

**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. 299 OF 2006

Sri Shiv Sankar Sharma
R/O : G.E. Air Force
P.O: Salonibari P.S.: Tezpur
Dist: Sonitpur, Assam **Claimant**

Versus

1. Sri Monish Daga
[Owner of the vehicle No.H.R.-01-H/8960]
2. Sri Shiv Shankar Sharmah
[Driver of the vehicle No.H.R.-01-H/8960]
3. The United India Insurance Co. Ltd.
[Insurer of the vehicle No. H.R.-01-H/8960]

ADVOCATES WHO APPEARED

For the claimant	:	Salim Khan Advocate
For the OP No 1	:	Md. Taher Ali, A.K. Sharma Advocates
For the OP No 3	:	Sri K.P. Singh, Sri S.K. Singh, advocates
Date of argument	:	21.09.13, 10.02.14
Date of judgment	:	17.04.14

J U D G M E N T

1. This claim petition has been filed by the claimant Sri Shiv Sankar Sharma, claiming compensation on account of injury sustained in a motor accident took place on 15.10.2006.

10/04/14
 12/11/14
 Member, Motor Accident Claims Tribunal
 Addl. District Judge
 Sonitpur, Tezpur

2. The facts of the above mentioned case, may, in brief, be stated as follows:

On 15.10.06, the Claimant was a driver of the vehicle Regd No. H.R.-01.H/8960 (Fiat UNO) coming back from Guwahati with the friends of OP No 1 and when the said vehicle arrived at Kamarkuchi at about 5.30 pm under Sonapur Police Station and suddenly one of the sound came out from parts of the running vehicle Regd No. H.R.-01.H/8960 (Fiat UNO) and the said vehicle capsized. As a result of the claimant himself sustained injuries along with friends. The claimant grievously injured he carried to the Down Town Hospital and thereafter taken treatment at GMC and thereafter taken treatment at Dr kalita, and admitted at E.N.T Hospital and still under treatment. The accident took place due to mechanical defect of the said vehicle.

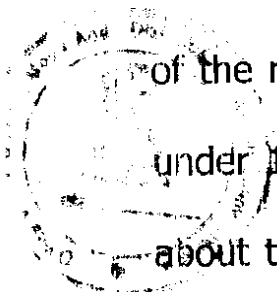
Hence, under the above facts and circumstances, the claimant preferred this claim petition claiming an amount of Rs.8,00,000/ - as compensation from the opposite parties.

3. The O.P. No.1 was the owner of the offending vehicle bearing Registration H.R. -01.H/8960 (Fiat UNO) which was driven by O.P. No. 2 and was insured O.P. No. 3 ,the United India Insurance Co. Ltd.

4. In the written statement filed by O.P. No. 1, owner of the vehicle has denied the cause of action and maintainability of the case and stated that the claim petition suffers from vagueness and infirmity as well as suffers from suppression of material facts and the claim petition is bad for mis joinder and non joinder of necessary parties. The OP No 3 has also stated in the written statement that the vehicle is duly insured with United

Insurance Co. Ltd and have valid upto 06.06.07. It is also stated that there is no rash and negligent driving on the part of the driver of the said vehicle because driver Sri Shiv Sankar Sharma drove the said vehicle with due care and precaution and had obtained valid driving licence at the time of accident. Alleging amount claimed by the claimant is so high exaggerated and excessive. So, the OP No 1 has prayed to dismiss the claim petition.


5. In the written statement filed by O.P. No. 3, insurer of the vehicle has denied the maintainability of the case and also stated that there is collusion between the claimant and the owner of the said vehicle then that will obtain to this OP the protection available to it u/s 170 of the MV Act, 1988. It is also mentioned that the OP has not received any copy of the record or report of the said accident from Sonapur Police Out-Post under 158(6) of the MV Act, 1988. The OP did not have the knowledge about the manner of accident, about the high speed at which the vehicle was running at the relevant time. The OP also stated that the Investigator investigated the case and the Insurance Co. that an accident took place on 15.10.06, the accident took occurred when the claimant-driver of the offending vehicle tried to overtake a running truck and in the process dashed against piles of soil by the side of the road kept for leveling the road. The driver of the said vehicle unmindfully of the road condition drove the vehicle and was overtaking when on one side of the road condition drove the vehicle and was overtaking when on the road side of the road there was piles of soil, the accident occurred. This fact has been suppressed and the claimant has put forwarded a fraudulent statement by saying that the vehicle capsized giving the impression as if because of any



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result of the claimant himself sustained injuries along with friends. The claimant grievously injured he carried to the Down Town Hospital and thereafter taken treatment at GMC and thereafter taken treatment at Dr Kalita, and admitted at E.N.T Hospital and still under treatment. The accident took place due to mechanical defect of the said vehicle.

The claimant Sri Shiv Sankar Sharma in his evidence has narrated the manner in which the accident took place due to mechanical defect of the said vehicle and the vehicle was duly insured with United India Insurance Co. Ltd, while the insurance company cross examined this witness and suggested that the accident took place due to the negligence of the offending vehicle, the claimant totally denied.



In the evidence of the doctor it is found that the claimant sustained injury in brain, and fracture of wrist, colour bone nasal bone and left ear and broken two upper teeth and one lower teeth. During the time of treatment the claimant went under treatment of his left perforated ear. The insurance has not given any evidence from which it can be inferred that the driver was at fault. But, the claimant has stated that there was some mechanical defect in the vehicle. He has stated in his affidavit in his evidence-in-chief that while he was driving the vehicle, on way from Guwahati to Tezpur, suddenly near Kamarkuchi at about 5.30 PM, sound came out from parts of the running vehicle, and the vehicle capsized and the accident took place. This fact requires no further corroboration, as admitted facts need not be proved.

The driver had a valid driving licence, the vehicle was insured at the time of the accident.

For determination of the liability of the opposite parties in this case, and whether 163A of the Act is ground by the fault or no fault liability, it is required to be seen what Section 140 MV Act speaks about.

"Section 140. **Liability to pay compensation in certain cases on the principle of no fault.**-(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section(1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made or shall be quantum of compensation recoverable in respect of such

death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section(2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is sole liable to pay compensation under any other law for the time being in force:"

Here in this case, Sub-section (3) and Sub-sec(4) and Sub-Sec (5) are relevant,

Reading of the above sub-sections it is clear that the burden of pleading or establishing wrongful act, neglect or default of the person who had done the act and not claimant. Sub-Sec 3 relates to the fact that claimant shall not be required to plead and establish death or permanent disablement in respect of any claim made due to any wrongful act, neglect or default of the owner, of the vehicle, and under Sub-Sec(4) the quantum of compensation recoverable would go to the share of the owner for such responsibility.

The evidence on record is that there was mechanical defect, and the same has not been rebutted, or disproved by the owner OP No 1 Manish Daga.

Now on perusal of Section 163A, of the MV Act, the owner OP No 1 had been negligent in maintain his vehicles. The owner can plead and establish such wrongful act, or neglect or default and Sub Sec (2) of Sec 163 A is clear in this context. So, the point as to who is responsible for the accident clearly shifts to the OP No 1 in this case. The OP No 1 Manish Daga the owner of the vehicle is liable to pay the compensation, due to his

negligence as discussed above and the insurance company is absolved from the claim.

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

ISSUE NO 2

10. In view of the discussion made in Issue no 1 , the claimant is entitled to get compensation. The offending vehicle was duly insured at the time of the accident. So, the claimant is entitled to get compensation from OP No 3 United India Insurance Company with whom the offending vehicle No H.R. -01.H/8960 (Fiat UNO) was insured.

Now remains the amount of compensation to be decided for claimant. The claimant has stated that at the time of the accident i.e. on 15.10.06 the deceased was aged about 27 years and at that time he was earning Rs. 3333/ per month. The claimant has exhibited the medical report and cash memos and also the prescriptions Ext 2 to Ext 27(4) it is found that an amount of Rs 54,047.25/- was incurred by the claimant for medical treatment of the injured. So, the notional income is taken into consideration and the amount of compensation to which the claimant is entitled to get is calculated as follows.

1. Medical Treatment during treatment	54,047.25/- Only
2. Future Medical and Miscellaneous Expenses	20,000/-Only
3. Loss of earning during treatment	20,000/- Only
4. Physical and mental pain	50,000/- Only
5. Loss of amenities and loss	<u>50,000/-/-Only</u>

Rs. 1,94, 047.25/- Only

Rs. 1,95,000/-Only(Rounded up)

11. Accordingly, the claimant is entitled to get compensation of **Rs. 1,95,000/ Only.**

ORDER

12. The claim petition is allowed awarding an amount of **Rs: 1,95,000/** 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 owner of the vehicle Sri Manish Daga will pay the said amount within one month from the date of receipt of the copy of the Judgment.

13. The OP. No. 1 Sri Manish Daga is hereby directed to pay the compensation amount of **Rs: 1,95,000/-** only to the claimant with an interest at the rate of ~~12~~9% per annum from the date of the filing of the claim petition till realization and the owner of the vehicle Sri Manish Daga will pay the said amount within one month from the date of receipt of the copy of the Judgment.

14. Send a copy of this judgment to the OP No. 1 i.e. the owner of the vehicle Sri Manish Daga at free of cost.

15. Given under my hand and seal of this Court on this **17th day of April, 2014** at Tezpur.

M.R.Sharma
12/4/14
(Smti.M.R.Sharma)
Member, M.A.C.T (Addl. Dist. Judge)
Sonitpur, Tezpur

Tribunal