

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.2,
KAMRUP (M), GUWAHATI**

Present : Shri D. Bhattacharjee, AJS
Member, M.A.C. T. No.2,
Kamrup (M), Guwahati

MAC Case No.1072 of 2014

Smt. Anjana Thakuria represented by his father

Akbor Ali Thakuria

... Claimant

-Versus-

1. The United India Insurance Co. Ltd.

2. Sri Tapan Choudhury

3. Shri Kushal Das

...Opposite Parties

NAME OF THE ADVOCATES WHO APPEARED IN THIS CASE

1. For the claimant : Md. M. H. Choudhury, S. N. Choudhury,
: Sri S. Khan
2. For the O.P. No.1 : N. N. Bhuyan & Bhaskar Kakati
3. For the O.P. Nos.2 & 3 : Smt. Sabita Mahanta

DATES OF THE CASE

1. Claim petition filed on : 06-06-2014
2. Evidence recorded on : 21-02-2016 & 18-05-2016
3. Arguments heard on : 06-02-2017 & 16-03-2017
4. Judgment delivered on : 21-03-2017

J U D G M E N T

1. This is an application under Section 166 of the Motor Vehicle Act, 1988, (M.V.Act. in short), filed by the claimant Anjana Thakuria claiming compensation of Rs.90,00,000/- (rupees ninety lakhs only) from the opposite parties on account of the injury sustained by her in a motor vehicle accident.
2. The story of the claimant's case is that on the fatal day of the accident i.e. on 07-03-2014, she was proceeding by a motorcycle bearing registration No.AS-01-AK-8357 being driven by her brother Jemirul Islam @ Jeherul Islam from Narengi side towards Chandrapur side, and on the way, when they reached at Amgaon, the Truck bearing registration No.AS-01-C-1627, came with a very high speed and in a rash and negligent manner, knocked the motorcycle, as a result of which her brother died on the spot and she sustained grievous injuries. Immediately, she was taken to the GMCH, Guwahati for treatment and thereafter, she was taken to Down Town Hospital, Guwahati and there she was undergoing treatment as an indoor patient. She was again admitted in the GMCH, Guwahati and on being referred by the doctors, she was shifted to the AIIMS, New Delhi.
3. In connection with the accident, a case was registered vide Pragjyotishpur P.S. Case No.35 of 2014 under Section 279/338/427/304(A) of IPC. At the time of accident, the injured was aged about 30 years and she was a designer and editor in Oversees Vision and her monthly income was Rs.14,000/-. Due to the accident, the injured has become a permanent disabled person. Therefore, she has filed this claim case claiming compensation of Rs.90,00,000/- (rupees ninety lakhs only) from the opposite parties.
4. Notices were issued to all the opposite parties and they have contested the case by filing their separate written statements.
5. The opposite party No.1 the insurer of the vehicle by submitting written statement has denied that the accident occurred due to rash and negligent driving of the driver of the offending Truck. This answering opposite party has denied the age, occupation and income of the deceased. Also denied the factum of the accident. It is also pleaded that the claimant has claimed an exorbitant amount toward compensation. It is further contended that the liability if any, of the answering opposite party is always subject to the terms and conditions of the insurance policy. With the above, it is prayed to dismiss the claim petition.

6. The O.P. Nos.2 & 3 by filling separate written statement has stated that there is no cause of action for the case and the claim petition is also bad for non-disclosure of all the materials facts. They have denied the rash and negligence act on the part of the driver of the offending vehicle. It is further pleaded that at the time of accident the offending truck was duly insured with the United India Insurance Company Ltd. vide policy No.1302053113P101397468 and was valid up to 05-06-2014. Therefore, it is stated that if any compensation is awarded to the claimant, the same shall be realized from the O.P. No.1 insurance company.

They have submitted along with the written statement photostat copy of registration certificate and insurance policy of the offending vehicle & a copy of the driving license vide annexure-I, II & III.

7. Upon pleadings of the parties the following issues have been framed for adjudication of the case:

1. Whether the claimant, Anjana Thakuria sustained injuries in the motor vehicle accident dated 07-03-2014 due to rash and negligent driving by the driver of the vehicle bearing registration No.AS-01-C-1627 (Truck) ?
2. Whether the vehicle was duly insured with the insurance company at the time of accident?
3. What relief/reliefs the claimant is entitled to?

8. The claimant in order to prove her case examined as many as four witnesses and exhibited some documents. On the other hand, the opposite party has examined none.

9. Heard arguments of learned counsels for both the sides and perused the record.

DECISION AND REASONS THEREOF

10. Let us decide the above issues on the basis of materials available on record in order to deliver the judgment.

ISSUE Nos.1 & 2

11. For the sake of convenience and brevity both the issues are taken together for discussion and decision.

12. The PW-1 Anjana Thakuria, the injured-cum-claimant has stated in the

evidence that on the fatal day of the accident i.e. on 07-03-2014, she was proceeding by a motorcycle bearing registration No.AS-01-AK-8357 being driven by her brother Jemirul Islam @ Jeherul Islam from Narengi side towards Chandrapur side, and on the way, when they reached at Amgaon, the Truck bearing registration No.AS-01-C-1627, came with a high speed and in a rash and negligent manner and knocked the motorcycle, as a result of which her brother died on the spot and she sustained multiple fracture injuries on her person. Immediately she was taken to the GMCH, Guwahati, for her treatment and thereafter, she was taken to Down Town Hospital, Guwahati, and there she was undergoing treatment as an indoor patient. She was again admitted in the GMCH, Guwahati and on being referred by the doctors, she was shifted to the AIIMS, New Delhi. She has further deposed that the accident occurred due to the rash and negligent driving of the driver of the offending Truck.

13. In support of her evidence she has exhibited the Ext.-1 accident information report; the Ext.-2 disability certificate; the Ext.-3 (1 to 44) discharge certificates; the Ext.-4 (1 to 99) bills and vouchers and the Ext.-6 income certificate.
14. In the cross-examination (recorded on commission) she has stated that she is 32 years old and she was working in Overseas vision as video editor.
15. I have gone through the evidence adduced by the claimant and also perused the documents submitted before this Tribunal. In support of the case, the claimant has submitted the Ext.-1 accident information report. From the Ext.-1 accident information report, it is found that on 07-03-2014 the accident occurred and the Truck bearing registration No. AS-01-C-1627 and Motorcycle bearing registration No.AS-01-AK-8357 was involved with the accident.
16. It is also found in Ext.-1 Accident Information Report that at the time of accident, the vehicle was duly insured with the United India Insurance Company Ltd. vide Policy No.1302053113P101397468 and it was valid up to 05-06-2014 and the driving license of the driver vide D/L No.AS-0119920085393 and it was valid up to 23-02-2017. Further it is also found from Ext.-1 that in connection with the accident, the Pragjyotishpur P.S. Case No.35 of 2014 under section 279, 338, 427 & 304(A) of IPC. From the above noted evidence, it appears to me there was rash and negligence only on the part of the driver of the Truck bearing registration No.AS-01-C-1627.
17. In ***Godavari Devi Sharma & Ors vs. United India Insurance Co. Ltd. &***

Ors, reported **2012 (4) GLT 516**, the honourable Gauhati High Court in paragraph 14 held as follows:

"Moreover, while conducting the inquiry into a claim under Section 166 of the M. V. Act, the Tribunal is not expected to search for proof or evidence beyond reasonable doubt, rather it is preponderance of probability, what the tool is, for assessment of the evidence. The Tribunal can arrive at its finding on the prima facie materials, such as the First Information Report to presume existence of certain facts, in absence of other evidence which might debase such presumption.

In view of this, the finding that has been returned by the learned Motor Accident Claims Tribunal on the contributory negligence is interfered with and set aside."

18. Reverting back to the case at hand, from the Ext.-1 Accident Information Report and from the oral evidence of the claimant, it is held that, on 07-03-2014, at about 06:30 P.M., at Amgaon, the accident occurred due to the rash and negligent driving of the Truck bearing registration No.AS-01-C-1627 on the part of its driver and the said accident has caused injuries to the claimant Anjana Thakuria. Therefore, the issue Nos.1 & 2 is decided in the affirmative.

ISSUE NO.III

19. As the said accident has arisen due to the rash and negligent driving of the Truck bearing registration No.AS-01-C-1627 on the part of its driver and the said accident has caused injuries to the claimant Anjana Thakuria, certainly, the claimant is entitled to receive just and proper compensation.

20. Now, let us decide what should be the just and proper compensation under the facts and circumstances of the case.

21. The Ext.-3(1) Discharge Certificate issued by GMCH, Guwahati, shows that the claimant was admitted in to the said hospital on 22.03.2014 and was discharged on 31.03.2014 and on examination doctors found that the claimant sustained traumatic paraplegia with right elbow dislocation. The Ext.-3(21) shows that the claimant admitted in to the AIIMS, New Delhi, on 23.04.2014 and was discharged on 25.04.2014 and the doctors diagnosed as old case of right elbow dislocation. The Ext 3 (22) the C T Head + Cervical examination report given by AIIMS, New Delhi, depicts that the claimant has sustained D3-D4 Block Vertebra noted, moderate Rt. Pleural effusion and mild effusion on left effusion and fracture of the left transverse process and left 1 rib noted and healed fractures of right rib 3-6. The Ext. 3 (13)

referral certificate issued by the G. M. C. H, Guwahati, disclosed that the patient sustained traumatic paraplegia Rt. Elbow dislocation following RTA on 07.03.2014. So, from the above medical evidence of the claimant it is appeared that she sustained traumatic paraplegia Rt. Elbow dislocation following RTA on 07.03.2014 and also healed fractures of ribs 3-6.

22. The claimant in her evidence in chief has stated that she has become a permanent disabled person due to the injury sustained in the accident. In support of the contention she has produced the Ext. 2 Disability Certificate, which disclosed that she has become 100% permanently disabled person and the nature of disability is locomotor. Now, it is to be determined whether the claimant has become 100% permanently disabled due to the injury sustained in the accident or not. As stated above, the claimant has produced the Disability Certificate vide Ext. 2, which reveals that she has been suffering from 100% locomotor disability. Though the photocopy of the disability certificate (compared with original) has been submitted, neither its author nor any Doctor who constituted the Medical Board has been examined in order to prove the same.

23. In the present context, a decision of the honourable Supreme Court in ***Rajesh Kumar v. Yudhvir Singh***, reported in **(2008) 7 SCC 305** is referred. The relevant paragraph 11 of which is reproduced below:

"11. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen's Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate."

24. As discussed above, in the instant case the Ext. 2 Disability Certificate was issued after one year of the accident and it was not proved by examining its author as well as the Doctor who assessed the disability. Hence, placing reliance upon the above referred ruling it has been held that the Ext. 2 Disability Certificate produced by the claimant is not admissible in evidence.

25. However, another important aspect of the case has not lost my sight and is also to be looked into, the claimant/injured was cross-examined on commission as she was bed ridden as revealed from the order dated 17.12.2015 passed in this

case. The contesting opposite party could not demolish the factum of disability of the claimant either by cross examination or by adducing rebuttal evidence. Even at the time of cross examination of the claimant on commission, the opposite party could not brought anything to hold the view that the victim was not suffering from disability due to the accident.

26. The Ext. 3 (19) medical document issued by the G. M. C. H, Guwahati, reveals that the claimant has sustained fracture grade A, spinal cord injury. The Ext.-3 (21) Discharge Note and Ext.-3 (22) CT Head + Cervical examination report issued by the AIIMS, New Delhi, disclose that the claimant has sustained D3 - D4 Block vertebra with Rt. Elbow dislocation. The natures of above injuries clearly indicate that the claimant has sustained some sort of disability. Though the claimant has failed to prove the disability certificate but the impact of above described injuries cannot be ruled out.

27. Since this is a beneficial legislation I am of the considered view that the claimant must be compensated for the disability caused to her due to the accidental injury.

28. Under the facts and circumstances of the present case, in view of above discussion, the ends of justice would meet if it is treated that the claimant has been suffering from 50% permanent disability.

29. The proposition of law is settled that the compensation in bodily injury cases should be determined under the following heads :

Pecuniary damage (Special Damage)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Los of earnings (and other gains) which the injured would have made had he not been injured, comprising :

a) loss of earning during the period of treatment

b) loss of future earnings on account of permanent disability

(iii) Future medical expenses

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence for the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage)

(vi) Loss of expectation of life (shortening of normal longevity)

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and / or loss of prospects of marriage) and loss of expectation of life. (**Raj Kumar vs. Ajay Kumar and Another, 2011 (1) T.A.C. 785 (S.C)** is relied upon)

30. In the instant case, the claimant has submitted vouchers of total Rs.7,71,988/- for purchasing medicine and for other medical expenditures. But on careful scrutiny, the vouchers of Rs.5,38,988/- are found to be relevant and supported by prescriptions. Hence, an amount of Rs.5,38,988/- the claimant would be entitled towards medical expenditure.

31. The claimant has deposed in her evidence that at the time of accident she was a computer operator at Oversees Vision, Chandmari and her monthly salary was Rs.14,000/-. In order to prove her salary certificate vide Ext.-6 the claimant has examined the P.W.-4, Golap Das, the proprietor of the said Oversees Vision. But the P.W.-4 has not submitted the trade license, registration certificate and any relevant documents in connection with his establishment i.e. Oversees Vision. Also, the salary register of the employees, income tax return, profit and loss statement etc. of the establishment has not been submitted. The evidence of the PW 4 could not establish that there is a firm in the name and style 'Oversees Vision', Chandmari, was in existence at the time of accident. Hence, evidence adduced by the P.W.-4 is not taken into consideration.

32. In view of above, we have to take the recourse of notional income and it has been held that the claimant was earning Rs.5,000/- p.m.

33. The claimant has stated that at the relevant time of accident she was aged about 30 years which is supported by medical documents as revealed from the Ext.-3(1). But the claimant has not proved her age by submitting any other documents like school certificate or birth certificate. Hence, it has been held that she was 30 years old at the relevant time. Thus, she has been placed in the age group of 31 to 35. As per the decision of **Sarla Verma and others -Vs- Delhi Transport Corporation** reported in **(2009) 6 SCC 121**, the multiplier for the age group 31-35 is 16. Thus, the multiplier 16 has to be taken for ascertaining the loss of earning capacity in this instant case.

34. Apart from that, there should be an addition of 50% as per the decision of Hon'ble Apex Court in **Sarla Verma (supra)**, towards future prospect. In view of above, the loss of earning capacity is calculated as follows:

Rs.5,000/- p.m. x 12(months) x 16 (multiplier) x 50% (disability) + 50% (future prospects)= Rs.7,20,000/-.

Thus, an amount of Rs.7,20,000/- the claimant would be entitled towards loss of earning capacity.

35. Now point to be considered, whether the claimant is entitled to get any other amount or not? Form the record it appears that the claimant became the victim of accident at early age of her life and at the time of accident she was aged in between the age group of 31-35 years. Due to injury sustained by her, she would not be able to live like a normal human being. The claimant is expected to live more than 70 years. Due to the injury sustained in the accident, she would suffer lots of difficulties. After careful perusal of the documents submitted in this case and after hearing both the sides, it can be seen that, injuries sustained by the injured was severe in nature. The fact to be decided is that the injured being aged in between the age group of 31-35 years, has to endure with disability, for the rest of her life and she may have to face future difficulties on account of the disability and would definitely loss lot of amenities in life and may have to face tremendous discomforts in future. Having regard to the nature of the injuries, her age, nature and duration of treatment as well as the disability and also the fact that the injured was a woman at the time of accident; the claimant would be denied a lot of amenities in future. Hence, it would be just and reasonable to award her a sum of **Rs.2,00,000/-** for the loss of amenities and enjoyment of life.

36. The record reveals that in view of the road traffic accident, the claimant has sustained severe injuries and has become 50% permanent disabled person. During the period of treatment as well as during the continuation of the follow-up treatment she must had undergone a lot of unsaid pain and agony, therefore, it would be just and reasonable to award a sum of **Rs.3,00,000/-** towards pain, shock, sufferings and mental agony.

37. Now, let me consider, whether the claimant is required to award any other compensation on the head of future treatment. There is no doubt that the claimant will be required to take treatment time to time even to maintain the present condition of her health. In fact, it is found from the evidence of claimant witnesses that the injured had undergone treatment in hospitals; it is also a fact that she will need help of attendants for her day to day activities; therefore, she has to be paid

for the same. Hence, considering the present price rise of medicines and doctors charges, I have awarded **Rs.1,00,000/-** on the head of future treatment, cost of attendant etc.

38. Apart from above, the claimant is also entitled to an amount of Rs.1,00,000/- towards nutritious diet, cost of attendant etc. Besides this, the claimant is also awarded **Rs.1,00,000/-** as travelling expenditures. Except the aforesaid amount as compensation the claimant is not entitled to any other amount as compensation. Now, on computation the total amount of compensation is as follows:

Medical expenditure	:	Rs.5,38,988/-
Disability	:	Rs.7,20,000/-
Nutritious diet, cost of attendant etc.	:	Rs.1,00,000/-
Travelling expenditures	:	Rs.1,00,000/-
Future treatment and attendant charge	:	Rs.1,00,000/-
Loss of amenities and enjoyment of life	:	Rs.2,00,000/-
<u>Pain, shock and sufferings etc.</u>	:	<u>Rs.3,00,000/-</u>
Total	:	Rs.20,58,988/-

Rs.20,58,988/- is rounded off Rs.20,59,000/-

39. Now let us decide who amongst the opposite parties is liable to pay the compensation amount.

The claimant has stated in the claim petition that on the day of the said accident, the offending Truck bearing registration No.AS-01-C-1627 was insured with the Opposite Party No.1 Insurance Company vide Policy No.1302053113P10139 7468. The Opposite Party No.1 Insurance Company has failed to prove that the offending vehicle was not insured with it. The Ext.-1 accident information report also shows that at the time of the alleged accident the offending vehicle was duly insured with the O.P. No.1. Therefore, as there is no denial of the fact by the Opposite Party No.1 Insurance Company that at the relevant point of time, the vehicle in question was insured with it and the policy was very much in force and in existence, Section 149 of the M.V. Act, 1988 casts a duty on the insurer to satisfy the judgment and award against the persons insured in respect of third party risks. The Opposite Party No.1 Insurance Company also did not try to prove that there has been violation of the terms and conditions of the policy or that the driver was not entitled to drive the offending vehicle.

40. In view of the above discussion, it is held that at first, the Opposite Party No.1 the insurance company is to satisfy the award. The issues are decided accordingly in favour of the claimant.

ORDER

41. In the result, the claim petition is allowed on contest and an amount of Rs.20,59,000/- (Rupees twenty lakh and fifty nine thousand) only, is awarded as compensation to the claimant Anjana Thakuria with interest @ of 6% (six) p.a. from the date of filing of the claim petition till payment thereof. The opposite party No.1, the insurance company being the insurer of the offending Truck bearing registration No.AS-01-C-1627, shall satisfy the award.

42. In the facts and circumstances of the case, parties are left to bear their own costs.

43. The MAC Case is disposed of accordingly.

44. Signed, sealed and delivered in the open Court on this the 21st day of March, 2017, in Guwahati.

(Shri D. Bhattacharjee)
Member, M.A.C. T. No.2,
Kamrup (M), Guwahati

Dictated & corrected by me.

(Shri D. Bhattacharjee)
Member, M.A.C. T. No.2,
Kamrup (M), Guwahati