

**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.104 of 2019(I)

1. Gopal Ghosh.
S/O-Ganga Charan Ghosh
Village: Kachari gaon.
PO. Tezpur.
P.S. Tezpur,
Dist. Sonitpur, Assam.....claimant.

-Versus-

1. Rajib Kr. Nath
S/O-Nandeswar Nath
R/O-Mekanar Chuburi
Dist- Sonitpur, Assam...Owner of the two wheeler-AS-
12-T/0331(SCOOTY).
2. Rajib Kr. Nath
S/O-Nandeswar Nath
R/O-Mekanar Chuburi

Dist- Sonitpur, Assam..... Driver of the two wheeler-
AS-12-T/0331(SCOOTY).

3. National Insurance Co, Ltd
Tezpur Branch, Tezpur
Sonitpur, Assam.....Insurer of the vehicle
No.AS-12- T/0331(scooty).

ADVOCATES APPEARED

1. Shyam sunder Prasad for the claimant.
2. Basanta Sharma for the Ops.
3. Prayag Kumar Sharma for National Insurance Co.
Dist- Sonitpur,

Date of Argument : **09.08.2021**

Date of Judgment :- **23.08.2021.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by one Gopal Ghosh, hereinafter shall be referred to as the claimant, praying for grant of compensation on account of injuries sustained by him in a motor vehicle accident.

1. The case in brief is that on 2-6-2018 at around 5 P.M. the claimant on his way from Tezpur to Dhekiajuli on a two wheeler bearing registration No.AS-12-T/0331(scooty), riding pillion. On the way on NH-52 at Keherukhanda Market the said two wheeler met with an

accident. As a result of which the claimant had his thigh bone fractured and had also sustained injuries on his chest and hand. The claimant attributed the cause of his injuries in the RTA to rash and negligent manner Rajib Kr. Nath, the owner of the offending two wheeler, was riding it at the relevant point of time. The claimant claims requiring to go to Patna for treatment and had to spend a sum of Rs.2,50,000/- on his medical treatment.

2. Following the accident General Diary Entry No-50 dated 2-6-2018 had been recorded by OC Dhekiajuli PS. The GDE indicates that the claimant was the pillion rider on the two wheeler involved in the RTA on NH-15 and had sustained injuries in the said RTA on 2/6/2018.

3. O.P No.1 and OP No.2,owner-cum-driver of the offending two wheeler in his written statement inter alia denied the contention raised by the claimant. The answering OP contended that the offending two wheeler No.AS-12-T/0331(scooty) has been duly insured with National Insurance Company Ltd Tezpur branch bearing policy No.20090031176260002349 and same had been valid from 15-9-2017 to 14-09-2018. The answering OP further claims that on the day of the alleged occurrence the rider of the offending two wheeler, OP-1 had been in possession of a valid driving license. The answering OP further contended that since the payment of compensation is subject to proof of negligence by the person who was riding the offending two wheeler at the relevant point of time, the claimant is put to strict proof thereof and in case

compensation is awarded the insurer is liable to indemnify the insured. Thus the answering OP prays for being exonerated from any liability whatsoever in payment of compensation to the third party.

4. OP-3 National Insurance Co.Ltd, Tezpur branch in its written statement inter alia claimed the application for compensation being not maintainable. The answering OP attributes the cause of the RTA in which the claimant claimed to have sustained injuries to the negligence of the claimant himself. The answering OP has claimed defence available u/s 149 (2)(a) of the MV Act in case there is breach of specific conditions by the insured. The answering OP further contends that the case is bad for noncompliance of section 136 (c) and 158(6) of the Act as necessary particulars with regard to insurance coverage of the insured and report with regard to injury caused to the injured in the accident have not been communicated to the answering OP. Thus in the premise the answering OP claims exoneration of the liability to satisfy the award.

5. Upon above pleadings following issues have been framed.

1) Whether on 2/6/2018 at around 5 PM the claimant Gopal Ghosh had sustained grievous injuries in a RTA caused due to rash and negligent manner the OP no.1 was riding his two wheeler AS-12-T/0331(scooty) on NH-15 UNDER Dhekiajuli PS?

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

6. I have heard argument advanced by Learned Counsels on both sides. I have also perused the documents available on record.

Issue No.1.

7. Coming to the evidence of the claimant in the affidavit submitted by him as CW-1, the claimant claimed to have sustained injury, with a fractured hip bone, when the two wheeler AS-12-T/0331(scooty) he was riding pillion on his way to Dhekiajuli from Tezpur had met with an accident on NH-15. CW-1 attributed the cause of the RTA to negligence of OP-1 who was riding it. The CW-1 claimed being required to spend a sum of Rs.2,50,000/- on his medical treatment at EMM Hospital, Tezpur, Popular Nursing Home at Patna and Saint Jhon's Hospital Guwahati for his hip joint fracture. He claims Rs.7, 00,000/- in compensation. The CW-1 has exhibited following documents in support of his claim : ext-1 the AIR in form 54, ext-2 GDE extract of Dhekiajuli PS,ext-3 to 13 are prescriptions, medical advice, discharge certificate etc., ext-14 to ext-58 are cash memos, vouchers, money receipts and bills totaling Rs.1,24,816.00.

8. In his cross CW-1 reiterated to having received injuries in the RTA on NH-15 on 2-06-2018 at 5 pm involving the scooty AS-12T/0331 in which he was riding

pillion on his way to Dhekiajuli from Tezpur. CW-1 claimed being required to remain confined to his house due to injuries suffered by him for three months. CW-1 denied the suggestion that he was riding pillion on the above two wheeler without a helmet. CW-1 admitted having not produced any disability certificate from the authority concerned.

9. CW-2, Tridip Ghosh an onlooker on 2/6/2018 at around 5-00 p.m claimed in his evidence to have seen a two wheeler scooty AS-12T/0331 being plied on the road at Keherukhanda suddenly turning on its side on the road. CW-2 attributed the cause of the RTA to the negligence of the rider. CW-1 further deposed having recognized the pillion rider who was injured, bleeding profusely, as one living at his locality.

10. In his cross CW-2 deposed having seen the offending two wheeler turning on its side after the rider had hit the two wheeler against the speed breaker and falling down immediately with the two wheeler. He had helped the injured Gopal Ghosh and the pillion rider in shifting him to the Tezpur Medical college Hospital.

11. Having discussed the evidence available above as to the cause of the RTA in which the claimant had sustained injuries I have also heard respective submissions of Id counsels for both sides. The claimant in his evidence CW-1 has specifically attributed the cause of his injuries to the rash and negligent manner, the respondent No.1 was

riding his two wheeler. The cw-2 an eyewitness has also attributed the cause of the RTA, in which the claimant had sustained injury to the negligence of the rider who had fallen down hitting a speed breaker on the way. Ext-1 the AIR in form 54 is also an indication of the RTA on 2/6/2018 involving the two wheeler scooty AS-12T/0331 owned by Rajib kumar Nath. According to CW-1 Rajib Kr.Nath had driven the two wheeler on the day of the alleged occurrence. Ext-1 does not relate to involvement of any other vehicle in the alleged RTA in which the claimant had sustained injuries.

12. Coming to the standard of proof in MAC case which is summery in nature our Apex court in *Bimla Devi and ors. Vs. Himachal Road Transport Corporation and Ors (2009) 13 SC 530, held as such*

" 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."

The tribunal believes the existence Circumstances related to by CW-1 and CW-2 in their respective depositions as probable and coupled with the information revealed in ext-1 AIR supported by the legal principle laid down in the

above decision of our Apex court with regard to the standard of proof to be adopted in such cases, the tribunal is inclined to attribute the cause of the RTA in which the claimant had sustained injuries to the rash and negligent manner the OP-1 was riding his two wheeler on the day of the alleged occurrence.

Issue No. 2

13. Coming to awarding just compensation, in the catena of successive decisions our Apex court contemplated just compensation which is just and equitable rather than a bonanza or source of profit.

14. The information revealed in Ext-1 the AIR in Form 54 indicates that the offending two wheeler scooty AS-12T/0331 owned by Rajib kumar Nath was insured with National Insurance company Tezpur branch bearing insurance policy No.20090031176260002349 and insurance cover had been in force till 14/9/2018 and the alleged RTA had taken place on 2/6/18. The insurer has not taken any defence as to violation of specific conditions of policy by the insured in the case. Hence OP-3 is liable to indemnify the insured with regard to payment of compensation to the third party.

15. In the present case, the assessment of compensation being in respect of personal injury, the attending orthopedist at EMM Hospital, the first hospital the injured had been brought on the day of the RTA, had advised x-ray and CT scan for fracture of left hip joint. Ext-

4 is the said advice slip. Ext-5, NCCT scan of the left hip reveals fracture of left iliac bone caudally extending up to the roof, both the column & quadrilateral plate of left acetabulum and fracture left inferior pubic ramous. The medical reports available on record do not suggest likelihood of the claimant suffering permanent disability of the fractured limb. None of the attending orthopedist had been examined as to any likelihood of the injured suffering disability of any kind whatsoever following treatment.

16. Now coming to assessment of compensation on pecuniary damage, the hospital bill, money receipts and cash memos in respect of purchase of medicines, ext-14 to ext-53, produced by the claimant in the case in connection with medical treatment received by the claimant at EMM Hospital, Tezpur, Popular Nursing Home, Patna and St John's Hospital, over a period of three months, 2/6/2018 to 15/9/2018 shows that the claimant was required to spend Rs. 85,711/- on medical treatment alone. In addition the claimant is allowed Rs.10,000/- on the expenditure the claimant may have been required to incur on extra nourishment and attendant charges, Rs 36,790 on transportation during the period of treatment supported by ext-54 to ext-58 money receipts.

17. Now coming to assessment of non-pecuniary damage the claimant is allowed Rs.20,000/- on pain and suffering, Rs.20,000/- on loss of amenities and convenience. Considering claimant had his hip joint fractured, though without permanent disability of any limb

recorded during evidence and considering it would be some time before the claimant permanently recovers from his injuries to resume his usual occupation, he is allowed a lump sum on the head of loss of income during treatment to the tune of Rs.12,000/-.

18. Thus the claimant is awarded a sum of **Rs.1,84,501/- (Rupees one lakh eighty four thousand five hundred one)** only in third party compensation. Hence, issue No. 2 is decided accordingly.

O R D E R

In the result, the claim petition is allowed, awarding **Rs.1,84,501/- (Rupees one lakh eighty four thousand five hundred one)** only with interest thereon @ 6 % per annum from the date of filing of the case i.e.4/9/2019till full and final realization. The O.P. No. 3 National Insurance Company 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 to the account of the Member MACT through NEFT. The claimant is directed to furnish his savings Bank account details of any Nationalized Bank to this Tribunal.

Given under my hand and seal on this 23rd day of August, 2021.

Dictated and corrected by me.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

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

ANNEXURE

1. Witnesses of the Claimant:

1. Gopal Ghosh.
2. Tridip Ghosh.

2. Witness of the Defence

None.

3. Claimant's Exhibits:

Ext. 1 Form 54 (Accident Information Report)

Ext. 2 Extract copy of GDE.

Ext. 3 to ext-13 are medical documents.

Ext-14 to ext-53 are vouchers, money receipts and cash memos with regard to expenditure on hospital stay .

Ext-54 to ext-58 money receipts in respect of expenditure on transportation.

4. Exhibits of the defence

NIL.

(R. Goswami.)

Member

MACT, Sonitpur, Tezpur