

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:
BONGAIGAON.

M.A.C. CASE NO. 163/2012

1. Md. Naser Ali,
W/O Md. Fajar Ali.
.....Claimants.

Vs.

1. The Divisional Manager,
Oriental Insurance Co. Ltd.,
Bongaigaon.
....Insurer of Vehicle No. AS-19/B-3268
(Tata Indica).
2. Mr. Johir Uddin,
S/O Motiur Rahman,
Owner of vehicle No. AS-19/B-3268
(Tata Indica).
3. Md. Abdul Salam,
S/O Naser Ali,
Driver of vehicle No. AS-19/B-3268
(Tata Indica).

.....Opposite Parties.

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

*Advocate for the claimants : Sri M. H. Akond
Advocate for opposite party No.1 : Smt. J. Barua
Advocate for opposite party No. 2 & 3 : Smt. S. Saikia*

Date of Argument : 21.03.2017
Date of Judgment : 06.04.2017

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

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compensation from the Opposite Parties on account of injury sustained by him in a motor vehicle accident on 31.03.2012.

2. Case of the claimant, in brief, is that on 31.03.2012 at about 1:30 P.M while Md. Naser Ali was travelling from his house on foot towards Tulungia Bazar on 31 N.H.Way on his own side, suddenly the vehicle bearing No. AS-19/B-3268 (Tata Indica) coming in rash and negligent manner knocked down him from back side. As a result, he sustained grievous injuries. Immediately, after the accident at first he was taken to Abhayapuri Civil Hospital and on being referred he was taken to Bongaigaon Civil Hospital and finally he got admitted at GNRC, Guwahati. Due to the accident he sustained grievous injuries and became permanently disabled. It is further contended that with regard to the accident, North Salmara Out Post G.D.E No.201 was made. Hence, prayed compensation of Rs. 16,50,000/- from the opposite parties.

3. In response to the notice, opposite party No.1 Oriental Insurance Co. Ltd., the insurer of the vehicle No. AS-19/B-3268 (Tata Indica), entered its appearance and contested the case by filing written statement contending inter alia that there is no cause of action and the claim is hit by the principles of waiver, estoppel and acquiescence. The answering opposite party put the claimant to make strictest proof with regard to the alleged accident, driving licence, fitness of the vehicle, Registration Certificate, token tax receipts, insurance policy, road permit etc. and further contended that the claimant while walking by the wrong side, suddenly swerved to the left and exposed himself to a possible accident and the accident occurred due to

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contributory negligence of the claimant himself. In this premise, the answering opposite party prayed to dismiss the claim.

4. On receiving notice the opposite party 2 & 3 the driver and the owner of the vehicle No. AS-19/B-3268 by filing written statement denied the rash and negligent driving on the part of the driver of Tata Indica. It is pleaded that at the time of accident the Tata Indica was duly insured with The Oriental Insurance Co. Ltd vide policy No. 322300/31/2012/2094 valid upto 23.06.12 and the driver of the Tata Indica also possessed a valid driving licence which was valid upto 24.03.14. Therefore, the Insurance Co. is liable to pay the compensation, if any, and hence, prayed to exonerate them from this claim.

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

i. Whether the vehicle No. AS-19/B-3268 was involved in the accident and if so, whether the accident took place due to rash and negligent driving of the driver of the said vehicle?

ii. Whether the claimant Md. Naser Ali sustained bodily injuries in motor accident due to hit by or by travelling in the vehicle No. AS-19/B-3268?

iii. 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 three witnesses and the contesting opposite party duly cross-examined them. The contesting Opposite Party has not adduced any evidence.

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

Issue Nos. i & ii

8. Claimant Md. Naser Ali has averred in the claim petition as well as in evidence that on 31.03.12 at about 1:30 P.M when he was proceeded on foot towards Tulungia Bazar on 31 N.H.Way from home, suddenly the vehicle bearing No. AS-19/B-3268 (Tata Indica) coming in rash and negligent manner knocked down him from back side, as a result of which he sustained injuries on upper limb bilaterally, paralysis of left lower limb bilaterally & incontinence of bladder & bowel (Backbone) and the various part of the body. Immediately, after the accident he was taken to Abhayapuri Civil Hospital and thereafter on being referred he was taken to Bongaigaon Civil Hospital and again on being referred he got admitted at G.N.R.C Hospital, Guwahati. He also stated that for better treatment he was treated in Patna Hospital. Due to the accident he became 75% disablement. During cross he stated that the accident occurred before reaching the Tulungia Bazar and he got treated at Abhayapuri Civil Hospital, Bongaigaon Civil Hospital, Guwahati and Patna. He further stated that due to the accident he became unable to stand on his own foot and he also became unable to work.

9. The claimant side also examined one eye witness Md. Joynal Abedin who deposed that on 31.03.12 at about 1:30 P.M when the claimant Naser Ali was proceeding from his house towards Tulungia Bazar on 31 N.H. Way on foot on his own side, suddenly the vehicle bearing No. AS-19/B-3268 (Tata Indica) coming in rash and negligent

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manner knocked down the claimant Naser Ali from back side and as a result of which he sustained grievous injuries on his person. Immediately, after the accident he was admitted at Abhayapuri Civil Hospital and on being referred he was admitted at Bongaigaon Civil Hospital and thereafter for better treatment he was admitted at GNRC Hospital, Guwahati. He was also treated at Patna Hospital. He also stated that the claimant has become permanently 75% disablement. In support of his evidence he proved first information report as Ext.1, registration card of GNRC as Ext. 101, prescriptions, cash memos, money receipts, from Ext. 2 to 100, 102 to 126, 128 to 158, Healing Touch Medical Waterbed Installation Instruction as Ext. 127, extract copy as Ext. 159, M.V.I report as Ext. 160 and disablement certificate as Ext. 161. During cross he stated that after marketing while he was standing on the road then he saw that while the claimant was coming on foot on his left side, the Indica hit the claimant from back side.

10. Now let us see whether the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle No.AS-19/B-3268 (Tata Indica).

11. From the evidence of PWs and other documents proved by the claimant side, it is clear that the claimant Naser Ali received injury due to the motor vehicle accident occurred on 31.03.12. The accident information report available in the case record issued by North Salmara Out Post reflects that on 31.03.12 at about 1:30 P.M an accident occurred involving the vehicle bearing No. AS-19/B-3268 (Tata Indica), wherein Md. Naser Ali was shown as injured. The claimant as well as eye witness clearly stated that on 31.03.12 at about 1.30 PM when he was proceeding

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on foot from home towards Tulungia Bazar on 31 N.H.Way, suddenly the vehicle bearing No. AS-19/B-3268 (Tata Incida) coming in rash and negligent manner knocked down the claimant from back side. As a result, the claimant sustained on upper limb bilaterally paralysis of left lower limb bilaterally & incontinence of bladder & bowel (Backbone) and the various part of the body. During cross PWs clearly stated due to the accident claimant Naser Ali became unable to stand on his own foot and also became unable to work. 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 vehicle No. AS-19/B-3268 (Tata Incida). The opposite parties did not adduce any rebuttal evidence regarding rash and negligent driving of the offending vehicle concerned. With regard to the accident North Salmara G.D.E No. 201 dtd. 13.05.12 was made. 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 Tulungia Bazar on 31 N.H.Way due to rash and negligent driving of the offending vehicle i.e. AS-19/B-3268 and the claimant received injuries due to the said accident. Accordingly, these two issues are decided in favour of the claimant.

Issue No. iii:

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 the claimant received injuries on his person in the motor vehicle accident occurred on 31.03.12 and he is entitled to compensation. Now coming to

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the quantum of coming to the question of awarding compensation to the claimant, I relied on a plethora of decisions rendered by the Apex Court in awarding compensation in injury cases.

(i) **In *Neerupam Mohan Mathur -Vs- New India Assurance Co. Ltd. (2013 ACJ 2122)* the Apex Court has stated in Para-8 of the Judgment “In cases where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earning would depend upon the effect and impact of such permanent disability on his earning capacity. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at future loss of earnings.”**

(ii) **In *K. Suresh -Vs- New India Assurance Co. Ltd. [IV(2012) ACC 395]* the Hon'ble Supreme Court has observed that an adjudicating authority while determining quantum of compensation has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. The approach of the tribunal or a court has to be broad based. It would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of just compensation should be inhaled. (Para 10).**

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(iii) In *Raj Kumar -Vs- Ajay Kumar & Anr. (2011 ACJ 1)*, the Apex Court had laid down certain guidelines for awarding compensation in injury cases. It has held that “The provision of the Motor Vehicle Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.” (Para-5).

14. The claimant in his evidence stated that after the accident firstly he was taken to Abhayapuri Civil Hospital and on being referred he was taken to Bongaigaon Civil Hospital and again on being referred he was admitted in G.N.R.C, Guwahati and thereafter for better treatment he got admitted at Patna Hospital. On careful perusal of the vouchers and bills proved by the claimant, it reveals that an amount of Rs. 2,02,437.49/- say Rs. 2,02,500/- was expended during treatment of the injured. To prove disability the claimant examined one witness i.e PW3

Dr. Kachir Ali Ahmed. He deposed that on 27.05.13 he as a member of medical board examined the disabled person. He stated that on that day he examined the claimant Naser Ali S/O Fajar Ali aged about 19 years of village Nasatra under Abhayapuri P.S, in the district of Bongaigaon and found that he sustained quadriparesis leading permanent disablement for 75%. He proved Ext. 162 the disability certificate, Ext.162(1) is his signature and Ext.162(2) is the signature of the then Joint Director of Health Services, Bongaigaon Dr. Hirannay Adhikary. In cross examination he stated that the name of the other doctors of the medical board is not mentioned in Ext.162. According to him, except him there was none in the board to judge locomoto disability. He further stated that no medical certificate, test report, X-ray etc was consulted by him during physical examination of the patient. He also stated that there is hardly any possibility to improve the disability of the claimant in course of time. He admitted that after 2013, he has not examined the patient. During deposition it is found that he is unable to stand and came to the court with the help of the wheel chair. In cross examination he stated that he is unable to do work. Considering the injury, sustained by the claimant, his disability is taken as 75% and as such the claimant is entitled to pecuniary damages for loss of earning capacity to the extent of 75% due to the injury sustained in the accident besides medical expenses. Now taking the quantum of income, the claimant stated that he was a greengrocer in occupation and earned Rs.6,000/- per month but since the accident he became unable to do work. Though regarding income no document is proved but being a young man of the age of 19 years in the year 2012, one can easily earn at least Rs. 3,500/- per month. Claimant claimed his age as 19 years. Hence, multiplier would be '18'. As such the loss of income due to disability would be Rs. 3,500 X 12 X 18 X 75% =

5,67,000/-.

15. Apart from that in this case due to the accident, the claimant is reduced to such a state that his is unable to do work without subjecting himself to pain and suffering, agony and discomfort. In this case, the claimant is a young man and earned his livelihood as a greengrocer at the time of accident. For the remaining life, he will suffer the trauma of not being able to do work. He was in different hospitals. Therefore, I feel that the ends of justice will be met by awarding him a sum of Rs. 80,000/- in lieu of pain, suffering and trauma caused due to loss of ability to move without help of others or wheel chair. He is expected to live for at least next 50/60 years. Doctor stated that there is hardly any possibility to improve the disability of the claimant. Due to his disability as discussed above he cannot live like a normal human being and will not be able to enjoy life. The prospects of his marriage, have considerably reduced. Due to loss of his moving ability without wheel chair, he will suffer lots of difficulties. Hence, it would be just and reasonable to award a sum of Rs. 1,00,000/- for the loss of amenities and another amount of Rs. 80,000/- towards enjoyment of life and marriage prospect. Further he is required to periodical check up and has to purchase wheel chair periodically. Hence, an amount of Rs. 50,000/- is awarded as future expenses. Now, on computation, the total amount of compensation is as follows:-

Sl. No.	HEADS	CALCULATION
(i)	Medical expenses	Rs. 2,02,500/-
(ii)	Loss of income due to disability	Rs. 5,67,000/-
(iii)	Loss of amenities and attendant charges	Rs. 1,00,000/-

(iv)	Pain, shock and suffering	Rs. 80,000/-
(v)	Loss of enjoyment of life and marriage prospect	Rs. 80,000/-
(vi)	Loss of income due to disability	Rs. 50,000/-
	Total	Rs. 10,79,500/-

16. The offending Tata Indica bearing No. AS-19/B-3268 involved in the accident was duly insured with the opposite party No.1, i.e. The Oriental Insurance Co. Ltd., vide Policy No. 322300/31/2012/2094 which was valid up to 23.06.12. Hence, the opposite party No.1 is liable to pay the compensation to the claimant. Issue No. (iii) is decided accordingly.

O R D E R

17. In the result, the claim petition is allowed on contest. The amount of Rs. 10,79,500/- (Rupees ten lac seventy nine thousand five hundred) only to the claimant along with interest @ 6% p.a. from the date of filing claim petition i.e. from 11.10.2012 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. The opposite party No.1 is entitled to deduct the amount already paid, if any.

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

19. Given under my hand and the seal of this Tribunal on this

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6th day of **April, 2017.**

Dictated and corrected by me,

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

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