

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

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

JUDGMENT IN MAC CASE NO. 356 OF 2011

Shri Bijay Sarkar
S/O: Sri Prabhat Ch. Sarkar
Vill & P.O: Mitham
P.S: Dhekiajuli, Dist: Sonitpur, Assam

..... **Claimant**

Versus

- 1.Md. Abdul Latif
[Owner of the vehicle No. AS-12D-1673..... (Truck)]
- 2.Md. Alam Sah (Phukan)
[Driver of the vehicle No. AS-12D-1673..... (Truck)]
- 3.The Oriental Insurance Co. Ltd.
[Insurer of the vehicle No. AS-12D-1673..... (Truck)]

*Admission
4/4/14
District
Member*
 Member, Motor Accident Claims Tribunal
 Addl. District Judge
 Sonitpur, Tezpur

ADVOCATES WHO APPEARED

For the claimant : Smti. S. Das, Advocate
 For the OP No 1 & 2 : Md. I.H. Hussain, Advocate
 For the OP No 3 : Smti. L. Borah, Advocate
 Date of argument : **04.04.14**
 Date of judgment : **04.04.14**

J U D G M E N T

1. This claim petition is filed under Section 166 of the Motor Vehicles Act by the claimant Shri Bijay Sarkar claiming compensation on account of injuries sustained by him in a motor vehicle accident that took place on 11.08.2007.

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

On 11.08.2007, the claimant was proceeding from Hugrajuli Bazar to Dhekiajuli by a vehicle bearing registration No. AS-12D/1673 (Truck) seating in the cabin of the truck along with his goods and on the way of his journey at about 5.50 pm, the vehicle met with an accident due to rash and negligent driving by the driver of the said vehicle. The claimant had sustained grievous injuries of fracture on his left knee. Immediately after the accident, the claimant was been taken to the Dhekiajuli P.H.C and for his seriousness the claimant thereafter was taken to the Kanaklata Civil Hospital, Tezpur, where he was admitted as a indoor patient from 11.08.07 to 16.08.07 and thereafter he took treatment from various doctors and his treatment is still going on. He had incurred expenditure more than Rs 60,000/- for his treatment but he become permanently disabled and now is unable to move and work as before and he had lost his income source. He is the only bread earner of his family and at present he has no source of income, for that he is suffering from financial hardship. At the time of the accident, he used to earn Rs. 3,000/- only per month from his business as by selling jute, rice, etc. in various hats, Bazars so the claimant preferred

this claim petition claiming an amount of Rs. 7,00,000/- as compensation from the opposite parties.

3. The O.P. No.1 was the owner of the offending vehicle bearing Registration No. AS-12D-1673 (Truck), which was driven by O.P. No. 2 and was insured with O.P. No. 3, The Oriental Insurance Co. Ltd.

4. The OP No 1 and OP No 2 i.e the owner and the driver of the offending vehicle have filed jointly written statement has denied the cause of action and the maintainability of the case. The amount as claimed by the claimant is too excessive, unbelievable. The OP also admitted that the Truck bearing Registration No. AS-12D-1673 involved in the accident belongs to the answering opposite party No. 1 having proper registration 01.07.2006. The OP also stated that on 11.08.07 the vehicle was driven by the driver of the OP No 1 and was started from Hugarajuli Bazar. The claimant Bijay Sarkar was travelling as a goods carrying passenger and was sitting in ht cabin of the truck along with the driver and was proceeding towards Dhekiajuli. When the vehicle reached Alisinga centre suddenly one cyclist tried to cross the road very negligently without caring to look to either side of the road. As a result of which the driver of the truck while trying to save the cyclist knocked a standing truck on the rear side. The claimant suffered some injuries. The accident took place due to the fault of the cyclist and not due to rash and negligent driving of the driver of the vehicle No. AS-12D-1673(Truck) i.e the OP No 2. The OP also stated that the vehicle No. AS-12D-1673 (Truck) which was driven by the OP No 2 having a valid driving licence which was valid up to 22.02.2015 issued by DTO, Sonitpur, Tezpur. The vehicle was driven by the OP No. 2 on the very

day of the alleged accident with care and caution and within the limited speed being plied by complying all the terms and conditions. So, the O.P. No 1 and 2 have prayed for dismissal of the claim petition.

5. In the written statement filed by O.P. No. 3, the Oriental Insurance Co. Ltd, it is averred that this O.P. has denied the cause of action and maintainability of the case and the claimant suppressed the relevant information as to cause and manner of alleged accident. The OP also stated that the claimant has no locus-standi to file this case against the OP, as the alleged accident did not take place out of any motor accident and also stated that the claim of the petitioner is vague and without any basis what so ever. The OP also denied the place, date and the time that the offending vehicle involved in the alleged accident. The OP stated that the claimant has not mentioned his monthly income and also the claimant fails to prove that the vehicle (truck) has been insured with the Oriental Insurance Co. and the respondent company is not liable to pay any compensation to the claimant until and unless it is proved that the person at the wheel was having valid and effective driving licnece to drive such vehicle . Under the circumstances, the OP No 3 has prayed to dismiss the claim petition.

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

ISSUES

1. Whether the claimant suffered injury due to motor vehicular accident to vehicle No. AS-12D-1673 (Truck)?

2. Whether the claimant is/are entitled to any compensation as prayed for, if yes, from whom and what extent ?

7. 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 & REASONS THEREOF

ISSUE NO.1

8. This issue relates that whether the claimant suffered injury due to motor vehicular accident of vehicle No. AS-12D-1673 (Tuck).

The evidence and the medical documents of the claimant, it is clear that the claimant suffers injury due to the accident. In the cross-examination by the Insurance Company, the claimant stated that the accident occurred when the Truck dashed against a post on the street. After the incident he was inside the Truck and there were some passengers also in the Truck and immediately they took him to the Dhekiajuli PHC and then he was referred to Kanaklata Civil Hospital and there he was an indoor patient from 11.08.07 to 16.08.07. He also stated that he was submitted the documents relating to his accident. The injury suffered by the claimant has not been denied or controverted by the OP side. So, this issue is decided in favour of the claimant.

ISSUE NO 2

9. 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 and at that time the driver of the offending vehicle also had a valid driving licence, the claimant is entitled to get compensation. It is seen from the record that the driver had a valid driving licence at the time of the accident and the vehicle was insured with Oriental Insurance Co. at the relevant time, which is not denied. So, the driver is not liable to pay the compensation. As regards the liability of the owner, since the insurance policy was valid at the relevant time and the Insurance Company has also not proved the fact that the vehicle was not insured, the owner is also not liable to pay compensation. So, this issue is decided in favour of the claimant accordingly.

10. The documents show that he is 50% physical disability due to the accident which is exhibited as Ext 6. The said certificate is sufficient proof of the 50% disability of the claimant. Hence, the certificate is accepted as the OP Insurance has not been able to disprove the said certificate and has not adduced any evidence which can make the said certificate not acceptable and can be discarded.

In view of the discussions above, I find that the claimant has been able to prove the case, and he is entitled to compensation for the 50% disability and other injuries sustained by him as a result of the accident as per the provisions of M.V. Act and Rules.

Now, remains the amount of compensation to be awarded and which of the OP is/are liable for the payment of the same.

W. S. Srinivas
 W. S. Srinivas
 M.A. B.A.
 District Judge
 Bangalore, Tempur

Considering all aspects, and considering 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 claimant will meet the ends of justice.

1. Loss of future earning on account of disability(50%)	1,00,000/- Only
1. Medical Treatment(including vouchers)	4,710.20/- Only
2. Future Medical and Miscellaneous Expenses	20,000/-Only
3. Loss of earning during treatment	30,000/- Only
4. Physical and mental pain	1,00,000/- Only

.....
Rs. 2,54,710.20/ Only

(Rounded up to 2,55,000/-)

11. Accordingly, the claimant is entitled to total amount compensation of **Rs. 2,55,000/(Two Lakhs Fifty Five Thousand)**only.

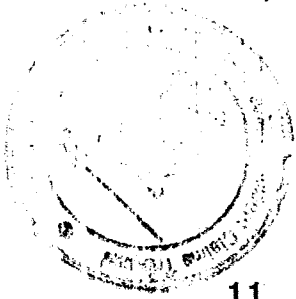
Accordingly, the Opp. Party Oriental Insurance Co. Ltd is directed to

pay the above amount the compensation to the claimant.

ORDER

12. The claim petition is allowed awarding an amount of **Rs. 2,55,000/(Two Lakhs Fifty Five Thousand)** 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 Insurance Co. will pay the said amount within a period of one month from the date of receipt of the copy of the judgment.

13. The OP. No. 3 i.e. the Oriental Insurance Co. Ltd is hereby directed to pay the compensation amount of **Rs. 2,55,000/(Two Lakhs Fifty Five Thousand)** 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



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21/4/19
District Judge
Oriental District Judge
Bhopal, Madhya Pradesh

realization and the Insurance Co. will pay the said amount within a period of one month from the date of receipt of the copy of the judgment.

14. Send a copy of this judgment to the OP No. 3 i.e the Oriental Insurance Co. Ltd free of cost.

15. Given under my hand and seal of this Court on this **04th day of April, 2014** at Tezpur.



Wanwe
4/4/14
(Smti.M.R.Sharma)
Member, M.A.C.T (Addl. Dist. Judge)
Sonitpur, Tezpur
Member
Motor Accident Claims Tribunal
Additional District Judge
Sonitpur, Tezpur