

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. 368 OF 2001

Sri Kamalesh Ganguly  
Son of Late N.D.Ganguly  
Resident at No. 1 Maitra Colony,  
Polofield Road, Tezpur  
P.O/P.S: Tezpur,  
Dist: Sonitpur, Assam ..... Claimant

Versus

- 1.Sri Monish Saini @ Bobby  
(Owner and Driver of the vehicle No. DEC-3850 .....Fiat Car)
- 2.Sri Shanti Ranjan Sarkar  
(Owner and Driver of the vehicle No. AS-12A-5763..... Kinetic Honda)
3. The United India Insurance Co. Ltd.  
(Insurer of the vehicle No. AS-12A-5763..... Kinetic Honda)

ADVOCATES WHO APPEARED

For the claimant : E.D. Sharma, A.K. Sharma  
Advocates

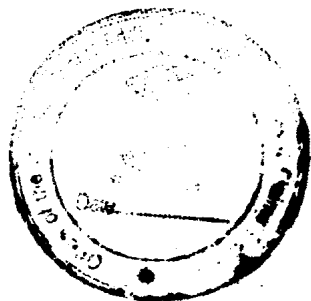
For the O.P. No. 5 : S.K. Singh  
Advocate

For the OP owner cum driver: P. Biswas, Advocate

Date of argument : 30.08.13, 12.09.13, 01.11.13

Date of judgment : 22.11.13

M.R. Sharma  
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Member  
Motor Accident Claims Tribunal  
Additional District Judge  
Sonitpur, Tezpur

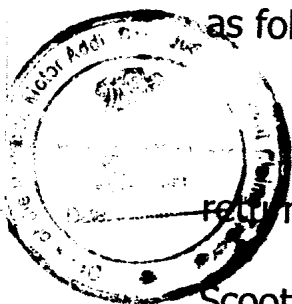


## J U D G M E N T

1. This claim petition has been submitted under Section 166 of M.V. Act, 1988 by the claimant Kamalesh Ganguly claiming compensation on account of injuries sustained by him in a Motor Vehicle Accident on 26.08.2000.

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

On 26.08.2000, at about 2.20 pm while the claimant was returning his house from his office at Tezpur Town as a pillion rider on the Scooter (Kintic Honda) bearing Registration No. AS-12A-5763 belonging to the OP No. 4 Shanti Ranjan Sarkar , an employee of the UCO Bank, Balipara Branch being driven by himself as the owner and driver of the said vehicle on the way to Tezpur Town near Goroimari Tiniali, the offending vehicle bearing registration No. DEC-3850 (Fiat Car) belonging to the OP 1 Sri Manish Saini @ Bobby being driven by himself as owner and driver of the said vehicle in rear direction happened to come in a very high speed in a rash and negligent manner suddenly dashed against the Scooter (Kinetic Honda) No. AS-12A-5763 turning to the said fiat car vehicle towards the direction through which the scooter was proceeding by the left side of the road towards Tezpur side. But the said offending vehicle was driven by the driver in a very rash, negligently, carelessly, endangering human lives by the wrong side of the road without observing traffic rules and regulations and blowing horn. Due to sudden turning on back gear of the said



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offending vehicle from right side to the left side, the said ill fate accident took place against the scooter as a result the claimant was thrown off the pillion of the scooter and tumbled down with serious profusion bleeding injuries of compound fractures in the right upper tibia with soft tissues and skin lost. Due to the said accident the OP No. 2 also sustained injuries in his persons and his scooter also damaged badly. The accident took place due to the rash and negligence driving of the fiat car vehicle of the OP No 1 as owner and driver.



Immediately after the accident, the claimant was brought immediately to Tezpur Kanak Lata Civil Hospital at about 2.45 pm for his treatment. The claimant was admitted as an indoor patient in Tezpur Kanak Lata Civil Hospital and given first aid by Dr. S. Kalita advised to arrange for an immediate medical treatment of the claimant in a well equipped or the hospital through his discharge certificated dated 29.08.2000 was being taken to Patna Hospital by Train Journey and admitted there as an Indoor patient on 31.08.2000, where three major operation of the Rt. Leg of the clamant was done on dated 4.09.2000 , 16.09.2000 and 23.09.2000 respectively. The claimant was admitted in Nurshing Home, Chohatta, patna-4 Bihar w.e.f 31.08.2000 to 20.10.2000

and was discharged under the advice of the doctor to take three months bed rest with daily cleaning and dressing of the wound and fixed ring plate surrounding the right leg as per photograph.

After discharge from Patna Hospital, the claimant come back to his house from Patna to Tezpur on 23.10.2000 with fixed ring plate in his right leg. The claimant went to Patna on 21.01.2001 for checkup and removal of

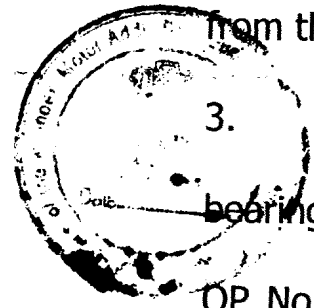
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his fixed ring plate from his right leg from where he returned on 03.02.2001 and still he is in his day to day medical treatment maintain temporary disability in his right leg.

The said injuries have caused the claimant huge pain, agony, sufferings and has made him disabled, shortened, expectancy of long healthy life and unable to do work and move as previously. The said accident took place due to the rash and negligent driving of the driver of the vehicles. It is also mentioned in the claim petition that the claimant is aged about 48 years he earned more than Rs. 15,500/ per month.. Hence, under the above facts and circumstances, the OPs are jointly and severally liable of payment of compensation to the claimant, the claimant as claimed in the claim petition claiming an amount of Rs. 7,45,540/- as compensation from the Opposite Parties.

3. The O.P. No.1 was the owner-cum- driver of the vehicle bearing Registration No. DEC-3850 (New No. AR-01-A-4530)(Fiat Car), the OP No 2 was the owner-cum-driver of the vehicle No. AS-12A-5763 was insured with O.P. No. 5, The United India Insurance Co. Ltd.

4. The owner-cum-driver (O.P. No. 1 & 3) has filed a written statement denying cause of action and also maintainability of the case and also stated that the claim petition is hit by the principles of waiver, acquiescence and estoppels. The Op also denies that the driver drove the vehicle in compliance with the provision of MV Act. The answering OP also stated that they have any knowledge about the manner of the accident particularly at that time the OP NO 1 was not present and about the speed at which vehicle was running at the relevant time of a accident was proper

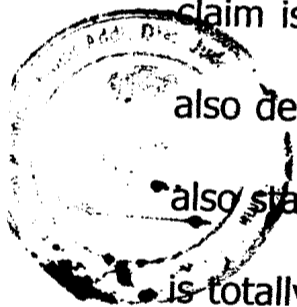


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and permissible speed. It is also submitted by the above opposite parties that at the relevant time of accident Manish Saini was not the owner of the vehicle and he becomes owner of the vehicle only on 21.01.2000 and getting ownership of the vehicle the owner has done proper insurance policy. But at the relevant time i.e on 26.08.2000 the Op were not owner of the vehicle. So this claim petition is not tenable. Therefore, the O.P. No. 1 has prayed for dismissal of the claim petition.

5. The (O.P. No. 2 & 4) has filed a written statement denying cause of action and also maintainability of the case and also stated that the claim petition is hit by the principles of waiver, acquiescence and estoppels. It is also contended in the claim petition that the claim petition is bad for mis-joinder and non-joinder of necessary party. The OP also stated that the claim is bad for suppression and non disclosure of material facts. The OP also denies and disputes time, place and date of alleged accident. The Op also stated that allegations of rash and negligent driven made by the driver is totally denied by the OP. The accident took place due to the fault of the driver/owner of the vehicle DEC-3850(Fiat Car) and driving the vehicle at a very high speed. Alleging that the amounts of compensation claim by the claimant is imaginary and excessive. Under the circumstances, the OP No. 2 has prayed for dismissal the claim petition.

In the written statement filed by O.P. No. 5, United India Insurance Company Ltd, it is averred that this O.P. has denied the maintainability of the case. It was also contended in the claim petition that the claim petition is bad for mis-joinder and non-joinder of necessary parties. The OP also stated that the claimant Sri Kamallesh Ganguli has no



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locus standi to file the claim case against the answering OP No. 3 for the alleged accident wherein he was injured in motor accident occurred on 26.08.2000 and also stated that claim petition is not properly verified as per the provisions of law. The answering OP No. 3 has not admitted the fact that the alleged accident took place at Goroimari, Tiniali, 52 N.H. in the District of Sonitpur, dated 26.08.2000. The OP also stated that it is not fact that the accident happened and occurred due to rash and negligent driving of the driver namely Sri Ranjan Sarkar who was driving the Kinetic Honda AS-12A/5763 was proceeding in the left side of the road towards Tezpur. As a matter of fact that accident occurred due to the fault of the driver of the offending vehicle Fiat Car DEC -3850(New- AR/01-A-4530). Besides the said fiat car does not have a valid papers and documents as well as it was not insured also it at the relevant time of accident under such circumstances the answering Insurance Co. is not at all liable for the alleged accident and may be exonerated from any compensation payable to the claimant. The OP also denied that the vehicle involved in the alleged accident was not plied as per the legal requirement of Insurance Policy as well as MV Act without having valid Registration papers and other documents which are essential for driving the vehicle. The op also stated that driving licence of the driver Si Manish Saini and Shanti Ranjan Sarkar is a doubtful issued to him by DTO concern. Therefore, it is necessary that OP No. 1 and Op No. 2 and 3 should produce the valid licence. Alleging that the amounts of compensation are highly exorbitant, excessive and baseless. So, the OP has prayed to dismiss the claim petition.



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7. 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 No. DEC-3850 (Fiat Car) or the driver of S-12/5763(Kinetic Honda) or whether both the drivers are equally responsible for the accident?

2. Whether the claimant is/ are entitled to any compensation and if yes, to what will be the quantum of compensation and by which of the respondents this amount shall be paid?

8. This claimant side has examined the claimant himself and also his supported witness has also produced certain documents.

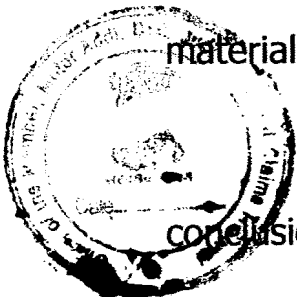
9. The learned counsel for the Insurance Company has submitted his written argument. I have also gone through the evidence and other materials on record.

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

10. This issue is whether the accident took place due to rash and negligent driving of the driver-cum owner of the vehicle. The evidence of the claimant also his supported witnesses have adduced that on that day of the accident, on 26.08.2000, at about 2.20 pm while the claimant was returning his house from his office at Tezpur Town as a pillion rider on the Scooter (Kinetic Honda) bearing Registration No. AS-12A-5763 belonging to



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the OP No. 2 Shanti Ranjan Sarkar , an employee of the UCO Bank, Balipara Branch being driven by himself as the owner and driver of the said vehicle on the way to Tezpur Town near Goroimari Tiniali, the offending vehicle bearing registration No. DEC-3850 (Fiat Car) belonging to the OP 1 Sri Manish Saini @ Bobby being driven by himself as owner and driver of the said vehicle in near direction happened to come as a very high speed in a rash and negligent manner suddenly dashed against the Scooter (Kinetic Honda) No. AS-12A-5763 turning to the said fiat car vehicle towards the direction through which the scooter was proceeding by the left side of the road towards Tezpur side. But the said offending vehicle was driven by the driver in a very rash, negligently, carelessly, endangering human lives by the wrong side of the road without observing traffic rules and regulations and blowing horn. Due to sudden turning on back gear of the said offending vehicle from right side to the left side, the said ill fate accident took place against the scooter as a result the claimant was thrown of the pillion of the scooter and tumbled down with serious profusion bleeding injuries of compound fractures in the right upper tibia with soft tissues and skin lost. Due to the said accident the OP No. 2 also sustained injuries in his persons and his scooter also damaged badly.

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In his cross-examination, he stated that for the owner cum driver of the fiat car by putting a suggestion to the effect that it is not a fact that the driver Manish Saini did not drive the vehicle in rash and negligent manner, impliedly admitted that the driver Manish Saini drove the vehicle. The fact is proved by CW-1 and 2 in their depositions and also the owner cum driver of the Kinetic Honda bearing Registration No. AS-12-A/5763



filed written statement and no where denied or disputed about the said accident or involvement of his vehicle. The claimant also stated that the insurer the United India Insurance Co. Ltd of the Kinetic Honda bearing Registration No. AS-12-A/5763 filed written statement and contested the case. The Insurance Co. took plea that as the claimant has made allegation of negligent driving only as the driver of the Fiat Car so the name of this OP is required to be strike off from the case. After completion of recording deposition of CW-1 (Claimant), the advocate for the Insurance Company filed a petition before the tribunal praying for striking off their name on the ground that during cross-examination the CW1 stated that he sought relief against the owner-cum-driver of the fiat car. Written Objection against the said petition of the Insurer was filed by the claimant and other. However, the said petition was rejected and so the Insurance is liable to pay the compensation. The claimant also adduced evidence of two witnesses in support of his claim including himself. He adduced in his evidence as CW-1 and Si Shankar Chakraborty adduced his evidence as CW 2. The witnesses have been able to prove the case of the claimant and the fact that the accident took place due to rash and negligence driving of the driver-cum - owner of the offending vehicle has been proved. It may be mentioned that during trial evidence was adduced by L.D. Assistant of D.TO on behalf of claimant and he has clearly pointed that the vehicle No-AR-01A-4530(Fiat Car) involved in the accident was earlier registered as AS-DEC-3850 and the same was assigned in the name of Manish Saini. The original registration of the DTO was exhibited as Ext A. Ext A(1) is the signature of DTO, Papumpare and also Ext. B was the Original Registration Book

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showing the change of number of the vehicle by Sri Manish Saini w.e.f 26.08.2000. So, this issue is decided in favour of the claimant and the Insurance Company is liable to pay the compensation to the claimant.

### **ISSUE NO 2**

11. Whether the claimant is entitled to any compensation and if yes, to what will be the quantum of compensation and by which of the respondents this amount shall be paid.

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.

Immediately after the accident, the claimant was immediately shifted to Tezpur Kanak Lata Civil Hospital at about 2.45 pm for his treatment. The claimant was admitted as an indoor patient in Tezpur Kanak Lata Civil Hospital and given first aid by Dr. S. Kalita advised to arrange for an immediate medical treatment of the claimant in a well equipped or the hospital through his discharge certificated dated 29.08.2000 was being taken to Patna Hospital by Train Journey and admitted there as an Indoor patient on 31.08.2000, where three major operation of the Rt. Leg of the claimant was done on dated 4.09.2000 , 16.09.2000 and 23.09.2000 respectively. The claimant was admitted in Nurshing Home, Chohatta, patna-4 Bihar w.e.f 31.08.2000 to 20.10.2000 and was discharged under the advice of the doctor to take three months bed rest with daily cleaning and dressing of the wound and fixed ring plate surrounding the right leg as per photograph.

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After discharge from Patna Hospital, the claimant come back to his house from Patna to Tezpur on 23.10.2000 with fixed ring plate in his right leg. The claimant went to Patna on 21.01.2001 for checkup and removal of his fixed ring plate from his right leg from where he returned on 03.02.2001 and still he is in his day to day medical treatment maintain temporary disability in his right leg.

The said injuries have caused the claimant huge pain, agony, sufferings and has made him disabled, shortened, expectancy of long healthy life and unable to do work and move as previously. The said accident took place due to the rash and negligent driving of the driver of the vehicles. It is also mentioned in the claim petition that the claimant is aged about 48 years he earned more than Rs. 15,500/ per month.

The documents show that he is 55% physical disability due to the accident which is exhibited as Ext. 10. The said certificate is sufficient proof of the 55% 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 55% disability and other injuries sustained by him as a result of the accident.

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

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12. On the quantum of the compensation, the claimant has claimed on amount of Rs. 7,45,540/-. The claimant has submitted documents of medical expenditure. Expenditure has been substantiated by document, since he was a service holder, he also submitted the salary list as loss of 153 days of salary i.e 81,753/- due to the accident and his salary is 15,500/ per month. Furthermore, he is 48 years of age. So, considering his salary, age and medical expenses, the following amount is calculated. So, calculating 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. Future maintenance, and loss of salary	131753/-Only
2. Expenditure during treatment as per vouchers	90177.95/- Only
3. Loss of future earning on account of disability	1,00,000/-Only
4. Physical and mental pain	100,000/- Only
5. <u>Loss of amenities</u>	<u>50,000/-/Only</u>

**Total: 4,71930.95- Only**

**Rs: 4,80,000/- (rounded up)**

13. Accordingly, the claimant Kamalesh Ganguly is entitled to total amount compensation of Rs. **4,80,000/-** only with an interest 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 United India Insurance Co. Ltd is directed to pay the above amount the compensation to the claimant.

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22.11.13

**ORDER**

15. The claim petition is allowed awarding an amount of **Rs 4,80,000/-** 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. 5 i.e the United India Insurance Company. Ltd is hereby directed to pay the compensation amount of **Rs 4,80,000/-** 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. 5 i.e the United India Insurance Company Ltd free of cost.

18. Given under my hand and seal of this Court on this 22<sup>th</sup> day of November, 2013 at Tezpur.

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