

J U D G M E N T

This claim petition has been submitted under Section 166 of M.V. Act, by the claimant Sri Ajoy Orang claiming compensation on account of injury sustained by him in a Motor Vehicle Accident.

2. The claimant brought the following fact in order to get the compensation :

On 02-06-2008, at about 11-15 a.m. the claimant was travelling from Keherikhanda towards Tezpur by a vehicle bearing Registration No. AS-01 Q / 5598 (709 Bus) as passenger. The driver of the said vehicle drove the vehicle in rash and negligent manner with very high speed and on the way of journey at about 12 noon near Hazarika Chowk of Rangamati, Bihaguri, the driver lost the control over the vehicle and as a result, the said vehicle fell down on the road side ditch and thus the accident occurred.

Immediately after the accident, the claimant was first brought to the Kanaklata Civil Hospital, Tezpur but subsequently, he took treatment Skylark Hospitak & researchg Centre, Tezpur as an indoor patient. As a result of the accident, claimant Ajoy Orang sustained grievous injury on various parts of his body with fracture on his left fore-arm, for which he has lost his earning capacity and thus became permanent disable

It is also mentioned in the Claim Petition that the claimant is a young man of about 25 years and he was working as a carpenter and he used to earn

Rs. 4,500/-, per month. But after the accident, as his left hand become permanent disable, he lost his earning capacity. Hence, under the above facts and circumstances, the claimant preferred this claim petition claiming an amount of Rs.6,50,000/- as compensation from the Opposite Parties.

3. The O.P. No. 1 was the owner of the offending vehicle bearing Registration No. AS-01 Q / 5598 (709 Bus), which was driven by O.P. No. 2 and was insured with O.P. No. 3, The New India Assurance Co. Ltd.

4. The owner (O.P. No. 1) and the Driver (O.P. No. 2) have filed a joint written statement denying cause of action and also maintainability of the case. The answering opposite parties have also averred in their written statement that the claimant has submitted this case by suppressing the material facts of the case. The involvement of the vehicle in the accident due to rash and negligent driving by its driver has also been denied by the O.P. 1 and No. 2 in their written statement and according to them, the accident took place due to mechanical failure. It is also averred by the contesting opposite parties that the O.P. No. 1 is the owner of the offending vehicle under ASTC having valid Registration Certificate issued by D.T.O., Kamrup, Guwahati and it was insured with the New India Assurance Co. Ltd. covering all risks and liabilities of any accident in policy and the Insurance Police was valid up to midnight of 28-08-2008, but the accident took place on 02-06-2008. It is further contended by the O.Ps that the O.P. No. 2 possessed professionals driving licence issued to drive throughout the India and the licence was valid up to 31-01-2010. The answering opposite party has stated that the amount of compensation claimed by the claimant is too high and

excessive. However, the answering O.Ps have submitted that as the 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 and O.P. No. 2 have prayed for dismissal of the claim petition.

5. In the written statement filed by the O.P. No. 3, New India Assurance Co. Ltd, it is averred that this O.P. has denied the cause of action and also maintainability of the case. It was also contended in the written statement that the claim petition is incomplete and not tenable in law. Further, the answering opposite party denied each and every statement made in the claim petition. The O.P. No. 3 has also disputed about the age, occupation and income of the injured person and the said O.P. has demanded strict proof of all such particulars by producing relevant documents. Therefore, O.P. No. 3 has alleged that the said accident occurred due to negligent driving of the driver and as such, driver and owner of the offending vehicle is only liable to compensate the claimant-injured. Alleging that the amounts claimed are highly exaggerated and made without any legal and material basis, the O.P. No. 3 has prayed for dismissal of the claim petition.

6. 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. AS-01 Q / 5598 (709 Bus) ?

2. Whether the claimant is / 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 ?

7. The claimant side has examined the claimant himself in support of his case who has also produced certain documents.

8. I have heard the submissions of the learned counsel appearing for the parties and I have also gone through the 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

9. This issues relates to whether the alleged accident took place due to rash and negligent driving by the driver of the Vehicle No. AS-01 Q / 5598 (709 Bus).

The O.P. Nos. 1 and 2 have denied the rash and negligent driving of the vehicle involved in the accident. It was according to them due to mechanical failure. Also, it is stated that the offending vehicle, at the time of the accident was not possessing proper and valid driving licence issued by proper authority. Hence, they stated that the claimant is not entitled to any compensation as claimed. But, though such averments

are made, there are no evidence adduced in this regard. Mere stating that the accident was due to the mechanical failure is not sufficient. The claimant has, in his affidavit evidence, stated that, the driver (O.P. No. 2) was driving with very high speed, and when the vehicle reached near Hazarika Chowk, at Rangamati, he lost control and the vehicle No.AS-01 Q / 5598 (709 Bus) fell down in the road side ditch, and accident occurred.

He has also in his cross-examination stated that the vehicle was of the Transport Department and the same has not been rebutted/denied or disproved by any evidence by the driver or the Insurance Company. This has been fully proved to the effect that the driver of the vehicle No. AS-01Q / 5598 (709 Bus) drove very rashly and negligently for which the accident occurred.

This issue is decided in favour of the claimant.

ISSUE NO. 2

10. This issue relates to whether the claimant is entitled to compensation and to what extent.

As is discussed in Issue No. 1, the accident occurred due to rash and negligent driving of the offending vehicle, and so, the claimant is entitled to receive compensation. For calculation of compensation, on going through the record, I find that the total amount of vouchers submitted is of Rs. 25,513.95. The other documents are prescriptions, X-Ray Reports and other documents which show that the accused had suffered bone fracture of left fore-arm. In the evidence given by the claimant, he stated that he took treatment at the Kanaklata Civil Hospital, Skylark Hospital and Research

Centre, Tezpur and subsequently also took treatment from Guwahati Medical College & Hospital. He also stated that he was earning Rs. 4,500/- as a carpenter, per month and due to the injuries sustained he has become permanently disable and an amount of Rs. 35,000/- was incurred as expenditures for his treatment though he could not submit total vouchers. It is seen from the affidavit evidence that he is aged about 25 years.

So, considering all the documents and certificates, as stated above, an amount, as he had grievous injuries resulting in fracture, calculating his earning capacity, age and also considering that he was earning Rs. 4,500/p per month, at the time of the accident, to following amount is granted as compensation :

1.	Medical expenses Rs. 26,000.00
2.	For causing injury, pain, agony, shock and sufferings etc.Rs. 50,000.00
3.	Compensation for loss of amenities and enjoyment for rest of the lifeRs. 25,000.00
4.	For inconvenience, discomfort, frustration, mental agony etc.Rs. 25,000.00
5.	Any other material, losses which may be required in special treatment laterRs. 10,000.00

TOTAL : **RS. 1,36,000.00**

11. Accordingly, the claimant is entitled to total amount of compensation of **Rs. 1,36,000.00 (Rupees One Lakh and Thirty Six Thousand)**, which I consider to be just and reasonable.

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

Copy of the judgment be sent to the Insurance Company.

Given under my hand and seal of this Court on this **6th day of February, 2013.**

**(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