



## J U D G M E N T

The Claimant Musstt. Hajera Begum has submitted the claim petition under Section 166 of M.V. Act, claiming compensation on account of injury sustained by her in a Motor Vehicle Accident.

**2.** The fact of the claim petition, in brief, is that on 17-02-2007, at about 12 p.m., the claimant Musst. Hajera Begum along with other relatives and villagers proceeded from Tezpur to visit Powamakka at Hazo in the vehicle bearing Registration No. AS-12A / 3338 (Tata 709 Bus). The driver drove the said vehicle in a rash and negligent manner endangering human life and at last he lost control over the vehicle and committed an accident at Gajengaguri, on the National High Way 52 under Dhekiajuli Police Station. Thus the accident occurred.

As a result of the accident, the alleged vehicle fell down on the road and all the passengers including the claimant sustained injuries on their persons. The claimant Musst. Hajera Begum also sustained serious injuries on her head, chest and both the hands which were not fully recovered after taking continuous treatment.

It is also mentioned in the Claim Petition that the claimant is aged about 42 years and she was doing knitting, cutting and embroidery works and thus she was earning Rs. 3,000/- per month. But after the accident, she was facing an acute financial difficulties and mental agony. Hence, under the above facts and circumstances, the claimant preferred this claim petition claiming an amount of Rs.6,00,000/- (Rupees Six Lakhs) as compensation from the Opposite Parties.

**3.** The O.P. No. 1 is the owner of the offending vehicle bearing Registration No. AS-12 A / 3338 (Tata 709 Bus), which was driven by O.P. No. 2 and was insured with O.P. No. 3.

**4.** The O.P. No. 3, New India Assurance Co. Ltd. has filed a written statement denying 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. The O.P. No. 3 has also denied the fact that the vehicle bearing No. AS-12A / 3338 (Tata 709 Bus) was not involved in any accident due to the rash and negligent driving by its driver (O.P. No. 2). It is further submitted by the owner that he denied the fact that the claimant was traveling in the alleged vehicle and sustained injuries due to accident, as stated by the claimant and demanded strict proof of all the particulars by producing police report, M.V.I. report, copy of charge sheet and any other such documents which are required to prove such fact. The O.P. No. 3 has also submitted that the alleged accident, in fact, was caused due own fault and negligent act of the claimant and hence, the claim petition is not maintainable against the answering O.P. The O.P. No. 3 has also disputed about the age, occupation and income of the injured person and also as regards the injuries, treatment and expenditure incurred for treatment of the claimant and the said O.P. has demanded strict proof of all such particulars by producing relevant documents. The answering O.P. has further submitted that the insurer is not liable to pay compensation as the vehicle was not driven properly having no valid driving licence of the vehicle. The O.P. No. 3 has also demanded protection under Sections 170 of the Motor Vehicles Act, 1988 and contended that the insurance company is not liable to pay any compensation. 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.

**5.** The O.P. No. 1, being the owner of the offending vehicle, has filed a written statement denying cause of action and also maintainability of the case. In his written statement, the O.P. No. 1 has admitted about his ownership of vehicle bearing Registration No. AS-12A / 3338 (Tata 709 Bus) and contended that the above vehicle was insured with the New India Assurance Co. Ltd. ( O.P. No 3) having its validity for the period up to 09-10-2007 which covers the date of the accident. Further, the owner of the vehicle averred in his written statement that the said vehicle was plied under a valid Registration Certificate, valid Road Permit, valid fitness certificate and even the said vehicle was driven by the O.P. No. 2 with a valid driving licence. It has also been stated that the accident having been occurred within the period of insurance, the insurance company shall be liable to pay compensation, if any. The O.P. No. 1 has prayed for dismissal of the claim petition as against him.

**6.** The other O.P. No. 2, driver of the offending vehicle, has not submitted any written statement.

**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. AS-12A / 3338 (Tata 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 ?

**8.** The claimant side has examined two witnesses including the claimant herself in support of her case and has produced certain documents.

**9.** 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**

**10.** This issues relates to whether the alleged accident took place due to rash and negligent driving by the driver of the Vehicle No. AS-12A / 3338 (Tata 709 Bus) ?

The O.P. Nos. 1 and 2, have admitted the accident by the offending vehicle No. AS-12 A / 3338 (Tata 709 Bus), so, the denial of the O.P. No. 3, the New India Assurance Co. Ltd. of the non-involvement of the vehicle in the accident is not tenable, as the O.P. No. 1, the owner of the vehicle has stated in the written statement that the said vehicle was insured at that time with the O.P. No. 3, the New India Assurance Co. Ltd. The O.P. No. 3 has not adduced any evidence in this regard to substantiate the facts otherwise. Also, the evidence of the claimant's side have proved the fact and in cross-examination also, the same has not been disproved. Rather, the witnesses were cross-examined on the points that, the claimant did not get any injury on

that accident, which rather amounted to admission of the accident.

Hence, under the above circumstances, this issue is decided in favour of the claimant. The vehicle No. AS-12 A / 3338 (Tata 709 Bus) was rashly and negligently driven and as a result of which, the accident occurred, and the claimant was injured.

### **ISSUE NO. 2**

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

The claimant Hajera Begum stated that she sustained grievous and multiple injuries over her body, head, legs and hands. She as admitted to Kanaklata Civil hospital on 18-02-2007 and also took treatment at Skylark Nursing Home, Tezpur and more than Rs. 50,000/- was expended for her treatment and she has not yet fully recovered also. In her affidavit evidence, while narrating the incident, she has stated that due to insufficient money she could not go beyond the State for further treatment and she has also admitted that she could not submit sufficient documents in respect of her treatment. From the record, I find that there are only two vouchers, - one being of Rs. 13,008.00 and another is of Rs. 15,925.00. Her supporting witness has also narrated about the incident and two Doctors' prescriptions have also been enclosed in the context of her injuries. She has admitted in her cross-examination that no other documents have been submitted by her regarding her treatment but she has claimed an amount of Rs. 6,00,000/- as compensation. Since there is no doubt

about the fact the claimant Hajera Begum was injured in the accident that occurred on 18-02-2007 and from the written statement and evidence, it is also proved that the vehicle No. AS-12 A / 3338 (Tata 709 Bus) was the offending vehicle, the claimant has proved herself to be entitled to compensation. Further more, the New India Assurance Co. Ltd. is the insurer of the vehicle involved in the accident and O.P. Nos. 1 and 2, namely, the owner and driver have also admitted this fact.

This issue is also decided accordingly and it is held that the claimant is entitled to get compensation from the O.P. No. 3 – New India Assurance Co. Ltd.

**12.** The decision that now requires to be taken on the quantum of compensation to be paid by the O.P. No. 3 – New India Assurance Co. Ltd. The compensation is calculated as follows :

- |           |                                                                            |                    |
|-----------|----------------------------------------------------------------------------|--------------------|
| <b>1.</b> | For causing injury, pain, agony, shock and sufferings etc.                 | .....Rs. 40,000.00 |
| <b>2.</b> | Compensation for loss of amenities and enjoyment for rest of the life      | .....Rs. 20,000.00 |
| <b>3.</b> | For inconvenience, discomfort, frustration, mental agony etc.              | .....Rs. 20,000.00 |
| <b>4.</b> | Any other material losses which may be required in special treatment later | .....Rs. 10,000.00 |
| <b>5.</b> | Medical expenses including Nursing                                         | .....Rs. 29,000.00 |

**TOTAL : RS. 1,19,000.00**

**13.** Accordingly, the claimant is awarded an amount of **Rs. 1,19,000.00 ( Rupees One Lakh and Nineteen Thousand)**, as compensation, which is payable by the O.P. No. 3.

**14.** 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 the period of two months 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 **30th day of January, 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