

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:
BONGAIGAON.

M.A.C. CASE NO. 215/2009

1. Sri Bhaskar Ray,
S/O Lt. Jagesh Ch. Ray
.....*Claimant.*

Vs.

1. Divisional Manager,
The National General Insurance Co. Ltd.,
Siliguri Branch, Siliguri.
...Insurer of vehicle No. AS-16/6713
(Tata Mobile).
 2. Divisional Manager,
National Insurance Co. Ltd., Bongaigaon.
 3. Sri Raj Kr. Basumatary,
S/O Lt. Subodh Basumatary
Owner of vehicle No. AS-16/6713 (Tata Mobile).
 4. Md Abdul kader Sheikh,
S/O Lt. Abdul Maleque Sk.,
Driver vehicle No. AS-16/6713 (Tata Mobile).
-*Opposite Parties.*

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

Advocate for the claimant : Sri T. K. Das
Advocate for opposite party No. 1 & 2 : Sri D. J. Mukherjee
Advocate for opposite party No. 4 : Sri R. N. Das

Date of Argument : 20.04.17
Date of Judgment : 26.04.17

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 him in a motor vehicle

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accident occurred on 13.02.2005.

2. Case of the claimant, in brief, is that, on 13.02.2005 at about 8:40 A.M, while claimant Bhaskar Ray was travelling by the Tata Mobile bearing No. **AS-16/6713** (Tata Mobile) at Bhatipara (No.1 Nowapara) on 31 N.H. Way due to rash and negligent driving of the driver, the claimant met with the accident and sustained grievous injuries. After the accident, he was taken to Manikpur PHC and then he was shifted to the Dr.M.N. Saikia, M.G. Road, Bongaigaon. In the accident, he sustained fracture in the lower end of right humerus and head of the right radius. In his treatment from 13.02.05 to 20.02.05, he spent an amount of Rs. 10,000/-. It is further contended that with regard to the accident Manikpur P.S. Case No. 18/05 U/S 279/338 IPC was registered. Hence, prayed compensation of Rs. 2,00,000/- from the opposite parties.

3. In response to the notice, opposite party No. 1 & 2 i.e. National Insurance Co. Ltd. the Insurer of vehicle No. **AS-16/6713** (Tata Mobile) entered its appearance and by filing written statement, contended inter alia that there is no cause of action and the claim petition is also barred by principles of waiver, acquiescence and estoppel. It is also contended that the claimant was travelling by the Tata Mobile which is a goods carrying vehicle and no passengers are allowed to travel in a goods carrying vehicle and since the claimant the alleged injured has violated the Motor Vehicle Rules and thereby violated the terms and conditions of the insurance if any and as such, he is not entitled to any compensation. Denying the rash and negligent driving on the part of the driver of the vehicle No. **AS-16/6713** (Tata Mobile), the answering opposite parties put the claimant to make strictest proof with regard to the alleged accident, road permit, tax payment receipt, fitness certificate, registration certificate, insurance

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policy etc. and further alleged that non-appearance of the insured, in the present claim proceeding without any just cause and reason, and his negligence or failure to take part in the proceeding will be sufficient to cause apprehension of the answering opposite parties that the insured and the claimant are in collusion to have wrongful gain against the answering opposite parties. It is also pleaded that the claimant's claim is highly excessive and as such prayed to dismiss the claim petition.

4. Opp. Party No. 4 the driver of the vehicle bearing No. **AS-16/6713** (Tata Mobile) by filing the written statement admitted that at the time of accident he was driving the vehicle but denied the rash and negligent driving on his part. He further pleaded that, the opposite party No.1 i.e. the Insurance company of the Tata Mobile is liable to pay compensation, if any. He further pleaded that claimant's claim is highly excessive and as such prayed to exonerate him from the claim.

5. In spite of receipt of notice, Opp. Party No.3, the owner of the vehicle No. **AS-16/6713** (Tata Mobile) did not appear to contest the case. Hence, the case was proceeded ex-parte against him.

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

*i. Whether the claimant Sri Bhaskar Ray sustained bodily injuries in motor vehicle accident occurred on 13.02.05 at 31 N.H. Way. Bhatipara due to rash and negligent driving of the vehicle bearing No. **AS-16/6713** ?*

ii. Whether the claimant is entitled to get compensation, if so, to what extent and by whom it is payable ?

7. In course of trial, the claimant examined himself and the contesting opposite parties duly cross-examined him. The contesting Opposite Parties have not adduced any evidence.

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

Issue No. i and ii

9. Claimant Sri Bhaskar Ray has averred in the claim petition as well as in evidence that on 13.02.05 at about 8:40 A.M, while he was travelling by the vehicle bearing No. **AS-16/6713** (Tata Mobile) due to rash and negligent driving of the driver, he met with an accident near Bhatipara (No.1 Nowapara) on 31 N.H. Way and sustained injuries. Immediately, after the accident he was taken to Manikpur PHC and on being referred he was shifted to Dr. M. N. Saikia, M.G. Road, Bongaigaon. Due to the accident, he sustained crack fracture in the lower end of right humerus and head of the right radius. It is further contended that with regard to the accident Manikpur P.S. Case No. *18/05 U/S 279/338 IPC* was registered. In support of evidence he proved accident information report as Ext.1. During cross he stated that at the time accident, he was riding his bi-cycle towards market and when he was returning towards home from the market, the Tata Mobile knocked down him from back side. He also stated that due to the accident he fell down on the road and his bi-cycle was broken but police did not seize his broken cycle. He also admitted that he had not submitted any document regarding expenses etc. and insurance certificate in the claim petition. He also admitted that he was not travelling by the goods carrying vehicle.

10. From the above, I find that there is a contradictory statement. In

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the claim petition as well as in evidence, the claimant stated that on 13.02.05 at about 8:40 A.M, while he was travelling by the goods carrying vehicle bearing No. **AS-16/6713** (Tata Mobile), due to rash and negligent driving of the driver of Tata Mobile he met with an accident. On the contrary, the claimant during cross by the opposite party No.1 stated that on the day of accident when he was proceeding towards market by riding his bi-cycle and when he was returning from market towards home, then the Tata Mobile coming in rash and negligent manner knocked down him from back side. So, the claimant himself made contradictory statement as to whether he was in Tata Mobile or whether when he was riding the bi-cycle, the vehicle knocked down him. With contradictory statement, the claimant discredited himself and as such the claimant failed to prove as to how the accident occurred.

11. Further, in this case, except the accident information report (Ext.1), no medical documents including the cash memo, bills, prescriptions etc. are proved by the claimant side. In the above facts, it is held that the claimant is not entitled to any compensation.

12. Accordingly, the claim petition is dismissed on contest.

13. Given under my hand and the seal of this Tribunal on this **26th** day of **April, 2017**.

Dictated and corrected by me,

(I. Barman)
Member, MACT
Bongaigaon.

(I. Barman)
Member, MACT
Bongaigaon.
