

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL:: DIBRUGARH

MAC Case No. 31 of 2021 (Injury)

Sri Gurupada Dasgupta
S/O- Lt. Har Chandra Dasgupta,
Resident of Paltan Bazaar, Uttar Jalan Nagar (Dibrujan)
PO- Jalan Nagar, Dist. Dibrugarh, Assam

..... Claimant

-VERSUS-

1. Sri Lakhi Ram Robi Das,
S/o- Late Hari Lal Rabi Das,
R/o- Bokul Banshbari,
P.O. & PS- Lahowal,
Dist. Dibrugarh,
Assam – 786010.
(Driver of the vehicle bearing registration No. AS06-AC-7893)
2. Sri Debajit Dutta
S/o – Sri Khagen Dutta,
R/O Bokul Mazgaon,
PO & PS Lahoal,
Dist. Dibrugarh, Assam – 786010.
(Owner of the Offending vehicle Registration No. AS06-AC-7893)
3. The Manager
ICICI Lombard General Insurance Company Ltd.
ICICI Lombard House, 414, Veer Savarkar Marg,
Near Sidhi Vinayak Temple, Prabhadevi,
Mumbai,
Maharashtra-400025.
(Insurer of the vehicle bearing Registration No. AS06-AC-7893)
.....Opp. Parties

Date of Argument: 10-03-2022.

Date of Judgment: 06-04-2022

ADVOCATES FOR THE PARTIES

For the Claimant : Sri S.N. Yadav
For the OP No. 1 & 2 : Sri Rajesh Keshari
For the OP No. 3 : Smti Ivy Chatterjee

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 Sri Gurupada Dasgupta under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by him.
2. The case of the claimant Sri Gurupada Dasgupta, in brief, is that on 10.04.2021 at about 2:15 PM, the claimant was going towards a shop at Naliapool; when he reached near Durgabari Tinali, the offending vehicle bearing registration No. AS-06-AC-7893, 750 D Vikram (three wheeler), being driven in a rash and negligent manner, hit him from back side, resulting in greivous injuries on his person. The claimant has stated that he was shifted to AMCH, Dibrugarh and then to Brahmaputra Diagnostics & Hospital Limited, Dibrugarh, on the same day.
3. O.P. No.1 and 2, Driver and Owner of the vehicle bearing registration No. AS06-AC-7893 (Vikram) in their written statement denied all material averments in the claim petition and pleaded inter-alia that at the time of accident, the said Vikram vehicle was duly insured with ICICI Lombard General Insurance Company Ltd. vide Policy No. 300420025595900000 and subsequently liability, if there be any, is to be borne by the insurance company.
4. OP No. 3, Insurer of Vikram bearing registration No. AS06-AC-7893 in its written statement also denied all the material averments and further stated that the accident occurred due to the negligence of the claimant and and hence OP No.3 is not liable to pay compensation.
5. On the basis of pleadings of the parties, the following issues were framed on 18.11.2021 for adjudication:-

- i. Whether Sri Gurupada Dasgupta sustained injury in the alleged road accident dated 10.04.2021, involving the vehicle No. AS06-AC-7893 and whether the said accident took place due to rash and negligent driving by the driver of the offending vehicle?
- ii. Whether the claimant is entitled to any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount is payable ?

6. During enquiry, the claimant Gurupada Dasgupta, examined himself as CW-1 and filed relevant documents.

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

8. The claimant/CW 1, in his evidence reiterated that on 10.04.2021, the vehicle bearing Registration No. AS-06-AC-7893 D Vikram (three wheeler) hit him from backside, at Naliapol, Dibrugarh because of which he sustained serious injuries. The claimant has stated that he sustained severe head, chest, back, hand and bone injuries. The claimant has further stated that he was treated, amongst others with 6 stitches at the back of his head; fracture in four fingers of his right hand; amputation of upper part of his right thumb. The claimant deposed that he was admitted in the ICU for four days and was discharged on 18.04.2021. In support of his oral evidence, CW-1 has proved the Ext. A/1-7 (series) - Accident Information Report, Ext. B/ 1-2 (series) – Photo Identity, Ext. C/1-59 (series) – medical prescriptions/ medical investigation reports/ medical certificates, Ext. D/1-23 (series) – Cash memo/medicine purchase receipts and bills, Ext. E/1-7 (series) – CT Scan plates and X-ray plates.

9. In cross-examination, the claimant No. 1 declined the suggestion that the accident had occurred because of his negligence.

10. Ext. A is the Accident Information Report wherein it has been recorded that the Vikram bearing No. AS-06-AC-7893 was involved in the accident on 10-04-2021, in which the claimant sustained injury. Ext. A further shows that Dibrugarh PS Case No. 797/2021 under Sections 279/338 IPC was registered in respect of the accident. It has been recorded in Ext. A that the said Vikram was duly insured with OP No. 3 vide Policy No. 300420025595900000 valid up to 08.06.2021 midnight. It is further reflected in Ext. A that the said Vikram vehicle at the relevant time was driven by one Lakhiram Rabi Das who had driving license being DL No. AS06-20060043399 valid up to 24.10.2029.

11. Thus, the oral evidence of the claimant, coupled with the documentary evidence mentioned above, establishes that the claimant sustained injuries in the motor vehicle accident, in which the Vikram No. AS06-AC-7893 was involved. Apart from the suggestion put forth to the claimant, there is nothing on record to establish that the claimant was negligent or contributed to the cause of accident. Hence, in view of the materials on record, as discussed aforesaid, claimant is held entitled to compensation.

12. The claimant has proved various medical documents. Ext.C-47, is the discharge certificate of Brahmaputra Diagnostics & Hospital Limited which shows that the claimant was admitted on 10.4.2021 and diagnosed with "*closed head injury with DAI with left Parietal and Ambiam Cistern bleed with Scalp laceration with Crush injury right hand (Dorsal and Volar aspect) with multiple Metacarpal fracture + Phalynax fracture with loss of bone and soft tissue with active bleeding*". Ext C-47 further hows that the claimant was treated with (i) wound debridement , wound lavage, homeostasis with primary suture, B/E POP Slab ↓ wrist Block on 10.4.2021 (ii) wound exploration, lavage, hematoma evacuation, homeostasis, secondary repair, ↓ brachial block on 14.4.2021. At the time of discharge on 18.4.2021, the claimant was advised daily dressing, strict lamb elevation, gradual exercise of hand and fingers, review in plastic surgery department, review in ortho OPD after 1 month and adviced medications.

13. Ext C-48 is the advice slip of OPD, Assam Medical College and Hospital (AMCH), Dibrugarh which shows that the claimant was advised to continue medicines as was already advised, elevation of hand and review after seven days. On 3.5.2021, the claimant was again advised certain medications. Ext 31 is the prescription of Brahmaputra Diagnostics and Hospital Ltd. from which it is revealed that the claimant reported for review, stiches were removed, was advcied further clinical examinations, medications; advised gradual grip exercise to the extent possible and called for review after two months.

14. Claimant has relied upon Ext C-59 being a declaration to the effect that the claimant having suffered from severe injuries was prevented from endorsing his signature and that thenceforth, the claimant would be putting his left thumb impression. The said certificate was issued under the signature and seal of Dr. Prakash Maheswari, Orthopedics.

15. Learned Counsel for the claimant relying on Ext C-59 submitted that the said exhibit would clearly establish that the claimant had suffered from physical disability in so far as his hand was concerned. Learned Counsel for the Insurance Co. submitted that the said certificate/Ext C-59 per se, cannot be said to establish anything, in as much as, the same has not been proved nor has the claimant exhibited any disability certificate in support of his claim that his thumb was amputated because of the injuries sustained in the accident.

16. From the aforesaid documents it is seen that the claimant did suffer from greivous injuries in the said accident and was under treatment and was advised to report for review for quite some time. Notwithstanding the latter, in absence of any proof with regard to disability, mere oral submission in this regard cannot be considered. The claimant has exhibited vouchers amounting to Rs. 2,28,137/-. The claimant is entitled to the said amount.

17. Since the claimant was hospitalized and undertook treatment as indoor patient for nine days, he had certainly incurred some incidental expenses on account of maintaining attendants, nursing, special food etc. and as such the

claimant is also entitled to some amount as pecuniary damages, along with the medical expenses.

18. Besides the pecuniary damages, the claimant who was 73 years of age at the time of the accident, is also entitled to a reasonable amount for non-pecuniary damages on account of pain, shock and suffering, more so in view of the grievous nature of injuries as is evident from the medical documents and as discussed hereinabove.

19. 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. 2,28,137.00
Incidental expenses during treatment Rs.1500 x 9 days.	:	Rs. 13,500.00
Loss of amenities of life etc	:	Rs. 50,000.00
Pain, shock and suffering etc	:	Rs. 1,00,000.00
Total	:	Rs. 3,91,637.00

20. Evidently the vehicle bearing registration No. AS-06-AC-7893, 750 D Vikram (three wheeler) was duly insured with ICICI Lombard General Insurance Co. Ltd. vide Policy No. 300420025595900000 and the said policy was effective and subsisting at the time of accident, hence the O.P. No.3, ICICI Lombard General Insurance Co. Ltd. is liable to indemnify the owner of the vehicle and satisfy the award.

AWARD

21. Rs. 3,91,637/- (Three Lakhs Ninety One Thousand Six Hundred And Thirty Seven) only is awarded with interest @ 7.5 % p.a. from the date of filing the claim petition, i. e. 14.07.2021, till payment. The opposite party No. 3, ICICI Lombard General Insurance Co. Ltd. is directed to pay the award to the claimant, within one month from the date of order.

22. Let a free copy of this judgment be furnished to claimant 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 6th April, 2022.

Member
Motor Accident Claims Tribunal/District Judge
Dibrugarh