

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

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

**MAC Case No: 38/2021 (Injury)**

1. Md. Abdul Matin  
S/o Faju Rahman @ Haju Rahman  
R/o Vill. : Gormara Gaon  
P.O.: Gormara  
P.S. : Dhekiajuli,  
Dist.: Sonitpur, Assam  
----- Claimant

-Vs-

1. Md. Haider Ali  
S/o Abdul Ali  
R/o Vill.: Dighaldal  
P.O. & P.S.: Missamari  
Dist : Sonitpur, Assam  
-----Owner of the offending vehicle

2. Md. Meher Ali  
S/o Md. Iroz Ali  
R/o Vill.: Lakhopara  
P.O. & P.S.: Missamari  
Dist : Sonitpur, Assam  
-----Driver of the offending vehicle
3. TATA AIG General Insurance Co. Ltd.  
----- Insurer of the offending vehicle  
----- Opposite parties.
4. Md. Abdul Matin (Injured himself)  
S/o Faju Rahman @ Haju Rahman  
R/o Vill. : Gormara Gaon  
P.O.: Gormara  
P.S. : Dhekiajuli,  
Dist.: Sonitpur, Assam
5. The Oriental Insurance Co. Ltd.  
----- Insurer of the offending vehicle

Date of argument: 30-11-2022

Date of Judgment: 23-12-2022

**APPEARANCE:**

Advocate for the claimant: Mr. B. B. Biswas

Advocate for the opposite party No.1 & 2: Mr. S. Singh

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

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

**1.** This case arose out of the petition u/s 166 of M.V. Act filed by the claimant for grant of compensation due to injury sustained by him in a Motor Vehicle Accident.

**2.** The claimant's case in brief is on 22.06.2021 at about 2.30 pm , while he was riding the vehicle bearing Regd No AS-12W-1161 ( Pulsar 150 DTS,M/C) from Dangabasti Centre towards Solmari alongwith his minor son- Wasim Akram as a pillion rider by the left side of PWD Road , then when he reached Solmari, one vehicle bearing Regd No AS-12V-9400 (Glamour Motor Cycle ) was coming from the opposite direction driven by its driver in a rash and negligent manner and endangering to human life. Suddenly the said vehicle knocked down the front side of the claimant's motor-cycle. Due to the accident, the claimant sustained grievous injuries on his right leg . Immediately after the accident, he was taken to the 30 Bedded Hospital, Dhekiajuli for giving first aid. Considering his seriousness , he was referred to Tezpur Medical College & Hospital where he took treatment and an amount of

Rs 2,50,000/- was incurred for his treatment. It is claimed that the claimant used to earn Rs 20,000/- per month by working as a Goldsmith in his established shop at Dangabasti Centre under Dhekiajuli P. S and he is the sole earning member of his family. The claimant is completely bed-ridden from the date of accident and he is unable to continue his business. As such, his family members have been passing their days in extreme financial hardship.

**3.** Notices were issued to the Opposite parties. Opp party no. 1 & 2 i.e. the owner and driver of the offending vehicle bearing Regd no AS-12V-9400 (Glamour Motor Cycle) submitted the joint written-statement stating that on the date of occurrence, the Opp no 2 was driving the vehicle at a very low speed and he was having a valid driving licence. The vehicle was duly insured with TATA AIG General Insurance Co. Ltd. It is alleged that the alleged accident occurred due to negligence of the claimant and he sustained injuries by himself due to his negligence. Hence, prayed to dismiss the claim petition.

**4.** Opp no 3 contested the case by filing written-statement stating that the claim petition is not maintainable and that the alleged accident took place due to sole negligence on the part of the driver of vehicle bearing registration no –AS-12W-1161 (Pulsar 150 DTS) and that the driver of the vehicle bearing Regd. No AS-12V-9400 (Glamour Motor Cycle) was driven on its own side with normal speed and proper manner, so there is no negligence on the

part of the driver of the said vehicle. So claimant is not entitled to any compensation.

**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 injured sustained injury in a road traffic accident, which had taken place on 22-06-2021, due to rash and negligent driving of the driver of the offending vehicle bearing registration No: AS-12-V- 9400 (Glamour M/Cycle)?

**(2)** Whether claimant who had drove the Motor cycle bearing registration No. AS-12-W-1161 has contributory negligence in causing the accident ?

**(3)** Whether both the vehicles bearing registration No. AS-12V-9400 and AS-12-W-1161 was duly covered with the insurance policy at the relevant time of accident?

**(4)** Whether the claimant is entitled to compensation as prayed for?

**(5)** To what relief/ reliefs, if any, parties are entitle to?

**6.** During the course of hearing, the claimant side examined 2 (two) numbers of witness including himself as CW-1. The claimant No.2 herself. The Opposite Parties did not adduce any evidence.

**7.** Heard arguments of Learned Counsels for both the parties. Perused the case record as well as the documents.

**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 Party passed the judgment on the issues so framed. Claimant submitted written argument also.

**Issue No. (1), (2) & (3):**

**9.** The claimant adduced his evidence as Cw-1 and reiterated the same facts as narrated in the claim petition. It is clear from his evidence and pleadings that on 22.06.2021 at 2.30 PM while the claimant was travelling from Dangabasti Centre towards Solmari in his Pulsar bearing Regd No AS-12W-1161, then the offending vehicle bearing no AS-12V-9400 (Glamour Motor Cycle ) coming from his opposite direction which was driven by the driver (OP No. 2 ) in a rash and negligent manner , suddenly knocked his motor-cycle from the front side which resulted in his injuries .

**10.** In his cross-examination, CW-1 stated that the accident took place as he was about to cross the road. The offending Glamour motor-cycle came from the opposite direction. He denied that the accident took place due to his fault.

**11.** CW-2 Faruk Hussain is the eye-witness to the accident . He deposed that on 22.06.2021 at about 2.30 pm while he was riding his bicycle on the nearby PWD road he saw the accident in which the offending vehicle bearing Regd no AS-12V-9400 came from the opposite direction driven by its driver in a rash and negligent manner and knocked down the vehicle bearing Registration No. AS-12 W-1161 . Due to the accident, the claimant sustained grievous injuries on his right leg and all over his body.

**12.** In his cross-examination, CW-2 stated that he was 20 feet away from the spot. He denied that the offending vehicle was coming at normal speed.

**13.** So, far the negligent aspect is concerned , the OP Nos. 1&2 have clearly denied the allegation of rash and negligent driving on the part of the driver of the offending vehicle. Rather claimed that the accident occurred due to rash and negligent driving of the motor-cycle by the claimant, which collided with the offending vehicle bearing registration no AS-12V-9400 and it is nothing but contributory negligence on the part of the claimant. Though the OPs took the plea of contributory negligence on the part of the claimant but they failed to submit any document or adduce any evidence to substantiate that the accident was only due to rash and negligent driving of the driver (claimant) of the vehicle bearing Regd. No. AS-12W-1161 causing him injuries. Claimant has denied the fact of contributory negligence on his part. OPs. did not

adduce any eye-witness or even failed to examine OP No. 2 , driver of the offending vehicle, who could have been the best witness in this case. When the driver and the owner of the offending vehicle no AS-12V-9400 (Glamour Motor Cycle) after filing written-statement, failed to adduce any evidence and the Insurance Company (OP no 3) also did not adduce any evidence to rebut the evidence brought on record by the claimant side , there could not be any presumption of contributory negligence merely from the fact that the accident occurred due to head –on collision of the two vehicles.

**14.** To establish contributory negligence, some act or omission , which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged. There is nothing on record to indicate that the claimant was driving the motor-cycle rashly or negligently nor that he did not follow the traffic rules. Contributory negligence , as is well settled , has to be proved by adducing evidence and no presumption of contributory negligence can be drawn merely on the fact that the two vehicles collided against each other. Reliance may be placed in this regard on the decision of our Hon'ble High Court in the case of Junali Saikia Deka vs Mahesh Srivastava , 2017 (3) GLT 589 . In the instant case, the plea of contributory negligence is taken by the opposite parties , so, naturally burden is on them , to prove that the motor-cycle was being driven in a rash and negligent manner at that time by the claimant and thereby contributed to the



happening of the accident. But, they have failed to prove the same by adduced any evidence.

**15.** Therefore, it is clear that this is not a case of contributory negligence. There is no instance or evidence of contributory negligence from the claimant side .

**16.** Now, coming to the documents submitted by the claimant in support of his claim case. Ext-1 is the FORM 54, Accident Information Report which reveals that the accident took place on 22.06.2021 at 2.30 pm at Solmari in which the claimant –Abdul Matin was injured and he was taken to 30 Bedded CHC , Dhekiajuli ,Sonitpur. The driver of the offending vehicle is shown as Meher Ali and owner is Haider Ali . Exts-4 (1 to 4) are the FIR and Ejahar lodged by the claimant regarding the accident , whereby a Missamari PS case no 73/2021 was registered u/s 279/338 IPC against the driver of the offending motor-cycle. Ext-6(1 &2 ) are the MVI report. Ext-7 (1&2) is the charge-sheet submitted against the driver of the offending vehicle bearing no AS-12V-9400 (Glamour) u/s 279/338 IPC. Therefore, it is clear that the offending vehicle is involved in the accident.

**17.** Now, standard of proof of negligence as required in a claim petition u/s 166 MV Act is on the touchstone of preponderance as held by Hon'ble Supreme Court in Bimala Devi vs Himachal Road Transport Corporation .[( 2009) 13 SCC 530]

**18.** In this instant case , evidence of the claimant side, both oral as well as documentary , with regard to the accident involving the offending vehicle (Glamour motor cycle) and that the offending vehicle was driven in a rash and negligent manner is proved.

**19.** Regarding the insurance policies of both the vehicles, from Ext-1 Accident Information Report , it is found that the vehicle bearing registration no AS-12V-9400 (Glamour Motor Cycle) was insured with Tata AIG Insurance Company vide policy no-0189678049/000000/00 valid till the midnight of 21.11.2023. From the claim petition, it is found that the vehicle bearing registered no AS-12W-1161 was insured with the Oriental Insurance Co. Ltd., which is not disputed by the Opposite parties. So, both the vehicles were duly covered with insurance policy at the relevant time of accident.

The issues are decided accordingly

**Issue No. (4) & (5):**

**20.** It is an admitted fact that the offending vehicle bearing Regd no AS-12V-9400 ( Glamour Motor Cycle ) was duly insured with OP No 3 i.e. TATA AIG General Insurance Company Ltd. vide policy No 0189678049/000000/00 valid upto 21.11.2023. The accident occurred on 22.06.2021 . It transpires that the accident occurred during the subsistence of the policy of the offending

vehicle . So, OP.No 3 i.e. TATA AIG General Insurance Company Ltd. is liable to pay compensation to the claimant.

**21.** According to the claimant, after the accident, he was taken to the 30 Bedded Hospital, Dhekiajuli for giving first aid. Considering his seriousness, he was referred to Tezpur Medical College & Hospital where he took treatment and an amount of Rs. 2,50,000/- was incurred for his treatment. The claimant has submitted receipts of the expenditure incurred during his treatment. The X-ray report has also been submitted along with the receipts. Exts. –10 (1 to 7) are the medical bills, money receipts and cash-memos amounting to Rs. 45,110/- and are considered as valid and cogent documents regarding the expenses incurred by the injured claimant which comes to Rs. 45,110/- (Forty five thousand one hundred & Ten) only. Exts-10 (9) is the same bill as Ext-10 (8) & Exts-10 (13 to 15) are not accepted as there are no prescriptions against these bills and the bill nos., bill dates are not in serial nos. Ext.-8 (1 to 7) are the X-ray and MRI plates. Ext.-11 is the plain MRI of right foot. From the exhibited medical documents , it is held that the claimant sustained the injuries due to RTA (Road Traffic Accident ).

**22.** The claimant was 34 years old at the time of accident and he has claimed that he is a goldsmith with an income of Rs. 20,000/- per month. CW-2 confirmed that the claimant is a goldsmith. But no income related document has been submitted.

However, notional income of Rs 9,000/- be considered as monthly income of the claimant. The medical expenses incurred by the claimant comes to Rs 45,110/- (Forty five thousand one hundred & Ten) only.

**23.** From the evidence on record, it is found that the claimant underwent treatment for a prolonged period of about 2 months and at present , he is bed-ridden. So, there has been loss of income for 2 months, hence loss of income is assessed to be Rs. 18,000/- . So, total pecuniary damage comes to Rs. 45,110/- + Rs. 18,000/- = Rs. 63,110/- ( Rupees sixty three thousand one hundred & Ten)

**24.** In regard to non-pecuniary damage, the claimant has definitely suffered pain and agony at the age of 34 years due to the alleged accident. He deserves compensation due to pain and suffering undergone by him . Hence, a sum of Rs. 25,000/- is awarded for his pain and suffering. Considering the gravity of the accident and the age of the claimant , another Rs. 15,000/- is awarded for loss of amenities.

Therefore, total compensation comes to Rs. 63,110/- + Rs. 25,000/- + Rs. 15,000/- = **Rs. 1,03,110/- ( One Lakhs Three thousand One hundred & Ten) only.**

Hence, issue nos. 4 & 5 are decided accordingly.

**ORDER**

In the result, the claim petition is allowed, awarding amount of **Rs. 1,03,110/- ( One Lakhs Three thousand One hundred & Ten)** only with interest @ 6% per annum to the claimant from the date of filing of the case i.e.24-09-2021 till full and final realization.

The OP No.3 i.e. TATA AIG 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 23<sup>rd</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) Abdul Matin
- (ii) Faruk Hussain

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

- Ext. 1 Accident information report (Form 54).
- Ext. 2 Doctor's Sheet.
- Ext. 3(1) to 3(11) Advice slip/Requisition/Prescription.
- Ext. 4(1) to 4(4) Certified copy of F.I.R. and Ejahar.
- Ext. 5(1) to 5(2) Certified copy of Seizure List.
- Ext. 6(1) to 6(2) Certified copy of MVI reports.
- Ext. 7(1) to 7 (2) Certified copy of Charge Sheet.
- Ext. 8(1) to 8(7) X-Ray & MRI Plates.
- Ext. 9 Voter I/D of Claimant.
- Ext. 10(1) to 10(17) Bills/Money Receipts/Cash Memos.
- Ext. 11 MRI of Right Foot.

4. Exhibits of the Defence:

NIL.

(Smti Bobita Kshetry)  
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