

COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL
KAMRUP :: GUWAHATI

Present :-

Paran Kumar Phukan
Member, MACT
Kamrup, Guwahati

MAC Case No. 1527/06

Md Jul Hussain

Represented by his brother, Md Tarikat Ali ... Claimant

-Versus-

1 Smti Sonali Mahanta
(Owner of the vehicle No. AS-02/5686)

2 New India Assurance Co Ltd
(Insurer of the above vehicle) ... Opp Parties

Advocate for the claimant : Mrs D D Roy
Advocate for OP No. 2 : Mr R Goswami

Date of hearing argument : 10.07.12
Date of Judgment : 09.08.12

J U D G M E N T

This claim case was started on the basis of a petition filed under section 163-A of MV Act 1988, by claimant, Md Tarikat Ali, for injury sustained by his brother, Md Jul Hussain, in a motor vehicle accident on 16.02.06 involving vehicle no. AS-02/5686 which was insured with New India Assurance Co Ltd.

The facts giving rise to claimant's case is that on the fateful day while his brother was proceeding by driving the bus bearing registration No. AS-02/5686, it met with an accident at Senchowa, as a result he sustained injury.

The offending vehicle was owned by OP No. 1, Smti Sonali Mahanta and insured with OP No. 2, New India Assurance Co Ltd.

The insurer, OP No. 2, raised usual legal objection and denied the liability stating that the case is not maintainable, in as much as the

injured himself was driving the vehicle. That the insurer is not liable to pay any compensation until and unless it is proved that the driver had valid licence and the conditions of the policy were not violated by the insured.

OP No. 1, owner of the offending vehicle, did not contest the case and case proceeded ex-parte against him.

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

- 1 Whether claimant, Md Jul Hussain, was injured in the alleged road accident dated 16.02.06 involving vehicle no. AS-02/5686 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 get any compensation for the injuries sustained by him and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable ?

To prove the case, claimant examined himself as the sole witness and proved some documents. Insurance Co has not adduced any evidence.

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

DECISIONS AND REASONS THEREOF

ISSUE NO 1

The claimant has averred in the petition and also stated in his evidence that on 16-02-06 while he was proceeding by driving the bus bearing registration No. AS-02/5686, it met with an accident at Senchowa, as a result he sustained injury. Claimant has also proved the accident information report being Ex-1 and Ex-2 medical certificate as well as Ex-3 & Ex-4 series are prescriptions and bills & vouchers and Ex-5 is City Scan Report. The opposite parties have also not adduced any contrary evidence. Thus, the oral evidence of the claimant coupled with

the documentary evidence mentioned above establishes that claimant sustained injury due to accident arising out of the use of the motor vehicle which was driven by the claimant himself. That the vehicle involved in the instant case was insured with the opposite party, New India Assurance Co Ltd, is also not in dispute. Hence this issue is accordingly decided in favour of the claimant.

ISSUE NO. 2

Claimant has stated in his evidence that due to the accident he sustained injury and spent an amount of nearly Rs 50,000/- for treatment and also proved the medical documents being Ex-2 as well as Ex-3, Ex-4 series & Ex-5. As per Ex-2 medical certificate issued by Civil Hospital, Morigaon, where the claimant was undergoing treatment, the claimant sustained following injuries :-

- i) One deep lacerated cut injury of the left anterior of the back of the scalp over the occipital region transversely. Size 8x4 cm, 7 Nos of stitches applied. Haematoma present on the occipital region.
- ii) Painful swelling of the left anterior chest. Size – 8 cm x 4 cm.
- iii) On bruise on the rt. Temporal region. Size - 6 cm x 4 cm.
- iv) Dislocation with fracture of the rt. Head of the humerus bone present (Reduction of anterior dislocation done).

Fracture of the head of the humerus with dislocation leads to restriction of the shoulder movement.

(X-ray reveals fracture of the head of the humerus).

The doctor opined that injury No. 2 & 3 are simple but injury no. 1 & 4 are grievous in nature and injury no. 4 may lead to permanent restriction of movement of right shoulder joint. Evidence of the claimant is that he is a professional driver and due to the injury he became physically handicapped and is unable to drive the vehicle. But neither from his evidence nor from the medical certificate it is possible to ascertain the percentage of disablement resulting from the injuries. But it

is evident that to some extent he became permanently disabled. The injuries are non-scheduled injuries as per the Workmen's Compensation Act but even then also he is entitled to some compensation in this case. From the medical treatment documents it transpires that the claimant has incurred approximately an expenditure of Rs 9,796/-, say Rs 10,000/- on account of treatment and as such, he is entitled to the said amount as pecuniary damages and an amount of Rs 10,000/- is awarded for pain and suffering. Thus, the total compensation comes to Rs 20,000/-.

A W A R D

Rs 20,000/- (Twenty thousand) is awarded with interest @ 6% p.a from the date of filing the claim petition, i.e. 16.06.06 till payment. The opposite party, New India Assurance Co Ltd, is directed to pay the award within one month from the date of order.

Given under my hand & seal of this Court on this 9th day of August 2012.

(Paran Kumar Phukan)
Member
Motor Accident Claims Tribunal
Kamrup, Guwahati