

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:
BONGAIGAON.

M.A.C. CASE NO. 56/11

1. Sri Bibekananda Sarkar,
S/O Lt. Umesh Chandra Sarkar.
.....Claimant.

Vs.

1. State of Assam,
Home Department,
Dispur, Guwahati (Assam)
2. Deputy Commissioner,
Bongaigaon.
3. Superintendent of Police,
Bongaigaon.
4. Sri Jayanta Kalita,
S/O Pradip Kalita,
Driver of escort vehicle No. AS-30/2772
(Gypsy).
.....Opposite Parties.

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

Advocate for the claimant : M. H. Khan

Advocate for the opposite party No.1, 2 & 3 : Sri R. N. Das, G.P

Advocate for opposite party No. 4 : Sri S. Alom

Date of Argument : 05.04.17

Date of Judgment : 28.04.17

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

Contd---P/2

:::2:::

by him in a motor vehicle accident occurred on 30.08.10.

2. Case of the claimant in brief, is that, on 30.08.2010 while the claimant A.S.I Bibekananda Sarkar along with one assistant constable Sri Bikramjit Ray were maintaining law and order situation and traffic control at Abhayapuri near Abhayapuri cinema hall, in the Dist. of Bongaigaon for the arrival of Hon'ble Revenue Minister Bhumidhar Barman, and claimant Bibekananda Sarkar was standing on the left side of the road, at that moment, at about 2:00 P.M, the offending escort vehicle of the Hon'ble Minister bearing No. AS-30/2772 (Gypsy) coming from western direction towards Abhayapuri in rash and negligent manner knocked down the claimant along with 3/4 rickshaws and other 3/4 persons standing thereon. The vehicle dashed the claimant from left side for about 15 feet away towards eastern direction, due to which he along with 3/4 persons sustained grievous injuries and rickshaws were also damaged. Immediately, after the accident, he was admitted at Abhayapuri Civil Hospital and on being referred, he was admitted at Lower Assam Hospital, Bongaigaon on the same day of accident. Thereafter, he got admitted at Dr. Chhang's Super Specialty Hospital Private Ltd. Himanchal Vihar, Phase-III, Matigara, Siliguri. Due to the accident, he sustained fracture in his left femur and got injured on his head. By profession, the claimant is a service holder under Director General of Police, Ulubari, Guwahati, Assam. During treatment he spent an amount of Rs.1,18,659/-. It is further contended that with regard to the accident Abhayapuri P.S. Case No. 254/2010 U/S 279/337/338/427 IPC was registered. Hence, prayed compensation of Rs. 2,93,579/- from the opposite parties.

Contd---P/3

:::3:::

3. In response to the notice, the opp. party Nos.1, 2 & 3 together by filing written statement contended inter alia that there is no cause of action and the claim petition is not maintainable. It is further alleged that on 30.08.10 at about 2:00 P.M while the escort vehicle bearing No. AS-30/2772 (Gypsy) of the Hon'ble Revenue Minister, Bhumidhar Barman was coming on the road and reached near Abhayapuri cinema hall in its regular motion, at that time, the claimant A.S.I of police entered into the area which convoyed in a reckless manner, as a result of which he was injured and further alleged that the accident occurred due to the fault of claimant himself. Denying rash and negligent driving on the part of the driver of the vehicle No. AS-30/2772 (Gypsy), the answering opposite parties put the claimant to make strictest proof regarding the expenditures of Rs.1,33,579. In this premise, the answering opposite parties prayed to exonerate them from the claim.

4. In response to the notice, the opposite party No. 4 the driver of the Gypsy bearing No. AS-30/2772 by filing written statement pleaded that there is no cause of action and the claim petition, suffers from mis-joinder of parties. Denying the rash and negligent driving on his part, he further admitted that he is the employee of Govt. of Assam and at the time of accident, he possessed valid driving licence. As such, if any, Govt. of Assam is liable to pay the compensation amount. In this premise, he prayed to dispense him from the claim.

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

i. Whether the claimant Bibekananda Sarkar sustained

Contd---P/4

:::4:::

bodily injuries in motor vehicle accident occurred on 30.08.2010 at Abhayapuri town due to rash and negligent driving of the vehicle No. AS-30/2772?

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 examined himself and the contesting opposite parties duly cross-examined him. The contesting Opposite Parties have 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 Sri Bibekananda Sarkar has averred in the claim petition as well as in his evidence that on 30.08.2010 he along with one assistant constable Sri Bikramjit Ray were maintaining law and order situation and traffic control at Abhayapuri near Abhayapuri cinema hall, Dist. Bongaigaon, for the arrival of Hon'ble Revenue Minister, Bhumidhar Barman and when he was standing on the left side of the road, at that moment, at about 2:00 P.M, the offending escort vehicle of the Hon'ble Minister bearing No. AS-30/2772 (Gypsy) coming from western direction towards Abhayapuri in rash and negligent manner knocked down the claimant along with 3/4 rickshaws and other 3/4 persons standing thereon. The vehicle dashed him from left side for about 15 feet away towards eastern direction due to which he along with other 3/4 persons sustained grievous injuries and the rickshaws were also damaged. Immediately, after the accident, he was admitted at Abhayapuri

Contd---P/5

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Civil Hospital and on being referred, he was admitted at Lower Assam Hospital, Bongaigaon on the same day of accident. He also got admitted at Dr. Chhang's Super Specialty Hospital Private Ltd. Himanchal Vihar, Phase-III, Matigara, Siliguri. Due to the accident, he sustained fracture in his left femur and head injury. With regard to the accident, Abhayapuri P.S. Case No. 254/2010 U/S 279/337/338/427 IPC was registered. In support of his evidence, he proved ejahar as Ext.1, accident information report as Ext.2, prescription of Abhayapuri hospital as Ext.3, discharge certificates as Ext. 4 & 5, doctors certificates as Ext.6 & 7, prescriptions from Ext.8 to 50, blood examination reports as Ext. 51 & 52, MRI of brain as Ext.53, NECT of brain as Ext. 54 & 55, USG of abdomen report as Ext. 56 OPD book of LAH as Ext. 57, ECG report as Ext.58, emergency patient card as Ext. 59, originals cash memos, medicine bills, final bill, original prescriptions from Ext. 60 to134, sonography plate, CT scan plates, X-ray plates from Ext.135 to 153 and original cash memos as Ext.154. During cross he stated that at the time of accident he was serving as an A.S.I at Abhayapuri police station.

9. 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-30/2772 (Gypsy).

10. From the evidence of PW1 that is the claimant himself and other documents proved by him, it is clear that he received injury due to the motor vehicle accident occurred on 30.08.10. The accident information report Ext.2 available in the case record issued by Abhayapuri Police Station reflects that on 30.08.2010 at about 2:00 P.M

Contd---P/6

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an accident occurred near the Abhayapuri Cinema Hall involving the Gypsy bearing No. AS-30/2772 wherein Sri Bibekananda Sarkar was shown as injured. The claimant clearly stated that on 30.08.2010 he along with one assistant constable Sri Bikramjit Ray were maintaining law and order situation and traffic control at Abhayapuri near Abhayapuri cinema hall, under Dist. of Bongaigaon in the arrival of Hon'ble Revenue Minister and the claimant was standing on the left side of the road, at that moment, at about 2:00 P.M, the offending escort vehicle of the Hon'ble Minister bearing No. AS-30/2772 (Gypsy) coming from western direction towards Abhayapuri in rash and negligent manner knocked down the claimant along with 3/4 rickshaws and other 3/4 persons standing thereon. As a result, he was dashed down from left side about 15 feet away, due to which he along with other 3/4 persons sustained grievous injuries and the rickshaws were also damaged. Immediately, after the accident he was admitted at Abhayapuri Civil Hospital and on being referred, he was admitted at Lower Assam Hospital, Bongaigaon on the same day of accident. He was treated at Dr. Chhang's Super Specialty Hospital Private Ltd. Himanchal Vihar, Phase-III, Matigara, Siliguri. Due to the accident, he sustained fracture in his left femur and head injury. With regard to the accident, Abhayapuri P.S. Case No. 254/2010 U/S 279/337/338/427 IPC was also registered. In view of the above evidence of the claimant himself as PW1 and in absence of any contrary legal evidence, it is crystal clear that the accident took place near Abhayapuri Cinema Hall due to rash and negligent driving of the offending Gypsy i.e. AS-30/2772 and the claimant received injuries due to the said accident. Accordingly, this issue is decided in favour of the claimant.

Contd---P/7

Issue No. ii:

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

12. In view of my foregoing decision, I am of the opinion that the claimant received injuries on his person in the motor vehicle accident occurred on 30.08.10 and as such the claimant is entitled to compensation. Now coming to the quantum of compensation, claimant in his evidence stated that after the accident at first he was admitted at Abhayapuri Civil Hospital and on being referred he was admitted at Lower Assam Hospital wherefrom he was discharged on 15/09/10. Thereafter, he was also treated at Dr. Chhang's Super Specialty Hospital Pvt. Ltd. at Siliguri where he was admitted on 22.09.10 and was discharged on 23.09.10 proved as Ext. 3, 4 and 5. On careful perusal of the vouchers and bills proved by the claimant, it reveals that an amount of Rs. 1,18,659 say Rs. 1,18,700/- was expended during treatment of the injured. During cross, PW1 admitted that for his treatment he was paid Rs. 20,000/- from S.P Office, Bongaigaon and the said Rs. 20,000/- was deducted from his salary. But he did not produce any document to prove that Rs. 20,000/- was deducted from his salary. So, after deduction of Rs. 20,000/- already paid to him, the claimant is entitled to Rs. 98,700/- (1,18,700 - 20,000) as medical expenses. By occupation, the claimant is a serviceman who is drawing salary regularly and as such there is no loss of income due to the motor vehicle accident occurred on 30.08.10. Ext. 3 & 4 reflects that the claimant received head injury and fracture shaft of left femur distal 1/3rd. Moreover, claimant Bibekananda Sarka was in

∴∴8∴∴

hospital from 30.08.10 to 15.09.10 and from 22.09.10 to 23.09.10. So, pain and suffering is there and he must incurred some miscellaneous expenses. Hence, the amount of compensation is calculated as follows :-

Sl. No.	HEADS	CALCULATION
(i)	Medical expenditures	Rs. 98,700/-
(ii)	Pain, shock and suffering	Rs. 10,000/-
(iii)	Miscellaneous expenses	Rs. 10,000/-
	Total	Rs. 1,18,700/-

13. The offending Gypsy bearing No. AS- 30/2772 involved in the accident was belonged to Govt. of Assam, Home Department and the driver of the Gypsy who was a government driver was also possessed valid driving licence. 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

14. In the result, the claim petition is allowed on contest. The opposite party No. 1 i.e. The Govt. of Assam, Home Department is directed to pay the amount of Rs. 1,18,700/- (Rupees one lac eighteenth thousand seven hundred) only to the claimant along with interest @ 6% p.a. from the date of filing of the claim petition i.e. from 22.03.11 till its realization. The opposite party No.1, The Govt. of Assam, Home Department is also directed to pay the said amount within 2 (two) months from the date of passing of this order.

∴9∴

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

16. Given under my hand and the seal of this Tribunal on this 28th day of **April, 2017**.

(I. Barman)
Member, MACT
Bongaigaon.

Dictated and corrected by me,

(I. Barman)
Member, MACT
Bongaigaon.
