

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:  
BONGAIGAON.

**M.A.C. CASE NO. 141/2015**

1. Smt. Ambika Barman  
W/O Lt. Koilash Ch. Barman  
.....Claimant

Vs.

1. Divisional Manager,  
The Oriental Insurance Co. Ltd.,  
Bongaigaon  
...Insurer of Vehicle No. AS-19/B-7171  
(M/Cycle, Yamaha YZF-15).  
2. Nerswn Brahma  
S/O Ratneswar Brahma  
Owner cum driver of Vehicle No.  
AS-19/B-7171 (M/Cycle, Yamaha YZF-15).  
.....Opposite Parties.

**PRESENT : Smt. I. Barman,  
Member, M.A.C.T.,  
Bongaigaon.**

Advocate for the claimant : Sri M. Islam.

Advocate for the opposite party No.1 : Smt. J. Barua.

Date of Argument : 27.03.17.

Date of Judgment : 07.04.17.

**JUDGMENT AND ORDER**

1. The claim case arose out of the petition preferred U/S 166 of the Motor Vehicle Act, 1988 filed by the claimant claiming compensation from the Opposite Parties on account of injury sustained by her in a motor vehicle accident on 07.11.2013.

Contd---P/2

:::2:::

2. Case of the claimant in brief, is that, on 07.11.2013 at about 5.30 PM while claimant Ambika Barman was proceeding from Dangtola Railway Market towards her residence and when she reached at Borpather Tiniali, suddenly the vehicle bearing No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15) coming in rash and negligent manner knocked down the claimant from back side. As a result, she sustained fracture of left mastoid bone and head and face injury. Immediately, after the accident she was admitted at Lower Assam Hospital & Research Centre, Bongaigaon and was discharged on 15.11.13. It is further contended that with regard to the accident Bongaigaon P.S. Case No. 549/2013 U/S 279/338 IPC was registered. Hence, prayed compensation of Rs. 1,94,000/- from the opposite parties.

3. In response to the notice the opposite party No.1 i.e. The Oriental Insurance Co. Ltd., the insurer of the vehicle No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15), by filing written statement contended inter alia stated that there was no rash and negligence on the part of the driver rather the negligent was on the part of the injured, who suddenly wanted to cross the road without noticing either side of the road. The opposite party put the claimant to make strictest proof with regard to the alleged accident, driving license, fitness certificate, Registration Certificate etc. and also contended that non-appearance of the insured, if any, in the present claim proceeding without any cause and his negligent or failure to take part in the proceeding will be sufficient to cause apprehension on the answering opposite party that the insured and the claimant are in collusion to have wrongful gain against the opposite party. It is further contended that the claimant's claim is highly excessive. In this premise,

Contd---P/3

∴3∴

the answering opposite party prayed to dismiss the claim.

4. In spite of receipt of the notice, the Opp. Party No.2, the owner cum driver of the vehicle No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15) did not turn up and hence, the case was proceeded ex-parte against him.

5. On the pleadings of the parties, the following issues are formulated:-

- i. *Whether the claimant Ambika Barman sustained bodily injuries in motor vehicle accident on 07.11.2013 at Borpather Tiniali due to rash and negligent driving of the vehicle No. AS-19/B-7171?*
- ii. *Whether the claimant is entitled to get compensation, if so, to what extent and by whom it is payable ?*

6. In course of trial, the claimant side examined two witnesses and the contesting opposite party No.1 duly cross-examined them. The contesting Opposite Party side has not adduced any evidence.

7. I have heard argument of both sides and carefully gone through the evidence on record.

**Issue No. i:**

8. Claimant Ambika Barman has averred in the claim petition as well as in evidence that on 07.11.2013 at about 5.30 PM when she was proceeding from Dangtola Railway Market towards her residence and

Contd---P/4

:::4:::

reached at Borpathar Tiniali, suddenly the vehicle bearing No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15) coming in rash and negligent manner knocked down her from back side. As a result, she sustained fracture of left mastoid bone with injury on head and face. Immediately, after the accident she was admitted at Lower Assam Hospital & Research, Bongaigaon Centre wherefrom she was discharged on 15.11.13. She also stated that after the accident she is not able to do any hard work. It is further contended that with regard to the accident Bongaigaon P.S. Case No. 549/2013 U/S 279/338 IPC was registered. During cross she stated that on the day of accident she was going on foot. She also stated that she has a problem of proper hearing and viewing. She also stated that though she did not mind about the motor cycle, but the bike suddenly knocked down her from backside.

9. Claimant side examined one eye witness Rina Rani Barman as PW2. She is the daughter of the claimant. She deposed that on 07.11.2013 at about 5:30 PM while she along with the claimant were proceeding from Dangtola Railway Market towards their residence and when they reached at Borpathar Tiniali, suddenly the vehicle bearing No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15) coming in rash and negligent manner knocked down the claimant from back side. As a result, the claimant sustained fracture of left mastoid bone with injury on head and face. Immediately, after the accident she was admitted at Lower Assam Hospital & Research Centre, Bongaigaon wherefrom she was discharged on 15.11.13. She further deposed that due to the accident the claimant lost her hearing capacity of left ear. She further stated that with regard to the accident Bongaigaon P.S. Case No. 549/2013 U/S 279/338 IPC was

Contd---P/5

:::5:::

registered. In support of evidence, she proved accident information report as Ext.1, F.I.R form as Ext.2, Ejahar as Ext.3, discharge certificate as Ext.4 and cash memos, prescriptions, money receipts etc. from Ext.5 to 53. During cross she stated that she is the daughter of the claimant and on the day of accident she was also proceeding on foot along with the claimant.

10. Now, let us see whether the accident took place due to rash and negligent driving on the part of the driver of the vehicle No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15).

11. From the evidence of PWs and other documents proved by the claimant side, it is clear that Ambika Barman received injuries due to the motor vehicle accident occurred on 07.11.13. The accident information report (Ext.1) available in the case record issued by Bongaigaon Police Station reflects that on 07/11/13 at about 5:30 PM an accident occurred involving the vehicle bearing No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15), wherein Ambika Barman was shown as injured. Both the PWs clearly stated that on 07.11.2013 at about 5:30 PM while the claimant was proceeding from Dangtola Railway Market towards her residence and when she reached at Borpathar Tiniali, suddenly the vehicle bearing No. AS-19/B-7171 (M/Cycle, Yamsha YZF-15) coming in rash and negligent manner knocked down the claimant from back side. As a result, the claimant sustained fracture of left mastoid bone with injury on head and face. Immediately, after the accident injured Ambika Barman was taken to Lower Assam Hospital, Bongaigaon wherefrom she was discharged on 15.11.13. From the above

Contd---P/6

:::6:::

evidence of PWs, both oral and documentary, it appears to me that there was rash and negligence on the part of the driver of the offending vehicle No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15). The opposite party did not adduce any rebuttal evidence regarding rash and negligent driving of the offending vehicle concerned. In view of the above evidence of PWs and in absence of any contrary legal evidence, it is crystal clear that the accident took place at Borpather Tiniali Chok due to rash and negligent driving of the offending vehicle No. AS-19/B-7171 (M/Cycle, Yamaha YZF-15) and the claimant received injuries due to the said accident. Accordingly, this issue is decided in favour of the claimant.

**Issue No. ii:**

12. This issue relates to the entitlement of the claimant for compensation and extent thereof as well as liability of the opposite party to pay such compensation.

13. In view of my foregoing decision, I am of the opinion that claimant Ambika Barman received injuries on her person in the motor vehicle accident occurred on 07.11.2013 and as such she is entitled to compensation. Now coming to the quantum of compensation, claimant in her evidence stated that after the accident she was admitted at Lower Assam Hospital, Bongaigaon. On careful perusal of the vouchers and bills proved by the claimant, it reveals that an amount of Rs. 40,828/- say Rs. 40,900/- was expended during treatment of the injured. As such, the claimant is entitled to this amount as medical expenses for the injury sustained by him. Moreover, Ext. 4 reflects that due to the accident she sustained fracture of left mastoid bone and injuries on head and face. She

Contd---P/7

∴7∴

was admitted in hospital on 07.11.13 and was discharged on 15.11.13. So, pain and suffering is there and she must incurred some miscellaneous expenses. Hence, the amount of compensation is calculated as follows :-

Sl. No.	HEADS	CALCULATION
(i)	Medical expenditures	Rs. 40,900/-
(ii)	Pain, shock and suffering	Rs. 10,000/-
(iii)	Miscellaneous including travelling expenses	Rs. 5,000/-
	Total	Rs. 55,900/-

14. The offending vehicle bearing No. AS-19/B-7171 involved in the accident was duly insured with the opposite party No. 1, i.e. The Oriental Insurance Co. Ltd., vide Policy No. 322300/31/2014/5521 which was valid upto 09/10/14. Hence, the opposite party No.1 is liable to pay the compensation to the claimant. Issue No. (ii) is decided accordingly.

### O R D E R

15. In the result, the claim petition is allowed on contest. The opposite party No.1 i.e. The Oriental Insurance Co. Ltd. is directed to pay the amount of Rs. 55,900/- (Rupees fifty five thousand nine hundred) only to the claimant along with interest @ 6% p.a. from the date of filing of the claim petition i.e. from 19/12/15 till its realization. The Opp. Party No. 1, The Oriental Insurance Co. Ltd. is directed to pay the said amount within 2 (two) months from the date of passing of this order.

Contd---P/8

∴8∴

16. Let a copy of the judgment be transmitted to the opposite party No.1 for information and necessary action.

17. Given under my hand and the seal of this Tribunal on this 7<sup>th</sup> day of **April, 2017**.

*Dictated and corrected by me,*

*(I. Barman)*  
*Member, MACT*  
*Bongaigaon.*

*(I. Barman)*  
*Member, MACT*  
*Bongaigaon.*

\*\*\*\*\*