

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
GOALPARA, ASSAM

PRESENT: D. MECH,
MEMBER, M.A.C.T., Goalpara.

MAC CASE NO – 298 OF 2017.

Raju Das
S/O – Lt. Monomohan Das.

----- Claimant.

Vs.

1. Oriental Insurance Co. Ltd. ----- Insurer of the vehicle no. AS-18/E-2760 (Motor Cycle),
2. Ibrahim Ali ----- Owner of the vehicle no. AS-18/E-2760 (Motor Cycle),
3. Manik Sutradhar ----- Driver of the vehicle no. AS-18/E-2760 (Motor Cycle),
4. National Insurance Co. Ltd. ----- Insurer of the vehicle no. AS-18/E-7623 (Motor Cycle).

----- Opp. Parties.

Advocates appeared in the case:

Mr. A. Islam ----- Advocate for the Claimant.
Mr. G. C. Saha ----- Advocate for the Opp. Party no-1.
Mr. N. Das ----- Advocate for the Opp. Party no-4.

Date of hearing Argument ----- 15.05.2019.

Date of delivery of Judgment ----- 04.06.2019.

J U D G M E N T

1. The applicant Raju Das filed the claim petition U/S 166 of the Motor Vehicles Act 1988 seeking compensation to the tune of Rs. 30,50,000/- for the injuries sustained by him.

2. The facts of the case are as follows:

3. On 28.09.2017 at about 8-30 P.M. the claimant Raju Das and his friend Mohadeb Saha were talking by the roadside at Molandubi near Balbala Bridge after stopping the claimants motor cycle no. AS-18/E-7623. At that time a motor cycle bearing registration no. AS-18/E-2760 which was driven by its driver in rash and negligent manner hit both of them as a result the claimant sustained grievous injuries. He sustained fracture of left leg and sustained injuries all over the body. The claimant's friend Mohadeb Saha had also sustained injuries on his person. Soon after the accident the claimant was taken to Civil Hospital, Goalpara and thereafter at G.M.C.H., Guwahati for treatment. Regarding the accident one Ajit Saha lodged an F.I.R. with the O/C of Agia P/S whereupon a case being no. Agia P/S case no. 167/17 (G.R. No. 1955/17) U/S 279/338/427 IPC is registered, investigated and on completion of investigation police submitted charge sheet against the driver of the offending vehicle (Opp. Party no-3).

4. All the Opp. parties in the case viz. Opp. Party no-1, the Opp. Party no-2, Opp. no-3 & Opp. Party no-4 appeared in the proceeding to contest the case, & submitted their written statements.

5. The Opp. Party no-1, Oriental Insurance Co. Ltd. in its W.S. besides denying all the averments made in the claim petition, stated inter-alia that due to careless of the claimant the alleged accident occurred. The opposite party no-1 stated that, it is the burden of the claimant to prove that the owner & driver had the valid driving license, & other vehicle related documents Insurance policy of the vehicle at the time of the accident seizure list, F.I.R., Police Report. The Opposite Party no-1 again stated that the compensation claimed by the claimants side is excessive, exaggerated and having no real basis. The Opp. Party no-1 also stated that as the claimant was driving the vehicle no. AS-18/E-7623 (Motor Cycle), so, there might be contributory negligence on the part of claimant side also.

6. The Opp. Party no-2 inter-alia stated that, he is the registered owner of the vehicle no. AS-18/E-2760 (Motor Cycle). His vehicle was insured with the Opp. Party no-1, Oriental Insurance Co. Ltd. which is coverable at the relevant point of accident having policy no-322390/31/2017/3879. The Opp. Party no-3

had effective driving license no. 13424/Bng/Proff/F. Since the offending vehicle is insured with the Opp. Party no-1, he has no responsibility to pay any compensation to the claimant.

7. The Opp. Party no-3 inter-alia stated that the accident did not occur due to his rash and negligence driving. The vehicle is insured with Opp. Party no-1 and he had effective driving license no. 13424/Bng/Proff/F at the time of accident so, if any compensation amount is payable, the Opp. Party no-1 is liable to pay.

8. The Opp. Party no-4, National Insurance Co. Ltd. inter-alia stated that the claimant himself admitted that the accident occurred due to rash and negligent driving of the vehicle no. AS-18/E-2760 (Motor Cycle) insured with Opp. Party no-1. It is also stated that as the claimant is not the third party and the claim petition is filed U/S 166 of MV Act., hence the Opp. Party no-4 denies its liability.

9. Upon the pleadings of both sides, the following issues are found to be proved for the just decision of the cases:

- I. Whether the claimant Raju Das sustained injuries in the alleged motor vehicle accident on dated 28.09.2017 involving vehicle bearing registration number AS-18/E-2760 (Motor Cycle) and whether the said accident had taken place due to rash and negligent driving of the said vehicle?
- II. Whether the claimant side is entitled to compensation and if yes, to what extent and by whom amongst the Opp. Parties, the said compensation amount will be payable?

10. To prove the case, the claimant Raju Das examined himself as PW-1 & Dr. A. Ghosh as PW-2 to prove the injuries sustained by PW-1.

11. During examination of the PW-1 he exhibited the following documents:

- i. Ext. no-1: Accident Information Report,
- ii. Ext. no-2: Certified copy of F.I.R.,
- iii. Ext. no-3: Certified copy of Charge sheet,
- iv. Ext. nos-4(i) to 4(iii): Certified copy of seizure lists,

- v. Ext. no-5: Certified copy of medico legal report,
- vi. Ext. no-6: Disability certificate,
- vii. Ext. no-7: Discharge certificate of Marwari Hospital, Guwahati,
- viii. Ext. no-8: Discharge certificate of Civil Hospital, Goalpara,
- ix. Ext. nos-9(i) & 9(ii): Advice slips,
- x. Ext. no-10(i) & 10(ii): Copy of voter id and D.L.,
- xi. Ext. nos-11(i) to 11(iii): X-Ray reports,
- xii. Ext. nos-12(i) to 12(vii): Medical reports,
- xiii. Ext. nos-13(i) to 13(iii): Medical requisition slip,
- xiv. Ext. nos-14(i) to 14(xxix): Cash memos,
- xv. Ext. nos-15(i) to 15(x): X-Ray plates.

12. The Opp. Party no-1 insurer side in order to disown their liabilities examined no witness.

13. Heard Argument from the learned advocate of both sides.

14. Scrutinized the materials on record and after consideration of the same the issues are decided as under:

ISSUE NO-I

(I) The claimant averred in his claim petition and also stated in his evidence that on 28.09.2017 at about 8-30 P.M. he and his friend Mohadeb Saha were talking by the roadside at Molandubi near Balbala Bridge after stopping his motor cycle no. AS-18/E-7623. At that time a motor cycle bearing registration no. AS-18/E-2760 which was driven by its driver in rash and negligent manner hit both of them as a result he sustained grievous injuries. He sustained fracture (Crush) of left leg and sustained injuries all over the body including on chest, head etc. His friend Mohadeb Saha had also sustained injuries on his person. He (PW-1) sustained type iii B compound fracture of both bones left leg and other injuries. Initially he was taken to Goalpara Civil Hospital thereafter at G.M.C.H., Guwahati and subsequently he underwent operation at Marwari Hospitals, Guwahati and Illizator Fixation Operation was done in his leg. He underwent treatment as indoor patient in Marwari Hospitals, Guwahati from 04.10.2017 to 08.10.2017. He

appeared before the District Standing Medical Board, Goalpara on 22.01.2018 and the board after his physical examination and going through his medical documents issued 40% permanent disability certificate. He further stated that before the accident he used to do business of collecting betel nut and from which he used to earn Rs. 15,500/- per month. He also used to do cultivation but after the accident he became disabled and lost his earnings. He spend Rs. 1,75,000/- in his treatment as medical expenditure. Regarding the accident one Ajit Saha lodged an F.I.R. with the O/C of Agia P/S whereupon a case being no. Agia P/S case no. 167/17 (G.R. No. 1955/17) U/S 279/338/427 IPC is registered, investigated and on completion of investigation police submitted charge sheet against the driver of the offending vehicle (Opp. Party no-3).

(II) He in his evidence specifically stated that the accident causing injuries upon his person, had taken place due to rash and negligent driving of the vehicle bearing registration number AS-18/E-2760 (Motor Cycle). In support of his oral evidence, he has submitted before the Tribunal, the Accident Information Report, being marked as Ext. No-1, certified copy of being F.I.R. being marked as Ext. no-2, certified copy of charge sheet, being marked as Ext. No-3, certified copy of Seizure lists being marked as Ext. Nos-4(i) to 4(iii), certified copy of Injury report being marked as Ext. no-5 and other related medical documents.

(III) Perused the certified copy of charge sheet (Ext. No-3) of Agia P.S. case no. 167/2017 (G.R. No. 1955/17) Ext. No-3 is submitted by the police after completion of investigation of Agia P.S. case no. 167/17 in connection with a motor vehicular accident which is under consideration. From Ext. No-3, it is found that the police after completion of investigation, submitted charge sheet against the Opp. Party no-3, the driver of the offending vehicle i.e., motor cycle showing him as accused in the case and stating that the accident causing injuries upon the person of claimant had taken place due to rash and negligent driving of the vehicle bearing registration no. AS-18/E-2760 (Motor Cycle) by Opp. Party no-3, the driver of the offending vehicle. The submission of charge sheet against the driver of the offending vehicle can be considered as sufficient evidence of rash and negligent driving of that vehicle. In the absence of any evidence contrary there to, filing of the charge sheet, itself shows that the driver of the vehicle was driving the same in a rash and negligent manner. In a decision of Hon'ble Kerala

High Court reported in 2012 (1) TAC 816, a Division Bench of the Hon'ble Court held that filing of a charge sheet can be reckoned as sufficient evidence of negligence in a claim u/s 166 of the M.V. Act and if anyone of the Parties do not accept such charge sheet, burden must be on such Party to adduce oral evidence. The Hon'ble High Court also observed that if the charge sheet does not satisfy judicial conscience, the issue of negligence must be decided on the other evidence.

(IV) The opposite parties did not adduce any rebuttal evidence regarding the occurrence of the accident. Even the Opp. Party no-3 the driver of the offending vehicle who had personal knowledge regarding the accident, did not appear before the Tribunal & adduced evidence to disprove that the accident was took place due to his rash & negligent driving. In view of the above evidence of the claimant side and in the absence of any evidence contrary thereto, there can be no escape from the conclusion that the accident causing injuries upon the person of the claimant, had taken place due to rash and negligent driving of the vehicle bearing registration no. AS-18/E-2760 (Motor Cycle). Hence, this issue is decided in favour of the claimant side.

ISSUE NO-II

(I) In view of the discussion and decision made in Issue no-I, I am of the opinion that the claimant side is entitled to compensation in the claim petition.

(II) Now, coming to the quantum of compensation which the claimant side is entitled to, is assessed as under:

(III) The claimant as PW-1 has stated that, after the accident he was initially admitted in Goalpara Civil Hospital (Ext. No-8, admitted on 29.09.2017 where the doctors referred him to G.M.C.H., Guwahati on the same day) thereafter at G.M.C.H., Guwahati (Ext. No-13) and subsequently he underwent operation at Marwari Hospitals, Guwahati and Illizator Fixation Operation was done in his leg (Ext. No-7). He underwent treatment as indoor patient in Marwari Hospitals, Guwahati from 04.10.2017 to 08.10.2017 (Ext. No-7, Ext. No-14(xxvii)). The claimant in his evidence stated that he sustained fracture (crush) of left leg, type iii B compound fracture of both bones left leg and other injuries all over the body

including on chest, head etc. As per Ext. no-5 (injury report) the claimant suffered compound fracture left leg with active bleeding. As per Ext. No-7 (Discharge certificate of Marwari Hospital, Guwahati) the claimant suffered type III B compound fracture in BB leg (Lt.). Thus, from the evidence on record I do hold that, the claimant suffered fracture injury in his left leg. I have also examined the various medical documents relating to investigation of blood, E.C.G. etc. which are found to be normal in range. The disablement certificate being marked as Ext. no-6 has also disclosed about the fracture injuries suffered by the claimant. He in his evidence specifically stated that the accident causing injuries upon his person, had taken place due to rash and negligent driving of the offending vehicle. I have seen & examined X-Ray reports, ECG reports & the X-Ray Plates. I have also examined the various advice slip/prescription being marked as Ext. No-9(i) & Ext. No-9(ii) various cash memos being marked as Ext. No-14(i) to Ext. No-14(xxix).

(IV) He further in his claim petition stated that he had incurred Rs. 1,75,000/- (Rupees One lakh seventy five thousand) only towards his treatment as medical, incidental expenditure. The claimant appeared before the District Standing Medical Board on 22.01.2018 in order assesses the disability caused due to the alleged accident. The board after due consideration of the injuries sustained by him issued disability certificate (Ext. No-6) whereby declared that due to injuries sustained by him he suffered 40% permanent disbarment.

(V) From the disability certificate (Ext. No-7), it appears that, the injuries sustained by the claimant has been noted clearly i.e. PW-1 had sustained type III compound fracture BB (Lt.) leg.

(VI) PW-2, Dr. A. Ghosh has deposed before the Tribunal that on the date of examination of PW-1 he was present as a member of the board held on 22.01.2018. He attended the board meeting as a member. He deposed that, after his (PW-1) physical examination and based on medical reports, the board had come to the conclusion that PW-1 is permanently disabled amounting to 40%. He (PW-2) has proved the disability certificate (Ext. No-6). So I am of the view that the injuries sustained by the PW-1 certainly caused permanent disability to him diminishing his earning capability. Considering the type of injuries sustained by the claimant (PW-1), I am of the view that such injury has

caused permanent disability which may be calculated at 40% permanent disability.

(VII) In the case in hand the claimant has stated Rs. 15,500/- as his monthly income by doing betel nut business and cultivation. But after the accident he is not able to do any kind of business or hard work. It is found that the PW-1/Claimant has not submitted any kind of clear evidence to prove his monthly income as stated. There is no evidence that, the claimant used to do betel nut business at the time of accident. In fact there is no evidence brought by the claimant to show his specific employment in any organization. Under this circumstance I do hold that, the monthly income of the PW-1 cannot be less than Rs. 3,500/- in present days. Considering the types of injuries sustained by the PW-1/Claimant, I am of the view that such injuries has caused permanent disability which may be calculated at 40% permanent disablement and for such disability it would definitely reduce the earning capability. Considering his injuries i.e. fracture in BB (Lt.) leg and considering his profession as betel nut seller, I am of the view that such disability will reduce his earning capacity to the extent of 30%. Hence, the claimant (PW-1) is entitled to 30% loss of earning due to the permanent disability along with the other damages.

(VIII) In M.R. KRISHNA MURTHI Vs. THE NEW INDIA ASSURANCE CO. LTD. (CIVIL APPEAL NOS. 2476-2477 OF 2019) the Hon'ble Supreme Court held that.

"19.

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

(IX) On a careful scrutiny of the medical documents mentioned hereinabove, it is found that the claimant had incurred a sum of Rs. 87,295/- in his treatment as medical expenditure (Ext. No-14(i) to Ext. No-14(xxix)). As the claimant has undergone treatment as an indoor patient in Marwari Hospital, Guwahati has incurred some expenditure towards conveyance, maintaining attendants, food etc. and therefore, the claimant is entitled to some amount of pecuniary damages as incidental expenditure. As the claimant has sustained serious injuries so, I am of the opinion that the claimant is entitled to some amount of non-pecuniary damages on account of pain, shock and suffering under which he had to pass over.

(X) In the claim petition the age of the claimant has been mentioned as 23 years. In some medical documents the age of the claimant (PW-1) has been mentioned as 21 years at the time of accident, but no any age proof certificate is found on record to prove the age of the claimant, under this situation I assume that, the age of the claimant at the time of accident was 23 years. With the age of the claimant in the age group of 21 to 25 years, the proper multiplier would be 18 as per guidance of the Hon'ble Apex court in Sarla Verma case.

(XI) Thus, having considered the facts and circumstances of the case and the nature of injuries sustained by the claimant and the expenditure incurred thereof, just and reasonable compensation which the claimant is entitled to is assessed as under:

Medical expenditure -----	Rs.	87,295.00
Loss of income: Rs.(42,000/-x 30% x 18)=Rs.		2,26,800.00
Incidental expenditure -----	Rs.	15,000.00
Pain, shock and suffering -----	Rs.	30,000.00
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Total -----	Rs.	3,59,095.00 Rounded off

Rs. 3,59,100.00 (Rupees Three lakh fifty nine thousand one hundred) only.

(XII) That the offending vehicle bearing registration no. AS-18/E-2760 (Motor Cycle), at the time of accident, was duly insured with Opp. Party no-1, Oriental Insurance Co. Ltd., was not in dispute. The Opp. Party nos-2 & 3 have no liability, as being the owner & driver of the offending vehicle bearing registration no. AS-18/E-2760 (Motor Cycle) was insured with the Opp. Party no-1, Oriental Insurance Co. Ltd.

(XIII) Form the aforesaid discussion I have decided that, the Opp. Party no-1, Oriental Insurance Co. Ltd. is liable to indemnify the claimant as the company is the insurer of the vehicle no. AS-18/E-2760 (Motor Cycle) and as because the Opp. Party no-2 has not committed any breach of terms and conditions of policy. The Opp. Party no-1 is to satisfy the award. From the materials on record I have not found any evidence that the accident occurred due to contributory negligence on the part of the claimant, hence, the Opp. Party no-4 has no liability.

(XIV) This issue is decided accordingly.

AWARD

1. Rs. 3,59,100.00 (Rupees Three lakh fifty nine thousand one hundred) only with interest @ 6% p.a. from the date of evidence of claimant side on 13.07.2018 till payment. The Opp. Party No-1, Oriental Insurance Co. Ltd. is directed to pay the award to the claimant side within one month from the date of this order. The amount, if any, paid as no fault liability, shall be adjusted.
2. Free copy of the Judgment is given to the both sides forthwith.
3. The case is disposed on contest.

4. Claim petition is partly allowed.
5. No cost.
6. Given under my hand and the seal of this court on this 4th day of June, 2019.

Dictated & Corrected by me.

(D. Mech)
Member,
Motor Accident Claims Tribunal,
Goalpara.

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Member,
Motor Accident Claims Tribunal,
Goalpara.