

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
DIBRUGARH
MAC Case No. 63 of 2018 (Injury)**

Present: Ms. A. Ajitsaria, AJS,
Member, Motor Accidents Claim Tribunal/
District Judge, Dibrugarh

1. Abdul Rahim,
S/o Late Samsul Haque,
R/o- Panchali,
Opposite Post Office,
P.O., P.S. Dibrugarh,
District- Dibrugarh, Assam. Claimant.

-VERSUS-

1. Sri Himanshu Kalita,
S/o- Sri Bhagaban Kalita,
R/o- Tinsukia Railway Colony, Qtr. No. 38/B,
Tinsukia Railway Power House,
P.O., P.S. & District- Tinsukia, Assam.
(Owner of the offending vehicle)
2. Sri Nipul Gogoi,
S/o- Sri Anil Gogoi,
R/o- Chabua Dinjoy Gaon,
P.O. & P.S. Chabua,
District- Dibrugarh, Assam.
(Driver of the offending vehicle)
3. Sri Rinku Das,
S/o Sri Jogendra Das,
R/o Head Post Office, Sripuria,
P.O., P.S. Tinsukia.
District Tinsukia, Assam.
4. National Insurance Company Limited,
Hijuguri, A.T. Road, Tinsukia, Assam.
P.O. & District- Tinsukia, Assam.
(Insurer of the offending vehicle) Opp Parties

Date of Argument : 28-06-2022.
Date of Judgment : 22-07-2022.

ADVOCATES FOR THE PARTIES

For the Claimant : Sri Junaid Ansari.
For the OP No. 1 & 2 : Sri M.P. Todi.
For the OP No. 3 : Not appeared (Exparte).
For the OP No. 4 : Sri P.P. Sen Sarmah.

J U D G M E N T

1. This claim petition has been filed by the claimant Abdul Rahim under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by him in a road accident on 22.02.2015 involving the Tata Winger vehicle No. AS-23-BC-0754.

2. The case of the claimant in brief, is that on 22.02.2015 at about 11.35 AM, when the claimant was proceeding in his motorcycle No. AS-06-N-3245 from his residence situated at Panchali, Dibrugarh and reached Malipatty, Near Marwaripatty at NH-37, the Tata Winger vehicle No. AS-23-BC-0754 hit the claimant with great force from the rear side, knocked his motorcycle; as a result of which the claimant sustained grievous injuries and he was shifted to Srimanta Sankardeva Hospital & Research Institute, Dibrugarh.

3. OP No.1, owner of Tata Winger vehicle No. AS-23-BC-0754 filed written statement denying all the material averments and stating that though OP No. 1, Himangshu Kalita was the registered owner of the said vehicle, he had sold the said vehicle to the OP No. 3, Sri Rinku Das and the OP No. 1 was thus, not liable to pay any compensation.

4. OP No. 2, Sri Nipul Gogoi, driver of the Tata Winger vehicle No. AS-23-BC-0754 filed written statement denying all the material averments and stating that the accident had not occurred because of him, rather it was because of the negligence of the claimant. OP No. 2 further stated that he had a valid driving license at the relevant time. OP No.2, further stated that as the Tata Winger had a valid insurance policy, liability if there be any is to be borne by the OP No. 4.

5. OP No. 3, inspite of receipt of notice, did not participate in the proceeding and the case proceeded ex-parte against the said OP No. 3.

6. The OP No. 4, National Insurance Co. Ltd., insurer of the Tata Winger vehicle No. AS-23-BC-0754 filed its written statement denying all material averments of the claim petition and pleaded, inter alia, that the amount of compensation claimed by the claimant is highly exaggerated and speculative. It has been further stated that the insurer is not liable to pay any compensation until and unless it is proved that the driver of the offending vehicle had valid driving license and the conditions of the insurance policy was not violated by the insured.

7. On the basis of pleadings of the parties, the following issues were framed for adjudication:-

i. Whether Abdul Rahim sustained injury in a motor vehicle accident that took place on 22.02.2015 at Malipatty Chariali, Marwaripatty, N.H. 37?

ii. Whether the alleged accident occurred as a result of rash and negligent driving of the Tata Winger vehicle No. AS-23-BC-0754?

iii. Whether the claimant is to be granted compensation as prayed for? If so, from whom and to what extent?

8. During enquiry, the claimant examined 4 (four) witnesses including himself and exhibited documents. Opposite parties did not adduce any evidence.

9. I have carefully perused the entire materials brought on record, heard both sides. All the issues are taken up together for discussion and decision for the sake of convenience and brevity.

10. PW-1 in his evidence has reiterated that the Tata Winger vehicle No. AS-23-BC-0754 knocked the motorcycle which he was riding on 22.02.2015, because of which, he sustained grievous injuries and was shifted to Srimanta Sankardeva Hospital and Research Institute, Dibrugarh by the police personnel of Dibrugarh Traffic Branch. PW-1 has exhibited the Accident Information Report

as Ext. 1, Medical documents as Ext. 2 to Ext. 5, Ext. 9, Ext. 13 to 14, Ext. 16 to 18, Ext. 29 to 30, Ext. 44, Ext. 59, Discharge Summary dated 20.04.15 of Popular Nursing Home as Ext. 36 and second Discharge Summary dated 02.12.16 as Ext. 49, cash memos and Money Receipts as Ext. 6, 7, 8, 10, 11, 12, 15, 19 to 28, 31 to 35, 37 to 43, Ext. 45 to Ex. 48, 60, 65 to 67, Train Tickets as Ext. 50 to 54, Motor Insurance Certificate cum policy of Hero Extreme motorcycle of Abdul Rohim as Ext. 55, Certificate of Registration of motorcycle No. AS06N 3245 as Ext. 56, Driving licence of Claimant Abdul Rahim valid till 30.10.2028 as Ext. 57, PAN card of the claimant Abdul Rahim as Ext. 58, Prescription of Dr. Vibhu Bahl dated 15.05.18 of Apollo Clinic, Dibrugarh as Ext. 59, Photographs of Abdul Rahim as Ext. 61 to ext. 64, Salary Certificate as Ext. 68 and Charge sheet and injury report etc. as Ext. 69.

11. In cross-examination, PW-1 denied the suggestion that accident occurred because of his negligence; that the medical documents exhibited by him were not authentic and that he had falsely stated that he had become disabled.

12. PW-2 Adil Haque, in his evidence deposed that on 22.2.2015 at about 11.35 am, Saddam Ali called and informed him about the accident and immediately he rushed to the place of occurrence and came to from Saddam, who had witnessed the accident that one Tata Winger No. AS-23-BC-0754 had knocked the claimant resulting in severe multiple injuries on his person. PW-2 stated that on 22.5.2015 he lodged FIR against the driver of Tata Winger vehicle No. AS-23-BC-0754. PW-2 stated that the claimant sustained the following injuries, that is, fracture of left clavicle, fracture 4th and 5th right meacarpals (Open type 1), fracture volar lip of right radius. As the claimant had not recovered fully from the injuries, on 9.4.2015 the claimant went to Popular Nursing Home, Patna for better treatment. On 20.04.2015 the claimant was discharged from the hospital. Again on 28.11.2016 the claimant went to Patna for treatment at Popular Nursing Home, Patna. PW-2 further stated that he had seen that there was partial disability in the right wrist of the claimant who could not bend or twist his wrist, the ring finger and lady finger was deformed because of which the claimant was facing difficulty in his day to day activities. In cross-examination he denied the suggestion that he had heard the details of the

accident from others and accordingly he has written about the same in his evidence.

13. PW-3, Saddam Ali deposed that on the day of accident he had seen Tata Winger bearing No. AS-23-BC-0754 being driven in a rash and negligent manner, hit the claimant, as a result the claimant sustained severe injuries. PW-3 further stated that he immediately informed the matter to Adil Haque, nephew of the claimant. Police personnel took the claimant to Sankardeva Hospital & Research Institute, Dibrugarh. PW-3 stated that the accident had taken place only due to the fault, rash and negligent driving of the driver of the Tata Winger No. AS-23-BC-0754. In cross-examination he denied the suggestion that he had not witnessed the accident and he had deposed falsely about disability of the claimant.

14. PW-4, Md. Shahjahan deposed that prior to the accident, the claimant was working under him and looking after his vegetable shop for which he used to pay Rs. 15,000/- per month as remuneration to the claimant. PW-4 further deposed that the claimant sustained severe injuries in the accident which occurred on 22.02.2015 and because of his prolonged treatment, the claimant was not in a position to look after his business for nearly 4 to 6 months. During cross-examination he denied the suggestion that he did not pay him Rs. 500/- per day/ Rs. 15000/- per month/ Rs. 180,000/- per year, in cash to the claimant and that the certificate of salary issued by him in respect of the claimant was false and had been fabricated for the purpose of this case. PW-4 further stated that the claimant was working in his shop.

15. Claimant with permission, summoned, doctor as witness. Pursuant thereto, Dr. Abhinab Gogoi appeared and deposed that he has been shown Ext. 13/ prescription in respect of Abdul Rahim; the patient was examined by Dr. GS Borgohain on 23.03.2015 and Ext.2, showed that he was treated at Sankardev Hospital. Dr. Gogoi examined the claimant in the Court and assessed that the disability of the hand and wrist component (right hand and wrist) was 25-30%. Dr. Gogoi, further stated that the claimant is to undergo continuous physiotherapy for improvement, if there be. In cross-examination he stated that Ext. 2 is not of AMCH and that he had not been shown any disability certificate in respect of Abdul Rahim. He further stated that full recovery of Abdul Rahim, the claimant was not possible and he could get some relief from Physiotherapy.

16. Having laid the evidence in details, the same is analysed. Ext. 1 is the Accident Information Report which shows that Winger vehicle No. AS-23-BC-0754 was involved in an accident on 22.02.2015 in which the claimant sustained injuries. Ext. 1 further shows that Dibrugarh PS Case No. 137/15 was registered in connection with the said accident. In Ext. 1, it is further reflected that the OP No. 2, driver of the vehicle at the relevant time, had a driving license No. AS-0620120012727 valid upto 23-10-2016 and that the said vehicle was insured with OP No. 4, in the name of the owner, OP No.1.

17. Apart from the suggestion of the learned Counsel for the contesting respondent that the accident was the result of negligence on the part of the claimant, there is nothing on record to suggest the same. Thus, the oral and documentary evidence mentioned above, establishes that the claimant sustained injuries in a motor vehicle accident on 22-02-2015, due to rash and negligent driving of the offending Tata Winger vehicle No. AS-23-BC-0754. The said vehicle, was insured with the OP No. 4/National Insurance Co. Ltd. is not in dispute as would be evident vide Policy No. 55270031146360069759 valid upto 20.08.2015.

18. In view of the discussion aforesaid, it is held that the accident occurred because of the negligence of the OP No.2 and the claimant is held entitled to compensation.

19. The claimant has proved various medical documents. Ext. 36 and Ext. 49 are discharge certificates of Popular Nursing Home, Patna dated 20.04.15 and dated 02.12.16, respectively which show that the claimant was admitted on 09-04-2015 and discharged on 20-04-2015. At the time of first admission, the claimant was diagnosed with distal radius Right wrist fracture and treated under R3 ORIF radius with locking T-Plate implant. The claimant was advised active mobilization exercise of the wrist and medicines for next 3 months. Again, the claimant was admitted from 30-11-2016 to 02.12.2016. During the second admission, the implant was removed. The claimant was advised to avoid heavy physical activity for next three months. Claimant has filed original expense vouchers amounting to Rs. 76,089/- has been submitted by the claimant in this Tribunal. The claimant is held to be entitled to the said amount. It is pertinent to mention that out of the said original vouchers, Rs. 6,412/- is of train fare to and fro to Patna, which too the claimant is held to be entitled to.

20. In **Raj Kumar v. Ajay Kumar reported in (2011) 1 SCC 343**, the Hon'ble Supreme Court has laid down the principles for computation of compensation in injury cases where the claimant suffer from disability. The claimant in the instant case has relied upon the evidence of Dr. Abhinab Gogoi who assessed that the claimant had suffered 25-30% disability. The nature of the said disability is seen to be functional and confined to his right hand and wrist. The claimant having suffered injury in his right wrist, it is but natural that the said disability is bound to affect his ability and capacity to earn, in all times to come. The effect of disablement of the said part on the entire body is, bound to diminish the earning capacity of the claimant. Hence, in view of the same, percentage of loss of earning capacity of the claimant is held to be 10%.

21. Ext. 58 is the PAN card of the claimant which shows that he was 38 years of age at the time of accident. The multiplier is taken to be M-15 for the age group of 36 to 40 years.

22. Though the claimant has stated that his monthly income was Rs. 15,000/- and reliance is placed on the evidence of claimant witness No. 3, who has stated that he used to pay the said amount to the claimant but nevertheless, CW-3 could not produce anything to show that the said remuneration was given to the claimant by him. In absence of any such evidence, the monthly income of the claimant is taken to be Rs. 6000/-.

23. The Hon'ble Supreme Court in **National Insurance Co. Ltd Vs. Pranay Sethi and others [2017 (16) SCC 680]** has held that in respect of persons who are self employed or are fixed wage earners, 40% increase in total income ought to be taken.

24. The instant case being that of disablement, it is but appropriate that the element of rise in price index applied in death cases is also made applicable in cases of physical disablement. The Hon'ble Delhi High Court in **Manjeet Singh Vs Kailash Kumar reported in I (2013) ACC 138** computed the loss of future earning in respect of a person suffering from disability, by allowing 30% increase in income. Thus, following the Hon'ble Supreme Court and the Hon'ble Delhi High Court, loss of future earning is assessed as: [Rs.6000/- + 40% of Rs.6000 (monthly income/- x 12 x 15 x 10% = Rs.1,51,200/-.

25. From the medical documents, it is seen that the claimant was hospitalized for 15 days and under review for a considerable period of time. The claimant is therefore entitled to a reasonable amount for special diet, attendant. The claimant having suffered from fracture injuries could not have resumed his work immediately on being discharged and while under treatment, as such, the claimant is held to be entitled to a reasonable amount towards loss of earning. Besides the pecuniary damages, claimant is also entitled to some amount for non pecuniary damages on account of pain, shock and suffering.

26. Thus, having considered the nature of injury and disability sustained by the injured, expenditure incurred thereof and the facts and circumstances of the case, just and reasonable compensation to which the claimant would be entitled in the instant case is assessed as under:-

Medical expenses	:	Rs. 76,089.00
Incidental expenses during treatment special diet, attendant etc (15 days)	:	Rs. 15,000.00
Loss of income (4 month)	:	Rs. 24,000.00
Loss of future earning	:	Rs. 1,51,200.00
Pain, shock and suffering	:	Rs. 75,000.00
Total	:	Rs.3,41,289.00

27. Evidently, the Tata Winger vehicle No. AS-23-BC-0754 was duly insured with National Insurance Co. Ltd. and the said policy was effective and subsisting at the time of accident, hence the OP No. 4, National Insurance Co. Ltd. is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

28. Rs. 3,41,289/- (Rupees Three Lakh Forty One Thousand Two Hundred and Eighty Nine) only is awarded with interest @ 7.5% p.a. from the date of filing of the instant petition, that is, 29.11.2018 till payment. The opposite party No. 4, National Insurance Co. Ltd., is directed to pay the award to the claimant, within one month from the date of order.

29. Let a free copy of this judgment be furnished to claimant and OP No. 4 as provided u/s 168(2) M. V. Act within 7 (seven) days from the date of judgment.

30. Judgment is pronounced in open court, written on separate sheets and enclosed with the case record.

Given under my hand & seal of this Court on this 22nd day of July, 2022.

Member
Motor Accident Claims Tribunal/District Judge
Dibrugarh