Defence:

NIL.

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