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**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
DIBRUGARH**

MAC Case No. 127 of 2014 (Injury)

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

1. Sri Bablu Beria,
S/o Late Kamakhya Pd. Beria,
Resident of No. 2 Madhakaligaon,
P.O. & P.S. Khowang,
Dist. Dibrugarh, Assam Claimant

-VERSUS-

1. United India Insurance Co. Ltd.
Betchuchi, Ghy, Kamrup, Assam

2. Md. Anjum Hazarika,
S/O Late Dilwar Hazarika,
Na Pukhuri Gaon,
P.O., P.S. & Dist. Tinsukia, Assam.
(Regd. Owner of the vehicle)

3. Md. Rafik Ali,
S/o Md. Habib Ali,
Opur Kareng Gaon,
PO & PS- Pulibor, Dist. Jorhat,
Assam. (Driver).

....Opp Parties

Date of Argument : 10.01.2022
Date of Judgment : 10.02.2022

ADVOCATES FOR THE PARTIES

For the Claimant : Md. Nadir Shah,
: Miss Monika Devi.
For the OP No. 1 : Sri Debasis Roy.
For the O.P. NO. O.P. 2 and 3: : Sri Rakteem Bhattacharya

J U D G M E N T

1. This claim petition has been filed by Sri Bablu Beria, u/s 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by him in a road accident on 18.03.2014 involving Innova Car No. AS 01AA 5657 insured with United India Insurance Co. Ltd.

2. The case of the claimant, in brief, is that on 18.03.2014 when the claimant was proceeding towards his residence on a scooter, at about 11 AM, at Tiloi on NH- 37 Kali Mandir, the said Innova Car, being driven in a rash and negligent manner knocked the claimant from the back side, as a result of which he sustained grievous injuries on his person and was hospitalised.

3. O.P. No. 1, the insurer of the Innova car, 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 Innova car filed their written statements, denying all the material averments and stated that the accident occurred because of the negligence of the claimant. It has been further stated that at the relevant time, the said Innova car was duly insured with O.P. No. 1 and the driver of the Innova Car had a valid driving licence at the time of accident.

5. On the basis of pleadings of the parties, the following issues were framed on 15-03-2016 for adjudication:-

- i. Whether Bablu Beria sustained injuries in the motor vehicle accident which occurred on 18-03-2014, due to rash and negligent driving of the vehicle bearing Reg. No. AS-01-AA-5657?
- ii. Whether the claimant is entitled to get any compensation as prayed for? If so, from whom and to what extent?

6. During enquiry the claimant examined himself as CW 1, exhibited documents and also adduced evidence of one other witness. All the opposite parties also adduced evidence.

7. 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.

8. Claimant/C.W.1 in his evidence has reiterated that he was riding his scooter on 18.03.2014, when the Innova Car knocked him down from the back side as a result of which he sustained grievous injuries and was first taken to Tiloj PHC and then to Sanjivani Diagnostics and Hospital, Dibrugarh. CW 1 has stated that he was hospitalized for a total period of 16 days and his treatment continued for a considerable period of time. C.W. 1 has exhibited medical documents being Ext. 1, Ext. 2, Ext. 24 (series -29 nos), Accident Information report as Ext. 22, Medical expenditure vouchers as Ext. 3 to 21.

9. 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.

10. Claimant Witness No. 2/CW 2, Md. Jakir Ali filed evidence stating that on 18.03.2014 he had gone to repair his bike at Ashok Garage, Tiloj and then he had seen the accident in which the claimant sustained injuries. CW 2 stated that he, along with Pranab Jyoti Gogoi, had taken the claimant to Tiloj PHC for treatment. Nothing adverse could be elicited in cross examination of CW 2.

11. Claimant also adduced evidence of Sri Pranab Jyoti Gogoi as CW2, but as the said CW 3 did not stand cross examination, his evidence is not considered.

12. O.P. No. 1 through its Administrative Officer, Sri Pradip Kumar Shah has filed evidence on affidavit wherein it has been stated that the claimant is guilty of contributory negligence and he cannot claim advantage of his own rash and negligent driving. In cross-examination the

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said witness has admitted that at the relevant time the insurance policy issued by O.P. No. 1 in respect of the said Innova car was valid and subsisting. OP No.1 further stated that the claimant rode his scooter without a valid insurance policy and, as such, he is not liable to be awarded any compensation for violating the norms.

13. O.P. No. 2, owner of the Innova Car filed his evidence on affidavit, exhibiting the insurance policy issued by O.P. No. 1 in respect of the Innova Car and has stated that O.P. No. 1 is liable to indemnify the owner and pay compensation, if any. O.P. No. 2 has also exhibited the registration certificate and driving license of the driver.

14. O.P. No. 3, driver of the Innova Car filed evidence on affidavit, exhibiting his driving license and has also exhibited copy of the judgment and order dated 21.12.2018 in G.R. Case No. 1289/14 wherein he was acquitted by the Court of learned JMFC, Dibrugarh. In cross-examination O.P. No. 3 has denied knowledge of any injuries sustained by the claimant and stated that he did not know who the rider of the scooter was. O.P. No. 3 also denied that accident had occurred because of his negligent driving.

15. Ext. 22 is the Accident Information Report wherein it has been recorded that the Innova Vehicle No. AS 01 AA 5657 was involved in an accident on 18.3.2014, in which the claimant sustained injuries. Ext. 1 further shows that Moran PS Case No. 108/14 under Sections 279/338 IPC was registered in respect of the accident. It has been recorded in Ext. 1 that the said Innova vehicle was duly insured with OP No. 1 vide Policy No. TUI/11084471 valid up to 14.8.2014. It is further reflected in Ext. 1 that the said Innova vehicle at the relevant time was driven by OP No.2 who had a valid driving license being 109945/TV/MON/2009 valid upto 7.3.2015.

16. From the evidence adduced, it is established that Innova Vehicle No. AS 01 AA 5657 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 and the other two Opposite parties

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denied that accident occurred because of the negligence of OP No.3. In fact, OP No. 3, in support of his submission has relied upon judgment of the learned trial Court by which OP No.3 was acquitted of the charges u/s 279/338/427 of IPC. It is well settled principle that outcome of criminal proceeding against a driver in motor accident cases cannot be the guiding factor for the Tribunal for deciding compensation claims. Moreover, for the sake of discussion, even if we look into the judgment dated 21.12.2018, it is seen that it is in evidence that the offending vehicle hit the claimant from the back and the claimant was grievously injured there and then and fell unconscious. Hence, 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 riding his scooter, in absence of any contra evidence, it cannot be held that there was contributory negligence on the part of the claimant.

17. 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 Innova Vehicle No. AS 01 AA 5657. That the Innova vehicle No. AS 01 AA 5657 was insured with OP No.1, is not in dispute.

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

19. Claimant has proved various medical documents, Ext 1 is Discharge Certificate of Sanjivani Diagnostic & Hospital, Dibrugarh which shows that the claimant was admitted on 18-03-2014 and discharged on 03-04-2014. Ext. 2 further shows that the claimant was diagnosed with (i) multiple small intra cranial contusion, (ii) fracture of left clavicle (iii) mid penile hypo spadian. It further shows that the claimant was asked to report for review after six weeks in Neuro Surgeon Department, clavicular brace and arm pouch directed to be used for one month and review in Orthopedic Department after one month.

20. The claimant has exhibited vouchers amounting to Rs. 1,83,248/- Ext. 3(A) for Rs. 5,000/- and Ext. 9 for Rs. 20,000/- being receipt/voucher against advance payment made by the claimant, the claimant is not entitled to the same separately. The claimant is entitled to the said amount.

21. From the medical documents, it is seen that the claimant sustained fracture of left clavicle and called for review after one month. The claimant was hospitalized for 16 days and was under review for a considerable period of time. The claimant is therefore entitled to a reasonable amount for special diet, attendant etc. Besides the pecuniary damages, claimant is also entitled to some amount for non pecuniary damages on account of pain, shock and suffering.

22. 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.1,83,248.00
Incidental expenses during treatment special diet, attendant etc	:	Rs. 16,000.00
Pain, shock and suffering	:	Rs. 2,00,000.00
Total	:	Rs. 3,99,248.00

(Rounded off to Rs. 3,99,250/-)

23. Evidently, the Innova Vehicle No. AS 01 AA 5657 was insured with United India Insurance Co Ltd and the said policy was effective and subsisting at the time of accident, hence the O.P. No. 1, United India Insurance Co Ltd is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

24. Rs. 3,99,250 (Rupees Three Lacs Ninety-Nine Thousand Two Hundred and Fifty Only) is awarded with interest @ 7.5% p.a. from the

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date of filing the claim petition, that is 15-12-2014, till payment. The opposite party No. 1, United India Insurance Co. Ltd. is directed to pay the award to the claimant, within one month from the date of order.

25. 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