

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

PRESENT : Smt. M.R. Sharma
Member, Motor Accident Claims Tribunal
Additional District Judge
Sonitpur, Tezpur

JUDGMENT IN M.A.C. CASE NO. 23 OF 2006

1. Smt. Rumi Sarmah
Wife of Sri Bharat Sarmah
Resident of village Kuhiarbari,
P.S. – Behali, District–Sonitpur
2. Sri Bharat Sarmah
Son of Late Prabhat Sarmah
Resident of village Kuhiarbari,
P.S. – Behali, District–Sonitpur **Claimants**

–Versus–

1. Sri Sumit Basu
[Owner of the vehicle No. AS-12 / B / 9709 (709 Bus)]
2. Sri Parameswar Barman
[Driver of the vehicle No. AS-12 / B / 9709 (709 Bus)]
3. The New India Assurance Co. Ltd.
[Insurer of the vehicle No. AS-12 / B / 9709 (709 Bus)]

... Opposite Parties

ADVOCATES WHO APPEARED IN THIS CASE

For the Claimant : **Sri R. Pandit,
Advocate**

For the O.P.No. 3 : **Sri M. Bora,
Advocate**

Date of Argument : 21–09–2012

Date of Judgment : **06–10–2012**

J U D G M E N T

This claim petition has been submitted by the claimants Smti. Rumi Sarmah and Sri Bharat Sarmah claiming compensation on account of injury sustained by her daughter Smt. Nirmali Sarmah in a Motor Vehicle Accident involving the vehicle bearing Registration No. AS-12 / B / 9709 (709 Bus).

2. In order to get compensation brought the following facts :

On 14-12-2004 at about 3-30 p.m. while the injured person, was walking on the left side of the road on the National High Way No. 52 at village Kuhiarbari along with her mother, in the meantime, one 709 Bus was coming with a rash and negligent manner and endangering human life and knocked the injured Smt. Nirmali Sarmah from back side and thus accident occurred.

That immediately after the accident, the injured Smt. Nirmali Sarmah was rushed to the Catholic Hospital, Borgang. But due to seriousness of her injury, she was referred to Tezpur and she was admitted at EMM Hospital and Research Centre at Tezpur. There she had been admitted as an indoor patient and took treatment till 21-12-2004.

That in the said accident Smt. Nirmali Sarmah received multiple grievous injury all over her body including face and head and fracture in shaft, both radius

and ulna, adjacent soft tissues were swelling and she becomes permanent disablement.

3. The O.P. No. 1 was the owner of the vehicle bearing Registration No. AS-12 / B / 9709 (709 Bus), which was driven by O.P. No. 2 and was insured with O.P. No. 3. The claimants preferred this claim petition u/s 166 of the M.V. Act seeking an amount of Rs.1,07,000/- (Rupees One Lakh & Seven Thousand) as compensation from the opposite parties under different heads.

4. The owner (O.P. No. 1) has filed a written statement denying cause of action and also maintainability of the case. According to him, he has got no personal knowledge about the correctness of the statements made in the claim petition and demanded strict proof thereof. However, the owner of the vehicle has submitted that his vehicle was duly insured with the New India Assurance Co. Ltd. and the policy document was valid at the time of the accident and as such liability, if any, shall be reimbursed by the Insurance Company (O.P. No. 3). Therefore, the O.P. No. 1 has prayed for dismissal of the claim petition.

5. In the written statement filed by the driver (O.P. No. 2), it is averred that he denied the cause of action and also maintainability of the case. He has also stated that the vehicle was not driven in a rash and negligent manner causing the accident, as alleged in the claim petition. It is submitted in his written statement that the accident might have caused due to negligence and fault of the injured. The O.P. No. 2 has further submitted that he drove the vehicle carefully and the

vehicle was also insured with the New India Assurance Co. Ltd. and policy document was valid at the time of the accident and if the compensation is awarded to the claimant, the Insurance Company is liable to pay the same. Therefore O.P. No. 2 is not at all liable to pay compensation to the claimant and as such he has prayed for dismissal of the claim petition.

6. The O.P. No. 3, the New India Assurance Co. Ltd. has also filed a written statement denying cause of action and the maintainability of the case. The O.P. No. 3 has also denied any knowledge about the correctness of the statements made in the claim petition and demanded strict proof thereof. The answering opposite party has denied the allegation of being driven the vehicle No. AS-12 / B / 9709 (709 Bus), by his driver (O.P. No. 2) and the allegation of injuries sustained by the injured in the said motor accident, rather the injured sustained injuries due to her own fault. It is also alleged by the answering O.P. in its written statement that due to negligent act and carelessness of the mother of the injured, who was with the minor injured girl, the accident had occurred as the mother had not take care of her at the time of the accident. The answering O.P. has contended that at the time of driving the said offending vehicle, the driver did not possess proper and valid licence and demanded strict proof thereof by the claimant. The O.P. No. 3 has further submitted that the insurance company shall not be liable to pay any compensation. Alleging that the amount of compensation claimed is highly exaggerated, O.P. No. 3 prayed for dismissal of the claim petition.

7. Upon the pleadings of the parties, the following issues were framed :

I S S U E S

1. Whether the alleged accident took place due to rash and negligent driving by the driver of the Vehicle No. . No. AS-12 / B / 9709 (709 Bus) ?
2. Whether the claimants are entitled to any compensation and if yes, what will be the quantum of compensation and by which of the respondents, this amount shall be paid ?

8. The claimants side have examined two witnesses in support of their case who have also produced certain documents. The opposite parties have neither adduced any evidence nor produced any documents in proof of their pleas.

9. I have heard the submissions of the learned counsel appearing for the parties and I have also scrutinized the entire evidence and other materials on record.

A discussion on materials on record is required to come to a conclusion on the claim in this case.

DISCUSSION, DECISION AND REASONS THEREFOR

ISSUE NO. 1

10. This issues relates whether the alleged accident took place due to rash and negligent driving by the driver of the Vehicle No. . No. AS-12 / B / 9709 (709 Bus).

The claimant Smt. Rumi Sarmah, in her evidence-on-affidavit as CW-1, stated that on that day her daughter was walking along with her husband beside National High Way No. 52 at village Kuhiarbari, at about 3-30 p.m. and at that time the offending vehicle was coming from Routa side towards Borgang in a very rash and negligent manner and accordingly knocked her daughter Nirmali Sarmah from the back side. Nirmali Sarmah sustained grievous injury on her person and immediately she was rushed to Catholic Hospital at Borgang wherefrom she was referred to Tezpur due to seriousness of the injury. Then she was admitted at EMM Hospital and Research Centre, Tezpur and was under treatment till 21-12-2004. She has also in her evidence stated that the accident occurred due to the rash and negligent driving of the said vehicle.

11. However, CW-1 is not an eye witness to the accident and with regard to the contentions of this issue, the evidence of CW-2, Sri Phanidhar Das, is important. In his evidence CW-2, Phanidhar Das stated that at the time of accident he was waiting in front of a pan shop at Kuhiarbari and he saw the victim Nirmali Sarmah was walking along with her father Sri Bharat Sarmah beside the National High Way No. 52. He also deposed that at that time one vehicle bearing Registration No. AS-12 B / 9709 (709 Bus) was coming from Routa side towards Borgang which was driving in a very rash and negligent manner and knocked down Smt. Nirmali Sarmah from the back side. She, as a result of the accident, sustained grievous injury. He has also deposed that the driver was negligent and was rashly driving the vehicle.

In cross-examination on behalf of New India Assurance Co. Ltd. this witness deposed that he had seen the incident of knocking down Nirmali Sarmah, aged about 4 years. He further deposed in cross-examination that he denied the suggestion that the accident did not occur due to the negligence of the vehicle and was occurred on the negligence on the part of the injured.

12. Mere stating the facts and bringing the suggestion are not enough to prove the fact that the offending vehicle was not at fault and it was actually the fault of the victim Nirmali Sarmah. In the absence of any other evidence adduced by the opposite party to the contrary, the evidence given by the claimant cannot be disbelieved and they cannot be said to be any contributory negligence on the part of the claimant. O.P. No. 2, in his written statement, has stated that the accident was caused due to negligence and fault of the injured and he drive the vehicle carefully and so, he is not liable to pay any compensation. That he had driven the vehicle carefully has not been proved by him by way of any evidence and so, the same plea is not acceptable. ligent and rash driving of the driver of the offending vehicle. Hence, I find that the claimant side has proved that the accident took place due to the negligent act of the offending vehicle.

This Issue is, therefore, decided in favour of the claimant.

ISSUE NO. 2

13. This issue relates to the compensation and the quantum to be decided accordingly.

The evidence given by the two witnesses have sufficiently prove that the claimants are entitled to compensation and this portion of the issue does not require any further discussions in view of the decision given in the earlier issue.

14. The claimant, in the claim petition, has stated that the age of the victim was 4 years, a student and injury sustained was grievous in nature, all over the body including face and head. There was also fracture in shafts of both radius and ulna of right hand. Her adjacent soft tissues swelling and become permanent disablement. The claimant, in the claim petition, has claimed the quantum of compensation of Rs. 1,07,000/-.

15. In this case, the written statements of O.P. No. 1, 2 and 3 show that at the time of the accident, the vehicle was insured with New India Assurance Co. Ltd. and the driver also had a valid licence. The O.P. No. 1 has also in his written statement stated that at the time of the accident, policy document was valid with O.P. No. 3. They have also not adduced any evidence and the documents submitted in this case, are in support of the claimant.

16. The following documents have been submitted in this case :

Ext – 1 : G.D. Entry Certificate

- Ext – 2 : Entry Card of Cathoilig Hospital
- Ext – 3 : Prescription of Cathoilig Hospital
- Ext – 4 : Dischadge Certificate of EMM Hospital & Research Centre
- Ext – 5 : Referral Form of Scanex Diagnostic Centre
- Ext – 6 : Scan Report of Scanex Diagnostic Centre
- Ext – 7 : Money receipt
- Ext – 8 : Money receipt .
- Ext – 9 : Money receipt
- Ext – 10 : Money receipt.

Total treatment cost is seen to be Rs. 17,000/- (Rupees Seventeen Thousand) only. The said amount was seen to have been expended for treatment.

17. The age of the victim is seen to be 4 years and there has been sufficient injury, pain, agony, shock and sufferings etc. to the parents of the victim. Further more, the victim having injury at a tender age, there will be loss of amenities and enjoyment for the rest of the life including inconvenience, discomfort, frustration, mental agony etc. and material losses. The amount claimed by the claimant is not unjustified in view of the facts and circumstances of the case.

18. So, under the circumstances, the claimants, in my opinion, are entitled to compensation as follows :

- 1.** For causing injury, pain, agony, shock and sufferings etc.Rs. 40,000.00
- 2.** Compensation for loss of amenities and enjoyment for rest of the lifeRs. 20,000.00
- 3.** For inconvenience, discomfort, frustration, mental agony etc.Rs. 20,000.00
- 4.** Any other material, losses which may be required in special treatment laterRs. 10,000.00
- 5.** Medical expenses including NursingRs. 17,000.00

TOTAL : RS. 1,07,000.00

19. Accordingly, the claimants are entitled to total amount of compensation of **Rs. 1,07,000.00 (Rupees One Lakh and Seven Thousand)**, which I consider to be just and reasonable.

20. The O.P. No. 3, M/s New India Assurance Co. Ltd. is directed to pay the aforesaid amount of compensation to the claimants within a period of one month from today with interest @ 9% per annum with effect from the date of filing the claim petition, that is, 10-02-2006, till realization.

21. Further more, an amount of Rs. 50,000/- (Rupees Fifty Thousand) of the total awarded amount, be kept as Fixed Deposit in name of the victim Smt. Nirmali Sarmah till she attains majority.

Copy of the judgment be sent to the Insurance Company.

Given under my hand and seal of this Court on this 6th day of October, 2012.

**(M.R. SHARMA)
MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
ADDITIONAL DISTRICT JUDGE
SONITPUR : : TEZPUR**

Dictated and corrected by me

**(M.R. SHARMA)
MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
ADDITIONAL DISTRICT JUDGE
SONITPUR : : TEZPUR**

Transcribed and Typed on dictation by me

(I. Goswami)
Stenographer