

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:  
BONGAIGAON.

**M.A.C. CASE NO. 02/2011**

1. Sri Pitambar Ray  
S/O Mongolu Ram Ray
2. Smt. Anima Ray  
W/O Sri Pitambar Ray

.....Claimants.

Vs.

1. Divisional Manager,  
The Bharti AXA General Insurance Co. Ltd,  
5<sup>th</sup> Floor, A.T Road, Guwahati,  
...Insurer of Vehicle No. AS-27/C-0450  
(Tata Winger).
2. Sri Now Ram Boro  
S/O Lt. Lakshman Boro  
Owner of Vehicle No. AS-27/C-0450  
(Tata Winger).
3. Sri Darga Boro  
S/O Kandura Boro  
Driver of Vehicle No. AS-27/C-0450  
(Tata Winger).

.....Opposite Parties.

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

*Advocate for the claimant : M. H. Akond  
Advocate for the opposite party No.1: Smt. J. Barua  
Advocate for opposite party No. 3: Smt. S. Shome*

Date of Argument :10.04.17  
Date of Judgment : 25.04.17

**JUDGMENT AND ORDER**

1. The claim case arose out of the petition preferred U/S 166

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of the Motor Vehicle Act, 1988 filed by the claimants claiming compensation from the Opposite Parties on account of injury sustained by their minor son in a motor vehicle accident on 12.08.2010.

2. Case of the claimant in brief, is that, on 12.08.2010 at about 9.30 A.M while the claimants' son Arun Ray was proceeding from his house towards Kakoijana M.E. School by riding bi-cycle, suddenly the vehicle bearing No. AS-17/C-0450 (Tata Winger) coming in rash and negligent manner knocked down the claimants' son Arun Ray on 31 N.H.Way near Kakoijana M.E School from front side. Due to the accident, he fell down on the pacca road and sustained injuries over his stomach, hand, leg and the other parts of the body. Immediately, after the accident he was admitted at Lower Assam Hospital & Research Centre, Bongaigaon and was discharged on 22/09/10. It is also stated during treatment he had to undergo stomach operation in Lower Assam Hospital, Bongaigaon. During treatment an amount of Rs. 2,00,000/- was spent. It is further contended that with regard to the accident Abhayapuri P.S. Case No. 235/2010 U/S 279/338 IPC was registered. Hence, prayed compensation of Rs. 4,00,000/- from the opposite parties.

3. In response to the notice, the opposite party No.1 i.e. The Bharti AXA General Insurance Co. Ltd, the insurer of the vehicle No. AS-27/C-0450 (Tata Winger), by filing written statement denied the rash and negligent driving on the part of the driver of Tata Winger and put the claimants to make strictest proof with regard to the alleged accident, driving licence, fitness of the vehicle, Registration Certificate etc. and further pleaded that claimants' claim is highly excessive. Hence, prayed

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to dismiss the claim.

4. The Opp. Party No.3, the driver of the Tata Winger No. AS-27/C-0450, also by filing written statement denied rash and negligent on his part. It is further contended that at the time of alleged accident the Tata Winger was duly insured with the Opp. Party No. 1 i.e. Bharati AXA General Insurance Co. Ltd., and he possessed a valid driving licence vide D/L No. 5725/NB/08 Misc which was valid upto 16.04.11. As such, the insurance company is liable to pay compensation, if any, and prayed to exonerate him from paying any compensation to the claimants.

5. In spite of receipt of the notice, the Opp. Party No.2, the owner of the Tata Winger bearing No. AS-27/C-0450 did not turn up and hence, the case was proceeded ex-parte against him.

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

- i. *Whether the claimants' son Sri Arun Ray sustained bodily injuries in motor vehicle accident on 12.08.2010 at Parayar Para (Kakoijana) due to rash and negligent driving of the vehicle No. AS-27/C-0450?*
- ii. *Whether the claimants are entitled to get compensation, if so, to what extent and by whom it is payable ?*

7. In course of trial, the claimant side examined two witnesses and the contesting opposite parties duly cross-examined them. The contesting opposite parties have not adduced any evidence.

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

**Issue No. i:**

9. Claimant No. 1 Sri Pitambar Ray, father of the injured Arun Ray has averred in the claim petition as well as in evidence that on 12.08.2010 at about 9.30 A.M when his son Arun Ray was proceeding from home towards Kakoijana M.E. School by riding a bi-cycle and reached at Kakoijana near Kakoijana M.E School on 31 N.H.Way, suddenly the Tata Winger bearing No. AS-27/C-0450 coming in rash and negligent manner knocked down his son Arun Ray from front side. As a result, he fell down on the pacca road and sustained injuries over abdomen, hand, leg and the other parts of the body. Immediately, after the accident, he was admitted at Lower Assam Hospital & Research Centre, Bongaigaon and was discharged on 22/09/10. He also stated that during treatment his son Arun Ray got operated of abdomen in Lower Assam Hospital, Bongaigaon but he is not totally cured and became permanently disable. He further stated that with regard to the accident Abhayapuri P.S. Case No. 235/2010 U/S 279/338 IPC was registered. In support of his evidence, PW1 proved the accident information report as Ext.1, F.I.R form as Ext.2, Ejahar as Ext.3, gate pass as Ext.4, money receipts as Ext.5 & 188, bill as Ext.8, operation requirements as Ext.6, prescriptions, medicine bills from Ext. 9 to 187, final bill as Ext.189, discharge certificate as Ext.190, CT scan report as Ext.191, CXR(PA) reports as Ext. 192 & 193 and X-Ray plate as Ext.194. During cross he stated that his son was proceeding by bi-cycle by the side of road.

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10. Claimant side examined one eye witness Atul Ray as PW2. He deposed that on 12.08.10 at about 9:30 A.M when he was standing near Kakoijan M.E. School, then he saw that Arun Ray was proceeding from his house towards Kakoijana M.E. School by riding bi-cycle and when he reached near Kakoijana M.E School on 31 N.H.Way, suddenly the offending Tata Winger coming from opposite direction in rash and negligent manner knocked down the claimants' son Arun Ray from front side. As a result, Arun Ray fell down on the pacca road and sustained injuries over leg, hand, stomach and other bodily injuries. Immediately, after the accident he was taken to Lower Assam Hospital & Reacher Centre, Bongaigaon. He further stated that he saw the accident from 10 meter distance. During cross, he stated that on the day of accident he was proceeding towards the National High way to tie his cows.

11. 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-27/C-0450 (Tata Winger).

12. From the evidence of PWs and other documents proved by the claimants side, it is clear that Sri Arun Ray, the son of the claimants received injury due to the motor vehicle accident occurred on 12.08.10. The accident information report Ext.1 available in the case record issued by Abhayapuri Police Station reflects that on 12.08.2010 at about 9:30 A.M an accident occurred involving the vehicle bearing No. AS-27/C-0450 (Tata Winger), wherein Arun Ray was shown as injured. Both the PWs clearly stated that on 12.08.10 at about 9:30 A.M when Arun Ray was proceeding from his house towards Kakoijana M.E. School by riding

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a bi-cycle and reached near Kakoijana M.E School on 31 N.H.Way, suddenly the offending Tata Winger coming from opposite direction in rash and negligent manner knocked down the claimants' son Arun Ray from front side. As a result, he fell down on the pacca road and sustained injuries over leg, hand and abdomen. Immediately after the accident, he was admitted at Lower Assam Hospital, Bongaigaon and was discharged on 22/09/10. The claimants also stated that with regard to the accident, Abhayapuri P.S. Case No. 235/2010 U/S 279/338 IPC was registered. From the above 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 Tata Winger No. AS-27/C-0450. 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 near Kakoijana M.E. School due to rash and negligent driving of the offending vehicle i.e. AS-27/C-0450 (Tata Winger) and the claimants' son Arun Ray received injuries due to the said accident. Accordingly, this issue is decided in favour of the claimants.

**Issue No. ii:**

13. This issue relates to the entitlement of the claimants for compensation and extent thereof as well as liability of the opposite parties to pay such compensation.

14. In view of my foregoing decision, I am of the opinion that the claimants' minor son Arun Ray received injuries on his person in the motor vehicle accident occurred on 12.08.2010 and as such the claimants

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being parents of the injured is entitled to compensation. Now coming to the quantum of compensation, claimant No. 1 in his evidence stated that after the accident his son Arun Ray was admitted at Lower Assam Hospital, Bongaigaon wherefrom he was discharged on 22/09/10. On careful perusal of the vouchers and bills proved by the claimants, it reveals that an amount of Rs. 80,782/- say Rs. 80,800/- was expended during treatment of the injured. As such, the claimants are entitled to this amount as medical expenses for the injury sustained by him. Moreover, he was in hospital from 12.08.2010 till 22.09.2010. Ext. 190 reflects that due to the accident he sustained blunt abdominal injury and liver injury (Abrasion and tear supria surface of liver). So, pain and suffering is there and they must incurred some miscellaneous expenses during treatment of the inured. Hence, the amount of compensation is calculated as follows :-

Sl. No.	HEADS	CALCULATIO N
(i)	Medical expenditures	Rs.80,800/-
(ii)	Pain, shock and suffering	Rs.15,000/-
(iii)	Miscellaneous expenses	Rs.10,000/-
	Total	Rs.1,05,800/-

15. The offending vehicle bearing No. AS-27/C-0450 (Tata Winger) involved in the accident was duly insured with the opposite party No. 1, i.e. The Bharati AXA General Insurance Co. Ltd., vide Policy No. FCV/10274199/N1/05/K1N111 which was valid upto 19.05.2011. Hence, the opposite party No.1 is liable to pay the compensation to the claimants. Issue No. (ii) is decided accordingly.

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O R D E R

16. In the result, the claim petition is allowed on contest. The opposite party No.1 i.e. The Bharti AXA General Insurance Co. Ltd. is directed to pay the amount of Rs. 1,05,800/- (Rupees one lac five thousand eight hundred) only to the claimants along with interest @ 6% p.a. from the date of filing of the claim petition i.e. from 04.01.2011 till its realization. The opposite party No.1, The Bharti AXA General Insurance Co. Ltd. is directed to pay the said amount within 2 (two) months from the date of passing of this order.

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

18. Given under my hand and the seal of this Tribunal on this 25<sup>th</sup> day of **April, 2017**.

*Dictated and corrected by me,*

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

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Member, MACT  
Bongaigaon.*

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