

COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL
KAMRUP :: GUWAHATI

Present :-
Paran Kumar Phukan
Member, MACT
Kamrup, Guwahati

MAC Case No. 2528/05

Sri Rajib Saikia .. Claimant

- VS-

- 1 Sri Prem Sharma Bordoloi
(Owner of the vehicle Engine no. MVZ949995
& Chasis no. 944567)
- 2 Sri Thagiram Nath
(Driver of the above vehicle)
- 3 New India Assurance Co Ltd
(Insurer of the above vehicle) .. Opposite Parties

Advocate for the claimant : Mr Zafar Iqbal
Advocate for the OP No. 3 : Mr R Goswami

Date of hearing argument : 30-07-12
Date of judgment : 18-08-12

J U D G M E N T

The claimant, Rajib Saikia, has preferred this claim u/s 166 of MV Act claiming compensation for sustaining injury in a motor vehicle accident which occurred on 01.09.05 at Dhalpur under Bihupuria Police Station involving vehicle Engine no. MVZ949995 & Chasis no. 944567 which was owned by OP NO. 1, Sri Prem Sharma Bordoloi, driven by OP No.2, Sri Thogiram Nath and insured with OP No. 3, New India Assurance Co Ltd.

Case of the claimant in brief is that on that fateful day he was proceeding towards Biswanath Chariali from Silapathar in the aforesaid vehicle. Due to rash and negligent driving by the driver of the vehicle met with an accident, as a result of which he sustained grievous injuries.

In the claim-petition he pleaded that he was engaged in a private service and his monthly income was Rs 4000/- but he has not mentioned the name of his employer in his petition.

The OP No. 1 & 2, the owner & driver of the offending vehicle, did not participate in the proceeding and the case proceeded ex-parte against them.

The insurer, Opposite party No. 3, New India Assurance Co Ltd, filed written statement and contended inter-alia that the vehicle in question was insured with the company but denied that the accident took place due to rash and negligent by the driver. The company denied that the claimant sustained injuries caused by the aforesaid vehicle. The company also declined to accept the liability if there was violation in the terms and conditions of the insurance policy.

On the basis of the pleadings of the parties, the following issues were framed for adjudication :-

- 1 Whether claimant's son, Rajib Saikia, sustained injuries in the alleged accident dated 01.09.05 involving vehicle bearing no. Engine no. MVZ949995 & Chasis no. 944567 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle ?
- 2 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 ?

During enquiry, the claimant examined himself as PW-1 and one doctor as PW-2 and produced number of documents. The OP No. 3, insurer examined one witness as DW-1, Sr Asstt. dealing with legal matters of the company and he produced the insurance policy in respect of the vehicle.

I have heard argument for both the sides, perused the evidences and documents and upon consideration of the same the issues are decided as under :-

ISSUE NO. 1

The evidence of the claimant is that due to rash and negligent driving it dashed against a road side tree, as a result of which he sustained grievous injuries and there was fracture of his shaft of femur ® and other parts of the body. He was immediately shifted to Dhalpur 30 beded Rural Hospital and thereafter he was admitted in GMCH as indoor patient and

stayed there for 28 days and thereafter again he was admitted in Skylark Hospital, at Tezpur, as indoor patient for one day. In support of the oral evidence he produced the accident information report being Ex-1, medical documents Ex-2 to Ex-5 series. Ex-2 is the advice slip of Dhalpur 30 bedded Hospital, which shows that there was fracture of his right femur. Ex-3 is the discharge certificate of GMCH, which reveals that he was admitted in the hospital on 04.09.05 and was discharged on 01.10.05 and there was fracture of shaft of right femur following road traffic accident. Similarly Ex-4 also confirmed that there was fracture of his right femur. From the oral evidence of the claimant as well as documentary evidence produced by the claimant there is no doubt that he sustained grievous injuries in a road traffic accident on 01.09.05 at Dhalpur involving vehicle Engine no. MVZ949995 & Chasis no. 944567. In this regard Bihupuria PS registered a case vide PS Case No. 204/05 u/s 279/338/427 IPC. There is no rebuttal evidence regarding his injuries in the accident which occurred due to rash and negligent driving of the aforesaid vehicle. The oral and documentary evidence of the claimant established that he sustained injuries in a motor accident due to rash and negligent by the driver of the aforesaid vehicle. That the offending vehicle was insured with the opposite party, New India Assurance Co Ltd, is not in dispute. Hence this issue is decided in favour of the claimant.

ISSUE NO. 2

In view of the discussion and decision of the foregoing issue, claimant is certainly entitled to compensation. Now the pertinent question is how much compensation he is entitled to and who is liable to pay the same.

Evidence of the claimant is that he had spent about Rs 85,000/- for his treatment and he is entitled to compensation for pain and suffering. He produced Ex-8 disability certificate issued by Dr. P. K Padmapati, Orthopaedic Surgeon of MMC Hospital, Guwahati, which shows that there was shortening of right lower twie with pain and restriction of all movement in right hip following fracture shaft femur and he assessed his disability at 40%.

PW-2, Dr P K Padmapati, has been examined by the claimant. In his cross-examination also he has reiterated what he had stated in the certificate issued by him (Ex-8) but he has admitted in cross-examination that he was not aware of the present condition of the injured. But he has not assessed the permanent disability with regard to the whole body. From his evidence it is found that he examined the claimant on a single day i.e. 28.07.06 after about one year of the accident and on the basis of his evidence it cannot be held with certainty that the claimant became permanently disabled due to the accident. But since there was shortening of the leg and the injuries was grievous in nature and the claimant was undergoing treatment for a long time. The claimant is entitled to be compensated for loss of income during the period of treatment for six months and awarded a sum of Rs 10,000/- for loss of income. The claimant is also entitled to some amount for loss of amenities of life.

The vehicle in question was insured with the New India Assurance Co Ltd, which has not denied by the company in its written statement. Learned Advocate appearing for the company strenuously argued that the vehicle was a goods carrying vehicle but the claimant was traveling in the vehicle as a gratuitous passenger and as such the company cannot be saddled with the liability to pay compensation. He has invited my attention to paragraph 4 & 5 of the petition filed by the claimant. In para 4 he stated that he was in private service. But in para 5 he has not mentioned the name of the employer under whom he was working. On perusal of the claim-petition I have found that even in the narration of the accident given in para 22 of the petition the claimant is silent as to whether he was traveling as a passenger or a labourer. The claimant in cross-examination admitted that he has stated in the claim-petition that he was a labourer. From the pleadings itself it is difficult to come to a conclusion that the claimant was an employee of the vehicle. On scrutiny of his evidence it appears that the vehicle was hired by some News Paper Agency for transportation of news-papers and he was the representative of the News Paper Agency. But the claimant has not proved any documentary evidence in support of his case that he was associated with any News Paper agency. He even failed to disclose the name of the News Paper Agency in which he

was working. There is also no proof that the vehicle was carrying News papers.

The learned Advocate for the insurance company strenuously argued that the vehicle was carrying gratuitous passengers which was not covered by policy of insurance Ex-A issued in the name of the owner, Sri Prem Sharma Bordoloi.

The policy of insurance covers the risk of three workman engaged in the vehicle and the driver is statutorily covered. But there was no coverage for gratuitous passenger. Since it was a goods carrying vehicle it is not permitted to carry passengers and it was a policy issued u/s 147 of the MV Act. As per provisions of Section 147 of the MV Act, the owner of the goods was only covered by the policy of insurance. In the case of New India Assurance Co Ltd -Vs- Asha Rani 2003 ACJ I (SC), the Hon'ble Apex Court held that insurer is not liable for gratuitous passengers other than owner of goods after 1994 amendment. This is a settled position of law laid down by the Hon'ble Apex Court. In the instant case the claimant failed to prove by reliable and cogent evidence that he was a labourer of the vehicle or representatives of the owner of the goods and as such the insurance company is not liable to pay any compensation to the claimant. Moreover, as per decisions of the Hon'ble Apex Court in the case of Oriental Insurance Co Ltd, -Vs- Meena Varyal 2007 ACJ 1285 (SC); where a person is not a 3rd party within the meaning of the Act the Insurance company cannot be made automatically liable merely by resorting to Swaran Singh's ratio..... the Insurance company cannot be made liable to pay the compensation first and then to recover it from the insured.

From what has been discussed above, I am of the view that the insurance company is not liable to pay compensation and is not liable to indemnify the owner as there was violation of the conditions of policy and the owner of the vehicle is liable to pay compensation to the claimant.

Thus, having considered the nature of injury sustained by the claimant and medical expenditure incurred therefor and the facts and circumstances of the case as discussed above, the just and reasonable

compensation, to which the claimant would be entitled in the instant case as under :-

Medical expenses	:	Rs 80,079.00
Pain and suffering	:	10,000.00
Loss of amenities of life	:	10,000.00
Loss of income due to disability	:	<u>10,000.00</u>
Total	:	Rs 1,10,079.00

The amount is rounded off to Rs 1,10,000/-

This issue is accordingly decided in favour of the claimant.

A W A R D

Rs 1,10,000/- (Rupees one lakh ten thousand) is awarded with interest @ 6% p.a. from the date of filing the claim petition, 16.11.05 till payment. The OP No. 1, owner of the vehicle, is directed to pay the award within one month from the date of order.

Given under my hand & seal of this Court on this 18th day of August 2012.

(P K Phukan)
Member
Motor Accident Claims Tribunal
Kamrup, Guwahati