

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
DIBRUGARH**

MAC Case No. 71 OF 2017 (Injury)

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

1. Sri Biki Singh,
S/O Sri Sanjay Singh,
R/o- Udaypur,
PS- Barbaruah,
Dist. Dibrugarh, Assam Claimant

-VERSUS-

1. The Oriental Insurance Co. Ltd.,
CDO II, Guwahati, 3rd Floor,
Christian Basti, Amravati Path,
GS Road, Guwahati- 781005.
(Insurer of the truck)
2. Sri Jon Talukdar,
S/o- Sri Jibon Talukdar,
R/o- Lakhara Swkushi Road,
PS- Lakhara,
District- Guwahati, Kamrup.
(Driver of the truck)
3. Sri Dina Nath Singh,
S/O Late RN Singh,
R/o- Shree Ramkata, NH-37, Behabari,
PS- Beltola, W/No. 17, H. No. 23
District- Guwahati, Kamrup.
4. The National Insurance Co. Ltd.,
Hero Motor Crop Vertical, Delhi DO X, 803A, 8th Floor,
Tower C, Konnectus Building, Opp. New Delhi Railway Station,
Bhavbhuti Marg, New Delhi-110002
Represented by Dibrugarh Branch.
(Insurer of the scooty)
5. Sri Narayan Singh,

S/o- Bhim Singh,
R/o- Japara Gaon, Near Fly Over,
PS- Barbaruah,
District- Dibrugarh.
(Owner of the scooty)

.... Opp Parties

Date of Argument : 10.01.2022
Date of Judgment : 10.02.2022

ADVOCATES FOR THE PARTIES

For the Claimants	: Sri AK Mishra.
For the OP No. 1	: Sri GG Phukan.
For the O.P. NO. O.P. 2 and 3	: Not appeared.
For the O.P. No. 4	: Sri B. Agarwalla.
For the O.P. No. 5	: Srity Ghosh.

J U D G M E N T

1. This claim petition has been filed by Sri Biki Singh, u/s 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by him in a road accident on 20-03-2017 involving Tata truck No. AS-01-EE-7798 (insured with Oriental Insurance Company Limited).

2. The case of the claimant in brief is that on 20-03-2017 while the claimant was riding his scooty No. AS-06-R-7666 and was standing near the Dibrugarh University gate, the offending truck, being driven in a rash and negligent manner knocked the claimant, as a result of which he sustained grievous injuries on his person and was hospitalised.

3. O.P. No. 1, the insurer of the Tata 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.

4. O.P. NO. 2 and 3 owner and driver of the Tata truck and OP No. 5, owner of the scooty No. AS-06-R-7666 not having entered appearance, the case proceeded ex-parte against the said OPs.

5. OP No. 4, the insurer of the scooty No. AS-06-R-7666 filed written statement stating inter alia that since the offending vehicle is the Tata truck, the OP No. 4 is not liable to pay compensation in the instant case.

6. On the basis of pleadings of the parties, the following issues were framed on 15-02-2019 for adjudication:-

i. Whether Sri Biki Singh was injured in the motor vehicle accident on 20-03-2017?

ii. Whether the alleged accident occurred due to rash and negligent driving of the vehicle bearing No. AS-01-EE-7798?

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

7. During enquiry claimant examined himself as CW-1, exhibited documents and filed evidence of two other witnesses. OP No. 1 also adduced evidence.

8. 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.

9. Claimant/C.W.1 in his evidence has reiterated that he was standing near his scooty near Dibrugarh University gate, the Tata truck being driven in rash and negligent manner knocked him down as a result of which he sustained grievous injuries and was taken to Sankardev Hospital, Dibrugarh. CW 1 has stated that he was hospitalized and his treatment continued for a considerable period of time. C.W. 1 has exhibited medical documents being Ext. 4, Ext. 4(A), Ext. 7(A)-7(B), Ext.

8, police report, FIR, Sketch-Map and driving license as Ext. 1, 2 3 and Ext. 3(A), income certificate as Ext. 5, medical expenditure document as Ext. 6 (1) to Ext. 6(40).

10. In cross-examination of CW 1, nothing adverse could be elicited by the contesting Opposite parties. Claimant denied the suggestion that the accident occurred because of his negligence.

11. Claimant Witness No. 2/CW-2, Sri Somer Singh filed evidence stating that on 20-03-2017, the claimant who was standing with uncle's scooty near Dibrugarh University gate, was hit by Tata truck because of which he fell down and sustained fractured injuries. CW-2 has stated that he took the claimant to Sankardev Hospital, Dibrugarh and subsequently, the claimant was shifted to Assam Medical College & Hospital at Dibrugarh. CW-3 Sri Rupam Singh also filed evidence on affidavit wherein it has been stated that he knew that the claimant had sustained grievous injuries in the road accident involving the said Tata truck on 20-03-2017 and that the accident occurred because of the rash and negligent driving of the driver of the said Tata truck, which he had witnessed. Since CW-2 did not stand cross-examination, his evidence is not being considered.

12. OP No. 1 adduced the evidence of Sri Harokishore Bhattacharjee, Senior Assistant, Oriental Insurance Company Limited. DW-1 in his affidavit admitted that the said Tata truck was duly insured with OP No. 1 vide Policy No. 321200/31/2017/2521 valid upto 21-07-2017. It has been further stated that OP No. 1 during its internal investigation has learnt that the driver of the said Tata truck who was holder of driving license No. AS0120120011832, was not issued by the DTO, Kamrup. DW-1 has exhibited the policy copy as Ext. 'a', letter of investigator as Ext. 'b' and letter of DTO, Kamrup as Ext. 'c'. In cross-examination, DW-1 admitted that in the accident information report (Ext. 1), the validity of driving license of OP No. 2 was written as 24-02-2018.

13. Ext. 1 is the Accident Information Report wherein it has been recorded that the Tata truck No. AS-01-EE-7798 was involved in the accident on 20-03-2017, in which the claimant sustained injury. Ext. 1

further shows that Dibrugarh PS Case No. 381/2017 under Sections 279/338/427 IPC was registered in respect of the accident. It has been recorded in Ext. 1 that the said Tata truck was duly insured with OP No. 1 vide Policy No. 321200/31/2017/2521 valid upto 21-07-2017. It is further reflected in Ext. 1 that the said Tata truck at the relevant time was driven by OP No. 2 who had a driving license being No. AS0120120011832 valid from 17-11-1996 to 24-02-2018.

14. From the evidence adduced, it is established that Tata truck No. AS-01-EE-7798 was involved in an accident in which the claimant sustained injuries. During the course of argument, Ld. Counsel for the opposite party No. 1 stated that the accident occurred because of the negligence of the claimant himself. Any suggestion of contributory negligence or negligence on the part of the claimant appears to be nothing else but a suggestion, without any admissible materials on record for the purpose of the present proceedings. In the considered view of this Tribunal, only because the claimant was standing near a scooty, in absence of any contra evidence, it cannot be held that there was contributory negligence on the part of the claimant.

15. Thus, the oral evidence of the claimant, coupled with documentary evidence, mentioned above, establishes that the claimant sustained injuries in the Motor Vehicle accident, due to rash and negligent driving of the offending Tata truck No. AS-01-EE-7798. That the Tata truck No. AS-01-EE-7798 was insured with the OP No. 1, is not in dispute.

16. In view of the discussion aforesaid, the claimant is held entitled to compensation.

17. The claimant has proved various medical documents, Ext 4 is the Discharge Certificate of Srimanta Sankardev Hospital and Research Institute which shows that the claimant was admitted on 20-03-2017 and discharged on 29-03-2017. Ext. 4(A) further shows that the claimant was treated for injuries conservatively. Ext. 8 is the document of Assam Medical College & Hospital at Dibrugarh which shows that the claimant was admitted at Assam Medical College & Hospital at Dibrugarh,

Orthopedic Department on 29-03-2017 and discharged on 09-04-2017. The claimant was treated for lateral malleolus (R) with multiple rib fracture and operated for the same on 05-4-2017.

18. The claimant has exhibited vouchers amounting to Rs. 38,607/-. The claimant is entitled to the said amount. Ext. 6(33) for amount of Rs. 7520/- were money receipts against Ext. 6(29). Hence, the claimant is not entitled to the said amount separately.

19. From the medical documents, it is seen that the claimant was hospitalized for 22 days and under review thereafter. The claimant is therefore entitled to a reasonable amount for special diet, attendant. Though the claimant has stated that he was working under the private contractor in Pipe Line work in monthly basis and also running a pan ghunti near Dibrugarh University in the morning and evening and earning Rs. 20,000/- per month from all sources, no proof of the same has been placed on record. However, since it is not uncommon for young people in supporting their family by engaging in gainful employment, the claimant monthly income towards his family is taken to Rs. 6,000/- per month. Besides the pecuniary damages, claimant is also entitled to some amount for non pecuniary damages on account of pain, shock and suffering.

20. Thus, having considered the nature of injury, 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

21. Case is assessed as under:-

Medical expences	:	38,607.00	Rs.
Incidental expences during treatment special diet, attendant etc. (Rs. 1,000 x 22 days)	:	22,000.00	Rs.
Pain, shock and suffering	:	1,50,000.00	Rs.
Total	:	2,10,607.00	Rs.

22. 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. 1 has brought on record that the driver of Truck (arraigned as OP No. 2) 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 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.

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

24. Evidently, the Tata truck No. AS-01-EE-7798 was insured with Oriental Insurance Company Limited and the said policy was effective and subsisting at the time of accident, hence the O.P. No. 1, Oriental Insurance Company Limited is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

25. Rs. 2,10,607.00 (Rupees Two Lacs Ten Thousand Six Hundred and Seven Only) is awarded with interest @ 7.5% p.a. from the date of filing the claim petition, that is 18-09-2017, till payment. The opposite party No. 1, Oriental Insurance Company Limited is directed to pay the award to the claimant, within one month from the date of order.

26. 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 10th day of February, 2022.

Member
Member, Motor Accidents Claim Tribunal/
District Judge, Dibrugarh