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IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL DIBRUGARH

MAC Case No. 21 of 2016 (Injury)

1. Sri Baibhav Rajak,
S/o- Sri Golap Chandra Rajak.
Represented by his mother/natural guardian, i.e.,
Mrs. Sonia Rajak,
W/o- Sri Golap Chandra Rajak,
R/o- Ouphalia Tea Estate,
PO- Moran, District- Dibrugarh, Assam. Claimant

-VERSUS-

1. Sri Hemanta Saikia,
S/o- Bhaben Saikia,
R/o- Namtilal Pather,
Near Morangghar,
PO & PS- Sivasagar, Assam.
(Driver of the truck bearing registration No. AS-04-AC-6629)
2. Sri Manash Pratim Borah,
S/o- Sri Jadav Borah,
R/o- Malachakar, W/No. 10,
PO & District- Sivasagar, Assam.
(Owner of the truck bearing registration No. AS-04-AC-6629)
3. United India Insurance Company Limited,
Sivasagar Branch,
PO & District- Sivasagar, Assam.
(Insurer of the truck bearing registration No. AS-04-AC-6629)
4. Md. Isphaqul Ahmed,
S/o- Md. Tabibul Ahmed,
R/o- Laluka Gaon,
PO- Mohanaghat,
District- Dibrugarh, Assam.
(Driver of the vehicle bearing registration No. AS-03-AC-6685)
5. Aradhana Kakoti,
C/o- Dilip Dutta,
R/o- Chiring Chapori,
PN Road,
PO & PS- Dibrugarh, Assam.
(Owner of the vehicle bearing registration No. AS-03-AC-6685)
6. Cholamandalam MS General Insurance Company Limited,
2nd Floor, Dare House, 2 NSC Bose Road, Chennai-600001.
(Insurer of the vehicle bearing registration No. AS-03-AC-6685)
....Opp Parties

Date of Argument : 15.12.2021
Date of Judgment : 23.12.2021

ADVOCATES FOR THE PARTIES

For the Claimants : Mr. DJ Baruah.
For the OP No. 1 & 2 : Ex-parte.
For the OP No. 3 : Mr. Ganesh Gohain Phukan.
For the OP No. 4 : Smt. Anju S. Gogoi.
For the OP No. 5 : Mr. AK Dutta (Senior Advocate)
For the OP No. 6 : Mr. Bhaben Sarmah.

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

J U D G M E N T

1. This claim petition has been filed by the claimant Smt. Sonia Rajak as guardian of the minor Sri Baibhav Rajak under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by her minor son Master Baibhav Rajak in the road accident on 26-08-2015, involving the traveler bus No. AS-03-AC-6685 and trailer/truck No. AS-04-AC-6629 which were insured with Cholamandalam MS General Insurance Company Limited and United India Insurance Company Limited.

2. The case of the claimant, in brief, is that on 26-08-2015, when the claimant along with her minor son Sri Baibhav Rajak and other relatives was travelling from Moran towards Jorhat by traveler bus No. AS-03-AC-6685 as a passenger, the trailer/truck No. AS-04-AC-6629 coming from the opposite direction and being driven in a rash and negligent manner, dashed against the traveler bus because of which the claimant as well as her minor son Master Baibhav Rajak sustained grievous injuries on their person.

3. The OP No. 1 and 2, driver and owner of the Trailer-truck No. AS-04-AC-6629 not having appeared to contest the present case, the case proceeded ex-parte against the owner and driver, i.e., the said OP No. 1 and 2.

4. OP No. 3, the insurer of the truck in its written statement denied all the 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 condition of the insurance policy was not violated by the insured. OP No. 3 has denied the amount of income alleged to have been earned by the deceased. The insurance company has stated that the OP No. 1 (Hemanta Saikia), who was driving the truck No. AS-04/AC/6629 and holder of driving license No. F/79854/BNG/PROFF was reported not to have been issued by the DTO, Bongaigaon and as such, the owner alone is liable to pay compensation.

5. OP No. 4, the driver of the traveler bus No. AS-03-AC-6685 filed written statement denying the materials averments.

6. OP No. 5, the owner of the traveler bus No. AS-03-AC-6685 filed written statement and stated that at the relevant time, the bus was duly insured with the OP No. 6 vide Policy No. 3373/00406493/000/01 and valid upto 15-03-2016 and hence, compensation, if any, is to be paid by the said insurance company. It has been further stated that the OP No. 4, driver of the traveler bus had a valid driving license and was experienced and competent to drive the traveler bus.

7. OP No. 6, the insurer of the traveler bus also denied the material averments and stated that the trailer truck being responsible for the accident, the OP No. 6 is not liable to pay any compensation in the present case.

8. On the basis of pleadings of the parties, the following issues were framed on 30-10-2018 for adjudication:-

- i. Whether Mr. Baibhav Rajak sustained injuries in the motor vehicle accident that occurred on 26-08-2015?
- ii. Whether the alleged accident occurred as a result of rash and negligent driving of the vehicle bearing registration No. AS-04-AC-6629?
- iii. Whether the claimant is entitled to any compensation as prayed for? If so, from whom and to what extent?

9. During enquiry, the claimant Smt. Sonia Rajak examined herself as CW-1 and filed relevant documents. Contesting OPs No. 3 and 5 also adduced evidence.

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

11. The CW No. 1 in her evidence has reiterated that while she was travelling along with her minor son in the traveler bus on 26-08-2015, the trailer/truck, being driven in rash and negligent manner, dashed the traveler bus as a result of which, her son sustained grievous injuries. It has been further stated that since she herself had sustained grievous injuries and was admitted in hospital (for which MAC Case No. 20/2016 has been filed), her minor son was admitted to a nearby hospital by the local people, but later shifted to Sanjivani Diagnostics and Hospital, Dibrugarh for further treatment where he was admitted for six days as he suffered from fracture injuries. Later, her son was again admitted in Aziz Diagnostics and Polyclinic, Dibrugarh on 21-12-2015 for further treatment. CW-1 has exhibited From 54 as Ext 1, Discharge Certificate of Sanjivani Diagnostics and Hospital, Dibrugarh Ext 2, Hospital Bill of Sanjivani Diagnostics and Hospital, Dibrugarh as Ext 3, Doctor's bill of Sanjivani Diagnostics and Hospital, Dibrugarh as Ext 4; Cash memos of medicines and other related documents as Ext. 5 to Ext. 33, Discharge Certificate of Aziz Hospital & Diagnostic Centre as Ext 34, Hospital bill of Aziz Hospital & Diagnostic Centre as Ext. 35, Prescriptions of doctor as Ext. 36 to Ext. 47, Age proof document of the injured as Ext. 48. CW-1 was duly cross-examined by learned Counsel for the OPs.

12. OP No. 3 adduced the evidence of Sri Pradip Kumar Saha, Administrative Officer. In the evidence filed on behalf of OP No. 3, it has been admitted that the truck No. AS-04-AC-6629 was insured with United India Insurance Company Limited vide policy No. 1304023114P111017704 with validity from 24-03-2015 to 23-03-2016. It has been further stated that on verification, the driving license No. F/79854/Bng/Proff of OP No. 1 was reported not to have been issued by the DTO, Bongaigaon as informed vide letter No. DTO/BANGN/2016 dtd. 08-03-2016. OP No. 3 has further stated that since the driving license was fake, OP No. 3 ought to be absolved of any liability. OP No. 3 has exhibited amongst others the insurance policy as Ext. A and driving license report of the DTO, Bongaigaon as Ext. D.

13. In cross-examination, OP No. 3 has denied the suggestion that owner of the trailer/truck did not have knowledge that driver of the said truck did not have a valid driving license.

14. OP No. 5, Sri Dilip Dutta (husband of Late Aradhana Kakoti, who was at the relevant time owner of the traveler bus) in his evidence has reiterated that driver of the bus had a valid driving license on the day of accident and the bus being duly insured with OP No. 6, liability, if any, is to be borne by OP No. 6.

15. The claimant has averred in the petition and also stated in her evidence that her son suffered injuries in the accident involving the Trailer truck and the Traveler Bus on 26.8.2015 and pursuant thereto was treated at Sanjivani Diagnostic and Hospital, Dibrugarh and Aziz Diagnostic and Polyclinic, Dibrugarh. Claimant in her evidence has stated that an amount of rupees two lakh five thousand was spent in the treatment of her son. The claimant has proved various medical documents being Ext- 2 to Ext 47 in support of the injuries suffered by her minor son. Ex- 2 is the Discharge Certificate of Sanjivani Diagnostic and Hospital, Dibrugarh which shows that the claimant's son was admitted on 26.8.2015 and discharged on 1.9.2015. He was diagnosed with fracture shaft femur (L) side, public rami (both) fracture (L) SI joint separation , multiple metacarpal fracture (L) hand; focal consolidation in right upper and mid zone of lung, facial soft tissue injury. The claimant's son was treated amongst others, with CRIF c TENS, plaster and was advised to keep plaster for 21 days and visit the hospital again thereafter. The minor injured Baibhav Rajak was again admitted in Aziz Diagnostic and Polyclinic on 21.12.2015 for removal of implant and discharged on 22.12.2015, with advice to present for review after 6 weeks. Original expense vouchers amounting to Rs.1,13,351/- has been submitted by the claimant in this Tribunal. It deserves mention that Ext 4 is on a plain piece of paper wherein details of expenses of Rs.17,350/- has been mentioned. However, the same not being in proper form, is held to be in-admissible. Again Ext 12 is an advance voucher payment receipt, which being included in Ext 3, the claimant is not entitle to the said amount separately.

16. Since the claimant's minor son had to take 8 days of treatment as indoor patient, the claimant certainly incurred some incidental expenses on account of maintaining attendants for minor child, nursing, special food etc. and as such the claimant is also entitled to some amount as pecuniary damages, along with the

medical expenses. Besides the pecuniary damages claimant is also entitled to some amount for non pecuniary damages on account of pain, shock and suffering for her minor son.

17. Thus, having considered the nature of injury 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 expenditure :	Rs.	1,13,351.00
Incidental expenses during treatment:	Rs.	20,000.00
Pain, shock and suffering etc.:	Rs.	50,000.00

Total : Rs. 1,83,351.00

18. Having computed the amount of compensation, it is now to be ascertained as to which of the opposite parties are to satisfy the amount. The OP No. 3 has brought on record that the driver of Trailer-Truck (arraigned as OP No.1) did not have a valid driving license. The law in regard, that is, when the Insurer takes the plea that the driver of the offending vehicle did not have a valid driving license, is now well settled in catena of judgments of Hon'ble Supreme Court. In **Pepsu Road Transport Corp vs National Insurance Co** [reported in **2013 0 Supreme (SC) 784**], it has been held, amongst others, thus:

".....In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding

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the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

19. In the instant case, nothing has been brought on record to show that the owner of the Trailer Truck (OP No.2) had specific knowledge that the driving license held by OP No.1 had not been issued by the competent authority. Thus, insurer of the said trailer-truck, that is, United India Insurance Co. Ltd (OP No.3) cannot be allowed to submit that it should be absolved from the liability arising out of the accident at hand.

20. Again, it is seen that the present case would attract the principle of composite liability, in as much as, two vehicles were involved in the accident and claimant No.1, was a passenger of the Traveller Bus. In consonance with the said principle, the claimant can seek compensation from either of the vehicles involved in the accident. In **Khenyei vs New India Assurance Co. Ltd** [reported in **2015 0 Supreme 397**], the Hon'ble Supreme Court has held that :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the

absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award."

21. In the present case all the parties have been duly impleaded. It is the specific case of the present claimants as well as the claimants in analogous cases (being MACT Case No. 17 of 2016 and MACT Case No. 20 of 2016/which are being disposed of simultaneously by separate judgment) that the accident occurred because of negligence of OP No.1. In absence of any material on record to show that the Traveler Bus too, was responsible for the accident, this Tribunal cannot presume negligence on its part and proceed to apportion compensation between OP. No.3 and OP No.6.

22. Having held the driver of Trailer-Truck No. AS-04-AC-6629 /OP No. 1 to be responsible for the accident, the Opposite Party No. 3 is to pay the award.

AWARD

23. Rs. 1,83,351/- (Rupees One Lakh Eighty Three Thousand Three Hundred and Fifty One only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 14-03-2016 till payment to the claimant.

24. The OP No. 3, United India Insurance Co. Ltd, is directed to pay the award within one month from the date of the order.

25. Let a free copy of this judgment be furnished to claimants and OP No. 3 as provided u/s 168(2) M. V. Act within 7 (seven) days from the date of judgment.

Given under my hand & seal of this Court on this 23rd December,2021.

Member
Motor Accident Claims Tribunal/District Judge
Dibrugarh