

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

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

**MAC Case No: 48/2020 (Injury)**

1. Sri Purna Bahadur Chetry  
S/o : Krishna Bahadur Chetry  
Vill : Lalmati, Oghori Pahar  
Near Old Fire Brigade Office  
PO & PS : Tezpur  
Dist.: Sonitpur, Assam  
----- Claimant

-Vs-

1. Sagen Munda  
S/o Dhina Munda  
Vill.- Sonitpur Chah Bagicha, Chariduar  
Dist : Sonitpur, Assam  
-----Owner of the offending vehicle

2. Sanu Munda  
S/o Dina Munda  
Vill.- Upper Bhalukpung  
PS : Bhalukpung  
Dist.: West Kameng, AP  
----- Driver of the offending vehicle

3. HDFC ERGO General Insurance Co. Ltd.  
---- Insurer of the offending vehicle  
---- Opposite parties.

Date of argument: 21-10-2022, 18-11-2022, 16-12-2022

Date of Judgment: 22-12-2022

**APPEARANCE:**

Advocate for the claimant : Mr. N. Upadhaya

Advocate for the opposite party No.1: Mr. B. K. Basumatary

Advocate for the opposite party No.2: Mr. B. K. Basumatary

Advocate for the opposite party No.3: Mr. B. Kr. Sharma

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

**1.** The claimant– Sri Purna Bahadur Chetry has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs.5,95,000/- (Rupees Five Lakhs Ninety five thousand) only for the injuries sustained by him in the motor vehicle accident.

**2.** The claimant's case, in brief, is that on 29-02-2020 at about 10:30 AM, claimant as a pillion rider along with Sri Ganendra Chetry was riding on the motor cycle vide Registration No. AS 12G 3248 and were proceeding from Balipara towards Tezpur by National Highway 15. When both claimant and pillion rider reached Ghoramari Center and were waiting to cross the road for attending the road opening ceremony which was to be inaugurated by Hon'ble Minister Dr. Hemanta Biswa Sarmah, but before they could cross the road, an Alto 800 car vide registration No. AS 12U 9756, driven by Sanu Munda at rash and negligent manner endangering human life knocked down the claimant from back side with high speed due to which, both claimant and pillion rider fell down from the motor cycle. It is alleged that the offending vehicle dragged the claimant about 10 meters on the road, whereby the claimant sustained multiple grievous injuries on his head, left shoulder and legs. Immediately people of that locality gathered there and the claimant was taken to Kanaklata Civil Hospital, Tezpur and admitted therein for three days as indoor patient. Due to grievous injuries in his shoulder, Ultra sound and X-ray was conducted at KRSNAA Diagnostic, whole body check up done at AAstha International Diagnostic center, E.M.M. Fracture & Joint Clinic. Further X-Ray at APEX Healthcare and Diagnostics as indoor patient done till 03-03-2020 and even now he has been visiting doctors frequently as outdoor patient.

The claimant is a business man and a principal bread earner and the whole family members are dependent upon him including education of his children. His earning was Rs.26,304/- per month, but now the claimant shall have to be under continuous medical treatment for cure and he has become permanently partial disabled due to the injury sustained in his left shoulder. Moreover, due to the injury sustained in the accident, claimant has suffered severe pain, hardship and agony and have lost normal capacity to work. He was under treatment and incurred expenses of Rs.2,95,000/- (Rupees two lakh ninety five Thousand) only till 02-03-2020 for medical treatment, medical examinations, operations, nursing home, journeys, incidental expenses/ nursing. Hence, this claim case.

**3.** Notices were issued on the Opposite Party Nos. 1, 2 & 3. Opposite Party No.1 & 2 who are the owner and driver of the Vehicle bearing Regd. No. AS 12U 9756(Alto 800) have filed their joint written statement by denying all the allegations and stated that the accident was not due to the fault or any rash and negligent driving of the OP No.2 i.e. driver of the offending vehicle bearing registration No. AS 12U 9756(Alto 800), but due the negligence of the driver of the Motor cycle involved in this case. It is further stated that the vehicle was duly registered in the name of the owner (OP No.1) and was duly insured with HDFC ERGO General Insurance Company Ltd., having policy No. 2311202893028200000 with required validity upto 31-07-2020.

The OP No.2 was having a valid driving licence. Hence, prayed to dismiss the claim petition against OP Nos.1 and 2.

**4.** Opposite Party No.3 i.e. HDFC ERGO General Insurance Company Ltd. also submitted written statement denying the allegation regarding the manner in which the alleged accident is alleged to have occurred. It is denied on 29/02/2020 at about 10:30 A.M. the vehicle bearing Registration No. AS-12U-9756 was involved in an accident at Ghoramari Centre, N.H.-15. It is stated that the motor cycle did not have any valid documents like Registration, Insurance Policy or the motor cyclist did not have any valid driving licence at the time of accident. It further stated that the accident occurred due to collision of two vehicles one car bearing Registration No. (AS-12U-9756) and a Motor cycle bearing Registration No. (AS-12-G/3248) and that in such a situation, it is hard to feature out the quantum of rash and negligent on the part of both the vehicle for whose negligence the accident occurred. It might be that the driver of motor cycle bearing Registration No. (AS-12- G/3248) drove the vehicle in rash and negligent manner leading to alleged accident or tried to cross the road in subconscious mind without noticing the oncoming vehicle. Unless there is specific evidence against one motor vehicle, compensation if any, needs to be reduced assuming contributory negligence of the two vehicles provided the accident is proved. Hence, prayed for dismissal of the claim petition.

**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 accident took place on 29/02/2020 at about 10:30 AM. due to rash and negligent driving by the driver of the vehicle No. AS-12U/9756 (Alto 800) and whether Sri Purna Bahadur Chetry was injured due to the alleged accident?

**(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 3 (three) numbers of witnesses including the claimant himself. The Opposite party did not adduce any evidence.

**7.** Heard arguments of Learned Counsels for both the parties. Perused the case record as well as the documents. The OP No.3 submitted written argument also. Perused the same.

**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- Sri Purna Bahadur Chetry adduced his evidence as CW-1 and stated that on 29-02-2020 at about 10:30AM he as pillion rider along with Sri Ganenda Chetry was riding on the motor cycle vide Registration No. AS 12G 3248 and was coming from Balipara towards Tezpur by National Highway 15. When CW-1 and the rider reached Ghoramari Center and were waiting to cross the road for attending road opening ceremony, which was to be inaugurated by Hon'ble Minister Dr. Hemanta Biswa Sarmah, but before they could cross the road, an Alto 800 car vide registration No. AS 12U 9756, driven by Sanu Munda came in rash and negligent manner endangering human life and knocked down CW-1 from back side with high speed due to which both CW-1 and rider had fallen down from the motor cycle and thereafter the offended vehicle dragged CW-1 about 10 meters on the road and he sustained multiple grievous injuries on his head, left shoulder and legs. Immediately people of that locality gathered there and the claimant was taken to Kanaklata Civil Hospital, Tezpur and admitted therein for three days as indoor patient. Due to grievous injuries at his shoulder, Ultra sound and X-ray was conducted at KRSNAA Diagnostic, whole body check up done at AAstha International Diagnostic center, E.M.M. Fracture & Joint Clinic. Further X-Ray done at APEX Healthcare and Diagnostics as indoor patient in the same hospital till 03-03-2020 and now he has been visiting doctor frequently as outdoor patient. CW-1 alleged

that the accident took place due to rash and negligent driving of the driver (OP No.2) of the offending vehicle bearing Registration No. AS 12U-9756 (Alto 800) and a Tezpur PS Case No. 515/2020, u/s 279/338/427 of IPC was registered against the driver. Ext.1 is the (Accident information Report) Form 54, which reveals that an accident took place on 29-02-2020 at 10.30 AM on N.H.-15, Ghoramari Center and the claimant- Sri Purna Bahadur Chetry sustained injuries due to the alleged accident. The vehicle bearing registration No.AS12U-9756 (Alto 800) was shown as the offending vehicle. Ext.2 is the First Information Report and Ejahar lodged by the claimant regarding the accident. On the basis of the Ejahar one case was registered against the driver of the offending vehicle. Ext-27(1) is the Charge Sheet submitted against the driver of the offending Alto car bearing registration No. AS 12U-9756. Ext-3 is the MVI Report. Ext.-7 to 18 is the medical documents which proves the injuries of the claimant.

**10.** In his cross examination, CW-1 denied that as the rider of the motor cycle in which he was a pillion rider had contributory negligence, hence the Insurer of the offending vehicle is not liable to pay the compensation amount. He also denied that the motor cycle at the relevant time of accident was not covered under insurance policy, hence they had no any right to ride the motor cycle at public place. CW-1 stated that accident took place on 29-02-2020 and ejahar was lodged on 16-03-2020. He admitted



that he submitted voucher amounting to Rs. 6603/- and his income tax return for the year 2019-2020.

**11.** CW-2 Ganenda Chetry was riding the motor cycle bearing registration No. AS 12G 3248 on the date of accident and the claimant was the pillion rider. He narrated same facts as CW-1 regarding the occurrence.

**12.** In his cross examination, CW-2 stated that he was the owner of the Motor cycle vide registration No. AS-12G-3248. He was the riding the motor cycle at the relevant time of accident and there was no any valid insurance coverage of the motor cycle. He denied that he suddenly turned his vehicle towards the ceremonial place without giving any proper signal and the aforesaid accident was caused.

**13.** CW-3 Gopal Chetry was eye witness of this instant case and well conversant with the facts and circumstances of the case.

**14.** In his cross examination, CW-3 stated that the he was attending at the meeting held near the place of occurrence. He stated that after the accident, while he turned back, he saw both the persons of the motor cycle fell on the ground and the accident took place when the rider tried to cross the road.

**15.** Learned Counsel for the Insurance company has argued that though Charge Sheet was submitted against the driver of the Alto car bearing registration No. AS 12U-9756 but there was head on collision between the two vehicles. As such, the other vehicle bearing registration No. AS 12G 3248 (Motor Cycle) is also equally

responsible for the alleged accident. Hence, driver of the motor cycle has contributed in the alleged accident. On the other hand, Learned Counsel for the claimant has submitted that submission of Charge Sheet is enough to prove negligent of the driver of the vehicle. There is no iota of evidence to prove the allegation made by the Learned Counsel for the Insurance Company.

**16.** *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."*

**17.** *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.*

**18.** *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."*

**19.** 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 the accident took place on 29-02-2020 at about 10:30AM due to rash and negligent driving by the driver of the offending vehicle bearing registration No.AS12U-9756 (Alto 800) and he sustained injuries.

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

**Issue No. (2) :**

**20.** As the claimant sustained injuries due to rash and negligent driving by the driver of the vehicle bearing Registration

No.- AS-12U-9756 (Alto 800), 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.

**21.** It is admitted fact that the offending vehicle bearing Registration No. AS 12U-9756 (Alto 800) was duly insured with the HDFC ERGO General Insurance Company Ltd.(OP No.3) Vide policy No. 2311202893028200000 valid upto 31-07-2020. The accident occurred on 29-02-2020, which is during the subsistence of the policy of the vehicle. Exhibit-4 is the certificate of Insurance Policy, Exhibit-5 is the Pollution Certificate, Exhibit-6 is the Driving Licence of Driver of the offending vehicle. So, OP No.3 i.e. HDFC ERGO General Insurance Company Ltd. is liable to pay the compensation to the claimant.

**22.** Regarding the medical treatment, the claimant has submitted some Cash Memos. Exhibit-19 to Exhibit-25 are cash memos amounting to Rs. 6603/- only relating to the expenses incurred in his treatment. Exhibit-7 to Exhibit-18 are the Medical Documents. The Cash Memos i.e. (Exhibit-19 to Exhibit-25) are considered as the valid and cogent documents regarding the expenses incurred by the claimant for treatment towards his injuries sustained in the alleged accident.

**23.** Regarding the compensation, the claimant has claimed that he has spent an amount of Rs.5,95,000/- for his medical treatment. But, on careful scrutiny of medical bills and vouchers, it

is found that the injured had actually incurred expenditure of Rs. 6,603/- for his medical treatment.

**25.** Now, coming to the question of income and occupation of the claimant, he has stated that he was working as businessman and his monthly income was Rs. 26,304/-. Income Tax Return verification form is also produced by him. Ext.-26 is the Income Tax Certificate 2019-2020. Claimant is entitled to get the amount of expenditure incurred for his medical treatment and also for loss of income. He has submitted cash memos/vouchers amounting to amount Rs. 6,603/- So, pecuniary damage comes to Rs. 6,600/- (Rupees Six thousand Six hundred only)

**26.** With regards to non-pecuniary damage, the injured has definitely suffered pain and agony at the age of 45 years due to alleged accident. So, an amount of Rs. 30,000/- is awarded for pain and agony. An amount of Rs. 25,000/- 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. 6,600/- + 30,000/- + Rs.25,000/-+ Rs. 15,000/- = **Rs. 76,600/- (Rupees Seventy six Thousand Six Hundred) only.**

Hence issue No.2 is decided accordingly.

**ORDER**

In the result, the claim petition is allowed awarding **Rs. 76,600/- (Rupees Seventy six Thousand Six Hundred)** only with interest @ 6% per annum to the claimant from the date of filing of the case i.e. 07-12-2020 till full and final realization.

The OP No.3 i.e. HDFC ERGO General Insurance Company 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 22<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:

(i) Sri Purna Bahadur Chetry

(ii) Sri Ganenda Chetry

(iii) Sri Gopal Chetry

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Accident information report (Form 54).

Ext. 2 Certified copy of FIR and Ejahar.

Ext. 3 Copy of MVI Report.

Ext. 4 Certificate of Insurance Policy.

Ext. 5 Pollution Certificate.

Ext. 6 Driving Licence of Driver of offending vehicle.

Ext. 7 to 18 Medical Documents.

Ext. 19 to 25 Medical Cash Memo.

Ext. 26 Income tax Certificate 2019-2020

Ext-27 Certified copy of FIR and Ejahar.

Ext-27(1) Certified copy of Charge Sheet

4. Exhibits of the Defence:

NIL.

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