

**IN THE COURT OF THE MEMBER, MOTOR ACCIDENT CLAIMS
TRIBUNAL, UDALGURI, ASSAM**

Present : Sri P. Saikia,
Member, MACT,
Udalguri, Assam.

MAC CASE NO.30/2016.

Lakheswar Nath Claimant.

Vs

1. Apurba Talukdar, owner of vehicle No.AS 15 A 4271 LPG Truck.
2. Bijoy Ch. Das, Driver of vehicle No.AS 15 A 4271 LPG Truck.
3. The Branch Manager, Oriental Insurance Co. Ltd.
Barpeta Road,(Insurer)

.....Opp. parties.

Appearance:

For the claimant : Mr. N. Islam, Advocate.

For the OP No.3 : Mr. S.K. Achajya, Advocate.

Date of argument : 22.8.2019

Date of Judgment : 30.8.2019

J U D G M E N T

1. This MAC case has been filed by the claimant, Lakheswar Nath, u/s 166 of the MV Act, claiming compensation from O.P. No.1, Apurba Talukdar, owner of vehicle No.AS 15 A 4271 LPG Truck, O.P. No.2, Bijoy Ch. Das, Driver of vehicle No. AS 15 A 4271 LPG Truck and O.P. No.3, the Branch Manager, Oriental Insurance Co. Ltd. Barpeta Road,(Insurer) to the tune of Rs. 6,00,000/- for causing his injury in a road traffic accident which took place at Naika Nadi, Tangla (near Bishnu Mandir) on 31.10.2015 at about 5 PM

involving the said vehicle. In connection with the accident Tangla P.S. case No. 139/15 u/s. 279/338 IPC was registered against the opposite parties.

2. The case of the claimant, in brief, is that on 31.10.2015 at about 5 PM, the claimant was coming from Bhergaon to Tangla by bicycle and in the meantime the vehicle bearing registration No. AS 15 A 4271 LPG Truck knocked down him from back side on the bridge of Naika Nadi and as a result of which he sustained grievous injury. Immediately after the accident he was taken to Tangla CHC wherefrom he was referred to Mangaldai Civil Hospital for better treatment. Mangaldai Civil Hospital also immediately referred the claimant to Gauhati Medical College & Hospital.

3. The O.P. No.1, Apurba Talukdar, owner of vehicle No.AS 15 A 4271 LPG Truck and O.P. No.2, Bijoy Ch. Das, Driver of vehicle No. AS 15 A 4271 LPG Truck filed written statement contending, inter-alia, that their vehicle was duly insured with the Oriental Insurance Co. Ltd. Barpeta Road having policy coverage on the date of the accident and the O.P.-driver was holding valid driving licence at the material time.

4. The O.P. No.3, Oriental Insurance Co. Ltd. Barpeta Road, filed written statement denying all the material allegations made by the claimant in the claim petition. The answering OP No.3 denied all the liability to pay compensation as prayed by the claimant. It is submitted that the claim petition is liable to be dismissed.

5. On the basis of the pleadings of the parties, the following issues are framed for adjudication:-

(i) Whether the claimant Lakheswar Nath sustained injury in the alleged road traffic accident on 31.10.2015 at about 5 PM at Naika nadi Tangla (near Bishnu Mandir) involving vehicle No. AS 15 A 4271 (Truck) and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

(ii) Whether the claimant is entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?

6. The claimant side examined himself as witness in order to prove its case and has produced a number of documents, whereas the opposite parties did not adduce any evidence.

7. I have heard argument advanced by the learned counsel of the parties and perused the materials on record.

ISSUE NO. 1:-

8. PW1 is the claimant as well as victim in this case. Supporting his averments made in the claim petition this witness has deposed that on 31.10.2015 at about 5 PM, he was coming from Bhergaon to Tangla by bicycle and in the meantime the vehicle bearing registration No. AS 15 A 4271 LPG Truck knocked down him from back side on the bridge of Naika Nadi and as a result of which he sustained grievous injury. Immediately after the accident he was taken to Tangla CHC wherefrom he was referred to Mangaldai Civil Hospital for better treatment. Mangaldai Civil Hospital also immediately referred the claimant to Gauhati Medical College & Hospital. He sustained injuries on right leg and waist. Initially he was discharged on 1.11.2015 from GMCH and on 28.11.2015 he went for check up at GMCH and till 7.12.2015 took medicines as per advice of the doctor but could not recover from his pain on leg. Again on 8.1.2016 he went to GMCH and after examining doctor advised him to admit in the hospital and accordingly, he took treatment for 17 days as indoor patient at GMCH. The claimant claims to have incurred Rs.2,00,000/- for medicine, food and conveyance for his treatment.

In order to establish the claim of compensation PW1 has submitted Accident Information Report in Form No. 54 (Ext.1), Ext.2 to 6 are advice slips, Ext.7 is the discharge certificate of GMCH, Ext.8 to 10(1) are the cash memos and Ext.11 to 28(1) are the cash memos.

9. In cross-examination by the O.P.-insurance, the claimant has denied the suggestion of the O.P. that the truck was driving in a breakneck speed recklessly at the time of commission of the accident. As a result of the accident he sustained injuries on his waist as well as in his back. At first he took treatment at GMCH on 1.11.2015 and on the same day he was released from the hospital by doctor. Again he visited GMCH on 7.12.2015. Though he sustained fracture injury on his right leg but he has not submitted X-ray plate before the court. The claimant has denied the suggestion of O.P. that the medicines mentioned in the cash memos does not have any bearing with the injury sustained by him. As per Ext.14(2) doctor conducted liver function test of him.

10. Nothing has been elicited during the cross-examination of the claimant to raise any doubt regarding the veracity of the above claims on the issue. The contesting opposite parties also have not adduced any contrary evidence on the issue.

11. Claimant has proved Ext.1, Police Report, which shows that the vehicle No. AS 15 A 4271 LPG Truck was involved in the accident on 31.10.2015 causing injury to him and that Tangla P.S. case No. 139/15 U/S 279/338 IPC was registered. The oral evidence of claimant couple with the available documents produced by claimant that the accident took place due to rash and negligent driving of the offending vehicle No. AS 15 A 4271 LPG Truck which was duly insured with Oriental Insurance Company Ltd.

12. In view of the above oral and documentary evidence on record, it is found and held that issue No. 1 is decided in the affirmative.

ISSUE NO.2 :-

13. In view of the decision arrived at in respect of issue NO.1, it is found and held that the claimant is certainly entitled to receive compensation in this case.

14. In determining the quantum of compensation the claimant is entitled to receive, let us first find out the nature and the extent of the injuries suffered by the claimant in the accident, the nature and the extent of the treatment received by her for such injuries and the extent of the expenditures incurred by the claimant for such treatment.

15. Regarding the nature & the extent of the injury sustained by the claimant in the accident and the nature and the extent of the treatment received by her for such injury, according to claimant, PW-1, he sustained injuries on his chest and leg. Ext.4 shows that the claimant sustained fracture of 5th metatarsal (right). Ext.7, discharged slip issued by GMCH also shows fracture of 5th metatarsal (right). The nature of injury is grievous.

16. Regarding the extent of the expenditure incurred by the claimant for her treatment, he spent Rs.1,71,684/-. He has submitted Ext-8 to Ext.28(1) as cash-memos in support of his claim.

17. On perusal of the aforesaid medical documents, it is found that claimant spent about Rs.1,71,684/- say Rs.1,71,700/- for his treatment and he is entitled to get this amount as medical expenditures.

18. Here in the present case, the claimant claims that he was a cultivator by profession and earned Rs.9000/- per month.

19. Generally a cultivator cannot prove his income by showing any document. However, as an able bodied man and presuming that he is a cultivator by profession his income is taken as Rs.3000/- per month. Since he sustained grievous injury, so he is entitled to get Rs.3000 X 4 = 12000/- (Rs. twelve thousand) for 4 (four) months.

20. Considering the nature and extent of the injury sustained by the injured in accident it is held that she is also entitled to receive an amount for pain and suffering, loss of amenities of life, incidental expenses towards hospitalization, transportation, special food, nursing etc. Thus, the total

amount of compensation the claimant is entitled to receive is assessed as under :-

(i) Medical expenses.....	Rs.1,71,700/-
(ii) Pain and suffering.....	Rs. 10,000/-
(iii) Loss of income.....	Rs. 12,000/-
(iv) Loss of amenities of life	Rs. 5,000/-
(iv) <u>Conveyance & Ancillary expenses...</u>	<u>Rs. 3,000/-</u>

Total = Rs.2,01,700/-

21. As per the claim-petition, the offending vehicle was insured with OP No.3, insurance company at the relevant time. Ex-1, Form No. 54, supports that fact. Hence, it is held that OP No. 3 is liable to pay the aforesaid amount to the claimant as compensation in this case.

22. The issue is decided accordingly.

A W A R D

23. The O.P. No.3, Oriental Insurance Co. Ltd. is hereby directed to pay the claimant the aforesaid compensation of Rs.2,01,700/- (Rupees two lakhs one thousand seven hundreds) only within three months from the date of this order. The same shall attract an interest @ 6 % per annum from the date of the filing of the petition i.e. 11.11.2016 till realization.

24. Claim petition (MAC case No.30/16) stands disposed of.

Given under my hand and seal of this court on this the 30th day of August,2019.

(P.Saikia)
Member, MACT,
Udalguri.

Dictated and corrected by me

(P.Saikia)
Member, MACT,
Udalguri.

