

COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL
KAMRUP :: GUWAHATI

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

MAC Case Nos. 3002/08, 3005/08 & 3009/08

1 Mrs Rupchini Begum (3002/08)
2 Miss Sayeda Begum (3005/08)
3 Mrs Sirikan Begum (3009/08) ... Claimants

-Versus-

1 Sri Kamakhya Debuttar Board
(Owner of Vehicle no. AS-01/AC-4241)
2 Sri Hari Baruah
(Driver of the above vehicle)
3 Oriental Insurance Co Ltd
(Driver of the vehicle) ... Opp Parties

Advocate(s) for the claimants : Mrs Deepali Das Roy
Advocate for the OP No. 3 : Mrs N Baruah

Date of hearing argument : 21.08.12
Date of Judgment : 21.08.12

J U D G M E N T

All these three cases have arisen out of the same accident and as such they are taken together for disposal by this common judgment and order.

The claimants have filed their respective cases praying for compensation for sustaining injury in the motor vehicle accident that took place on 12-03-08, involving vehicle No. AS-01/AC-4241, which was insured with Oriental Insurance Co Ltd.

The case of the claimants was that on 12-03-08 while they were travelling in the vehicle bearing registration No, AS-01/AC-4241 as a passenger, which was proceeding from Baihata Chariali side towards Khalikajan, due to rash and negligent driving, the driver lost control

over the vehicle and met with an accident, as a result of the accident all the claimants sustained injuries. A case was registered vide Baihata PS Case No. 39/08 u/s 279/338/304-A IPC

Opposite party No. 3, the insurance co, in its written statement contended inter-alia that the case is not maintainable u/s 166 of MV Act and there is no cause of action etc. The company denied most of the averments made by the claimants in the claim-petition and declined to accept the liability if there was violation of terms and conditions of policy.

The owner and driver of the vehicle did not contest the case and as such the case proceeded ex-parte against them.

Upon the above pleadings of the parties, the following **ISSUES** were framed for adjudication :-

- 1 Whether claimants, Rupchini Begum, Md Chahedur Rahman and Mrs Sirikan Begum, sustained injuries in the alleged accident dated AS-01/AC-4241 (Bus), and whether the said accident took place due to rash and negligent driving of the offending vehicle ?
- 2 Whether the claimants are entitled to get any compensation for the injuries sustained by him/her and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable ?

During enquiry, all the three claimants have examined themselves and produced and proved number of concerned documents. Opposite party no. 3 has not adduced any evidence. I have heard argument of both the parties, perused the materials on record and on consideration of all these, the issues are decided as under :

ISSUE NO. 1

The claimants of all the cases averred in the petitions and also stated in evidence that on 12-03-08 while they were travelling in the vehicle bearing registration No. AS-01/AC-4241, due to rash and negligent driving, the driver lost control and met with an accident. As a

result of the accident all the claimants sustained injuries. In support of the oral evidence the claimants have proved the Ex-1, Accident Information Report in all the cases and medical documents being Ex-2, Ex-3 series & Ex-4 in MAC Case No. 3002/08; Ex-2 & Ex-3 series in MAC Case No. 3005/08 and Ex-2 & Ex-3 series in MAC Case No. 3009/08. In support of their oral evidence they produced accident information report in all the three cases from which it is found that the accident in fact occurred on 12.03.08 at about 8.30AM and it appears that one passenger died in the accident. A case has been registered vide Baihata PS registered a case vide no. 39/08 u/s 279/338/304-A IPC. The name of the claimants have been shown as injured in the accident information report as Ex-1. From the oral evidence of the claimants as well as the accident information report there is no doubt that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. Thus, the above evidence of the claimants, oral as well as documentary, established that the claimants sustained injury in the accident, due to rash and negligent driving of the offending vehicle. That the offending vehicle was insured with the opposite party, Oriental Insurance Co Ltd, is not in dispute. Hence this issue is decided in favour of the claimants.

ISSUE NO. 2

In view of discussion and decision of Issue No. 1, the claimants are certainly entitled to compensation sought in their respective claim petition. The claimant of MAC Case No. 3002/08, Rupchini Begum, died during the pendency of this case and her son, Mubarak Ali, impleaded himself as claimant. His evidence is that as a result of the accident more than Rs 50,000/- spent for treatment of his mother. There is no evidence that his mother died due to the accidental injuries and as such the claimant is only entitled to the amount which has been actually spent for the treatment as she sustained injuries in the accident. From the medical documents i.e. vouchers it is found that an amount of Rs 12,968/-, say Rs 13,000/- has been spent for the treatment of the deceased/injured and the claimant is entitled only this amount as pecuniary damages. Since the claimant has already died there is no

question of awarding compensation for pain and suffering and for loss of amenities of life.

In MAC Case NO. 3005/08 the injured is Sirikan Begum. From the advice slip of GMCH Ex-2(1) it appears that x-ray was suggested to the injured but no such report has been filed to this case and it is not known whether she sustained any fracture injury. Since she failed to produce the related report I presumed that she sustained simple injury. She produced a few cash-memos as Ex-3(1) to Ex-3(4). Ex-3(1) is not considered as these medicines were not prescribed by the doctor. The claimant is only entitled to the amount mentioned as Ex-3(2) to Ex-3(4). Rs 2000/- is awarded for pain and suffering.

In Case No. 3009/08, the injured is Md Chahedur Rahman. It appears from Ex-2(1) to Ex-2(4) that he sustained some wounds for which stitches were applied and there was also dislocation of shoulder. No major injury was suffered by him. He filed cash-memos and vouchers vide Ex-3(1) to Ex-3(9) and he is entitled to that amount and Rs 3000/- is entitled as pecuniary damages.

That the offending vehicle was insured with the opposite party Oriental Insurance Co Ltd, is not in dispute, and as such, the insurer has to satisfy the award. Now coming to the quantum of compensation to which the claimant of each case would be entitled is assessed as under :-

MAC Case No. 3005/08

Claimant has stated in his evidence that due to the accident she sustained injury and an amount of Rs 40,000/- was spent for treatment. Claimant has also proved various medical documents beings Ex-3(1) to Ex-3(4) series. Ex-3(1) is not considered as there is no prescription in support of the cash-memo. Scrutiny of the medical documents transpires that the claimant has incurred approximately an expenditure of Rs 4,335/- say Rs 4500/- on account of treatment. Besides the pecuniary damages on account of medical expenses, the claimant is also entitled to some amount of non-pecuniary damages on account of pain, shock and suffering. Thus, having considered the nature of injury sustained by the injured and expenditure incurred there for and the

facts and circumstances of the case, just and reasonable compensation to which the claimant would be entitled in the instant case is assessed as under :-

Medical expenditure	..	Rs 4,500.00
Pain, shock and suffering etc	..	<u>2,000.00</u>
Total	..	Rs 6,500.00

MAC Case No. 3009/08

The claimant Md Chahedur Rahman sustained injury in the accident and took treatment in GMC Hospital and Sanjivani Hospital and sustained shoulder dislocation. He had spent an amount of Rs 7,713/- towards treatment. Besides the pecuniary damages claimant is also entitled to some amount of non-pecuniary damages on account of pain, shock and suffering. Thus, having considered the nature of injury sustained by the injured and expenditure incurred there for and the facts and circumstances of the case, just and reasonable compensation to which the claimant would be entitled in the instant case is assessed as under :-

Medical expenditure	..	Rs 7,713.00
Pain, shock and suffering etc	..	<u>3,000.00</u>
Total	..	Rs 10,713.00

The amount is rounded off to Rs 11,000/-.

AWARD

Awarded Rs 13,000/- in MAC Case No. 3002/08; Rs 6,500/- in MAC Case No. 3005/08 and Rs 11,000/- in MAC Case No. 3009/08 to the claimants with interest @ 6% p.a. from the date of filing the claim-petition, i.e. 10.12.08 till payment. The Oriental Insurance 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 21st day of August 2012.

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