

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

**PRESENT:**           **SMTI. M.R. SHARMA**  
Member, Motor Accident Claims Tribunal  
Addl. District Judge  
Sonitpur, Tezpur

**JUDGMENT IN MAC CASE NO. 144 OF 2007**



**Md. Ramijuddin Ahmed**  
**Son Of Late Sayed Ali**  
**Resident of Alisinga, Pachmile,**  
**P.S : Tezpur**  
**Dist: Sonitpur, Assam** ..... **Claimant**

**Versus**

1. Sri Manik Lal Chokroborty  
[(Owner of the vehicle No. W.B.-02-S/ 6142 (Maruti)]

2. The National Insurance Co. Ltd.  
[(Insurer of the vehicle No. W.B.-02-S/ 6142 (Maruti)]

..... Opposite Parties

*M. Ram*  
21.12.13  
Member  
Motor Accident Claims Tribunal  
Additional District Judge  
Sonitpur, Tezpur

**ADVOCATES WHO APPEARED**

For the claimant	: Md. S. Khan, Advocate Advocates
For the OP 3	: Sri P. Sarmah, Advocate
Date of argument	: 16-08-2013, 15-11-2013
Date of judgment	: 21.12.13

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

1. This claim petition has been submitted under Section 166 of Motor Vehicles Act, by the claimant Md. Ramijuddin Ahmed claiming

compensation on account of injury sustained by his son, namely, Md. Rekib Ahmed in a Motor Vehicle Accident which occurred on 16-05-2006.

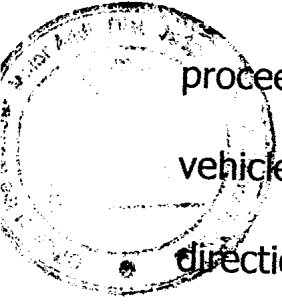
2. The facts of the above mentioned case, may, in brief, is that on 16.05.2006, while the son of the claimant Md. Rekib Ahmed was proceeding towards home from a shop after purchasing biscuit, a Maruti vehicle bearing Registration No. WB-02-S/6142, coming from opposite direction i.e from Dolabari side towards Marabharali side, which was driven with high speed hit the Motor Cycle in the front side and thus the accident occurred.

That immediately after the incident, the injured Md. Rekib Ahmed was admitted at the EMM Hospital at Tezpur as indoor patient. That in the said accident the injured received multiple injuries and the injured is still under treatment.

3. The OP No 1 was the owner of the vehicle bearing registration No. WB-02-S/6142(Maruti), which was driven by OP No 2 and was insured with OP No 3. The claimants preferred this claim petition u/s 166 of the MV Act seeking an amount of Rs. 5,00,000/ (Rupees Five Lakhs) as compensation from the opposite parties for general, special and consequential damages.

4. The case proceeded ex-parte against the owner (OP No 1) as he did not take steps of the case. The name of OP No 2 also struck off from the claim petition as he is not a necessary party in the case.

5. The OP No 3, National Insurance Co. Ltd. has filed a written statement denying the maintainability of the case. The answering OP has also not given in details the description of multiple injuries and the patient are treated under the Doctor of EMM Hospital, Tezpur. The answering OP



*Md. Rekib*  
21.12.11  
District Judge  
Tezpur

has denied the allegation of being driven the vehicle No. WB-02-S/6142 (Maruti) by his driver (OP No 2) in the rash and negligent manner. But it is also alleged by the answering OP in its written statement that the accident took place due the negligent part of the injured Md. Rekib Ahmed who negligently manner. But it is also alleged by the answering OP in its written statement that the accident took place due to the negligent part of the injured Md. Rekib Ahmed who negligently came to the middle of the road when the vehicle proceeded from Dolabari to Marabharali, for which the Insurance Company shall not be liable to pay any compensation. Alleging that the amount of compensation claimed is without any basis and not at all reasonable grounds to file such huge amount of compensation against the OP, the OP No. 3 prayed for dismissal of the claim petition.

6. Upon the pleadings of the parties, the following issues were framed.

**ISSUES**

1. Whether the alleged accident took place due to rash and negligent

driving by the driver of the vehicle?

2. Whether the claimant is entitled to compensation as prayed for?

7. The claimant sides have examined four 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.

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

*Admission*  
21.12.17

Member

Motor Accident Claims Tribunal

Additional District Judge

Rangpur, Tangur

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

**DISCUSSION DECISION & REASONS THEREOF**

**ISSUE NO. 1**

9. This issue relates to the fact that as to whether the accident took place due to rash and negligent driving of the driver of the vehicle No. WB-

02-S/6142 (Maruti).

10. The claimant Md. Ramijuddin Ahmed is the father of the injured son. In his evidence-on-affidavit as CW-1, he stated that on 16-05-2006, his son was proceeding towards home from a shop and at that time, the offending vehicle bearing Registration No. WB-02-S/6142 was coming from opposite direction, i.e from Dolabari side towards Marabharali in a very rash and negligent manner with high speed and accordingly knocked his son Md. Rekib Ahmed as a result he sustained injury on his person and immediately he was admitted to EMM, Hospital at Tezpur as indoor patient from 16-05-2006 to 18-05-2006. He has also in his evidence stated that due to the accident his son becomes cripple handicapped and has taken treatment of different doctors. The claimant also stated again that old fracture of the son which injury was found in the said accident is still not reunion his joint and as such he spent near about Rs. 70,000/- for the treatment of his son. In his evidence-on-affidavit the claimant has stated that his son is a school going student and reading at Class III and he is fully dependent on him. He also stated that his son is not able to give appear attention on his studies due to the said injury and he sustained the injuries of compound comminuted fracture lower thirds both legs

*Md. Ramijuddin Ahmed*  
21-11-2006  
Member  
Accident Claims Tribunal  
Additional District Judge  
Tezpur, Tezpur

bones(right) he lost 45 db conductive in his right ear, as a result, his son becomes cripple handicapped for which he is unable to do any kind of hard work and due to his loss of hearing he could not communicate with his teachers, friends and family members.

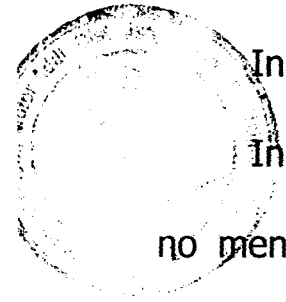
In support of his case, the claimant has exhibited certain documents.

In the cross-examination, this witness admitted that in Ext 8, there is no mention on the basis for giving disability certificate of 60% by Dr. Jiten Borkakati. He also admitted that he has also not submitted the prescriptions against the cash memos Ext 13(6).

CW-2, Md. Hussen Ali is the eye witness to the accident. He stated in his evidence-on-affidavit that on 16-05-2006, when he was taking tea from a hotel at Dolabari Centre, at that time the offending vehicle bearing No. WB-02-S/6142 was coming from Dolabari side towards Marabharali side knocked Md. Rekib Ahmed who was on the extreme sustained injury. It is also stated that the offending vehicle was coming with high speed and in rash and negligent manner.

In the cross-examination, this witness admitted that he was working tea in the verandah of the tea-stall and saw both, the vehicle and the boy on the road, he denied the defence suggestion that the injured was going through the middle portion of the road at the time of the accident and that the accident took place due to the fault of the injured boy.

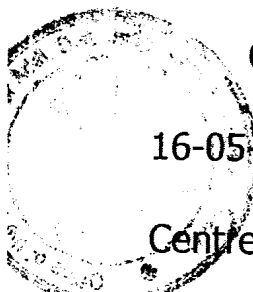
CW-3, Dr. Jiten Barkakati, deposed in his evidence that Md. Rekib Ahmed was under his medical treatment from 19-05-2006 and 23-05-2006. He also deposed that the injured sustained multiple injuries in facio-maxillary area, bleeding swelling, haetoma present with fracture and right



*Hussen*  
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Member  
Motor Accident Claims Tribunal  
Additional District Judge  
Burdwan, Tezpur

side tympanic membrane was repaired. He further deposed that he is not authorised to determine the disability but as per his opinion and examination, the patient was of 60% disability.

In the cross-examination, he admitted that the patient was examined and medical treatment was provided without any police requisition. He also stated in cross-examination that, as per his opinion, the injuries which he found in the person of the patient are curable and he also did not refer the patient to any other hospital.



CW 4, Dr Satyajit Borah deposed in his evidence-in-chief that on 16-05-2006, he examined Rekib Ahmed at EMM Hospital & Research Centre. He also deposed that on examination of Rekib Ahmed he found fracture on both legs bones (right) in the lower third and compound comminuted fracture and the injuries are grievous injuries.

In the cross-examination, the Medical Officer admitted that in this case he had not given any certificate or document of permanent disablement and also he admitted that he is not concerned with the issuing of Disablement Certificate.

From the evidence of claimant and his supported witnesses, it is proved that the accident took place due to the fault of the driver of the

vehicle. So, this issue is decided in favour of the claimant.

*Member*  
21-12-13  
Member  
Motor Accident Claims Tribunal  
Additional District Judge  
Santipur, Tamrapar

### **ISSUE NO 2**

11. In view of the above discussion made in Issue No. 1, the claimant is entitled to get compensation. So, this issue is not discussed in details. Under the provisions of Motor Vehicle Act and Rules, when the claimant got injuries due to rash and negligent driving of the vehicle which was duly

insured at the time of the accident, the claimant is entitled to get compensation. So, this issue is decided in favour of the claimant accordingly.

Now as to the compensation which the claimant is entitled the treatment which the claimant had to undergo as a result of the accident is required to be analyzed.

12. The claimant has in this case proved the fact that the claimant is entitled to compensation. As he is a small boy of 8 years and at this age, he has obtained disability of about 45% or more, though no certificate has been submitted, he has been deprived of enjoying his normal activities for his whole life. Under the circumstances, that fact can be taken into consideration without any certificate. Considering all aspects and taking into consideration all documents, evidence on record as well as for the discussions made above, I am of the opinion that the following amount awarded to the son of the claimant will meet the ends of justice.

1. Medical Treatment	70,000/- Only
2. Loss of future earning on account of disability	1,00,000/-Only
3. Future Medical and Miscellaneous Expenses	20,000/-Only
4. Loss of earning during treatment	20,000/- Only
5. Physical and mental pain	1,00,000/- Only
6. Loss of amenities and Future amenities	1,00,000/-/-Only

.....  
**Rs. 4,10,000 /- Only**

13. Accordingly, the claimant Md. Ramijuddin Ahmed is entitled to get the total amount of compensation of Rs. **4,10,000/-** only with an interest

*W. Khan*  
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at the rate of 9% per annum and the amount will be paid by the Insurance Company within one month from the date of filing judgment.

14. Accordingly, the Opp. Party National Insurance Co. Ltd is directed to pay the above amount the compensation to the claimant.

**ORDER**

15. The claim petition is allowed awarding an amount of **Rs 4,10,000/-** only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid by the Insurance Company within one month from the date of the judgment.

16. The O.P. No. 3 i.e the National Insurance Company. Ltd is hereby directed to pay the compensation amount of **Rs 4,10,000/-** only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid by the Insurance Company within one month from the date of the judgment.

17. Send a copy of this judgment to the OP No. 2 i.e. the National Insurance Company Ltd free of cost.

18. Given under my hand and seal of this Court on this 21<sup>th</sup> day of December, 2013 at Tezpur.

*M Sharma*  
21.12.13

**(Smti.M.R.Sharma)**  
**Member,M.A.C.T(Addl.Dist.Judge)**  
**Sonitpur, Tezpur**