

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
DIBRUGARH**

MAC Case No. 62 of 2016 (Injury)

Smt. Maina Hazarika
W/o- Sri Babul Hazarika
Aged about 35 years
Resident of Jerai Nalonihulla Gaon
P.O. Chabua, Dist. Dibrugarh, Assam.

..... Claimant

-VERSUS-

1. Sri Rinku Bora,
S/o- Sri Achyut Bora
P.W.D Building Office
Opp. To Congress Bhawan
P.O. & Dist. Tinsikia, Assam
(Driver cum owner of the offending vehicle)

2. The New India Assurance Co. Ltd.
Divisional Office, Tinsukia,
P.O. & Dist. Tinsukia, Assam
(Insurer of the offending vehicle)

.....Opp. Parties

Date of Argument: 18-11-2021.

Date of Judgment: 16-12-2021.

ADVOCATES FOR THE PARTIES

For the Claimant: Sri D.J Baruah
For the OP No. 1: Sri Uttam Kumar Saha
For the OP No. 2: Sri J.K Changmai

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 Maina Hazarika under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by her in a road accident on 16-06-2016. The brief case of the claimant is that on the said day, the claimant was traveling from Tinsukia towards Panitola through N.H.37 in an auto rickshaw bearing No. AS23-AC-1887, along with other co-passengers, when all of a sudden the Winger vehicle No. AS23-BC-0648, hit the auto rickshaw as a result of which the claimant sustained grievous injury on her head, chest, leg and other parts of the body and was, with the help of local people immediately admitted to Tinsukia Civil Hospital. The claimant has attributed the accident to the rash and negligent driving of the said Winger vehicle. The claimant has claimed Rs.1,32,000/- as compensation.

2. The OP No.1, owner cum driver of the Winger, in his written statement denied that the vehicle was driven in a rash and negligent manner by the OP No.1 and stated that the OP No.1 had a valid driving license being AS-2320070010150 valid up to 3.10.2017. It has been further stated that liability arising of the said accident, if there be any, ought to be borne by OP No.2, with which the said vehicle was duly insured vide Policy No. 53080031150100007414 valid up to 08-01-2017. OP No.1 also stated that Winger had a valid permit (upto up to 26.11.2017) on the date of accident.

3. OP No. 2, insurer of Winger No. AS23-BC-0648 in its written statement denied 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. 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 licence and the conditions of Insurance Policy was not violated by the insured.

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

- i. Whether Smt. Maina Hazarika was injured in the motor vehicle accident on 16.06.2016 as a result of rash and negligent driving of the vehicle bearing registration No. AS23-BC-0648?
- ii. Whether the claimant is entitled to any compensation as prayed for ? If so, from whom and to what extent?

5. During enquiry, the claimant examined herself CW-1 and filed relevant documents. The contesting respondent did not adduce evidence in the case.

6. 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 and for the sake of convenience and brevity.

7. The evidence of CW-1, Maina Hazarika, aged 38 years, is that she sustained injuries in the motor accident which occurred on 16.06.2016. In support of her oral evidence, CW-1 has proved the Ext. 1 Accident Information Report, Ext. 2 Discharge Certificate, Exts. 3 to 7 are cash memos of medicines and memo of charges for CT Scan.

8. In cross-examination, the claimant No. 1 denied the suggestion that she was not entitled to be awarded any compensation and that total expenses incurred in her treatment as per Exhibits 3 to 6 was not the amount as claimed by her in the claim petition. CW 1 admitted that the owner and driver of the auto rickshaw had not been made party in the instant case.

9. Ext. 1 is the Accident Information Report wherein it has been recorded that Tata Winger No. AS-23-BC-0648 was involved in the accident on 16.06.2016 in which the claimant sustained injury. Ext. 1 further shows that Tinsukia PS Case No. 652/2016

under Sections 279/304-A/338/427 IPC was registered in respect of the accident. It has been recorded in Ext. 1 that the said Winger was duly insured with OP No. 2 vide Policy No. 53080031150100007414 and that the same was valid up to 08-01-2017 midnight. It is further reflected in Ext. 1 that the said vehicle at the relevant time was driven by the OP No. 1 who had a valid driving license being DL No. AS23 20070010150 valid upto 03.10.2027. Ext. 2 is the Discharge Certificate of Tinsukia Civil Hospital which reveals that claimant underwent treatment for the injuries sustained by her.

10. Also on record as, Document No. 1 is the relevant insurance which shows that Policy No. 53080031150100007414 from 09.01.2016 upto 08-01-2017, was valid and subsisting at the time of accident. Document No.4 is the certificate of authorization/permit for plying the Winger throughout the territory of Assam valid up to 26.11.2017. Document No. 3 the DL of the OP No. 1 valid till 03.10.2027.

11. From the evidence adduced, it is established that Winger No. AS23-BC-0648 was involved in an accident in which the claimant sustained injuries. Thus, the oral evidence of the claimant, coupled with documentary evidence mentioned above, establishes that claimant sustained injuries in the motor vehicle accident, due to rash and negligent driving of the offending Winger No. AS23-BC-0648. That Winger No. AS23-BC-0648, was insured with the opposite party, the New India Assurance Co Ltd, is not in dispute.

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

13. Claimant has proved various medical documents. Ex- 2 is the Discharge Certificate of Tinsukia Civil Hospital which shows that the claimant was admitted on 16.6.2016 and discharged on 17.6.2016. She was advised CT Scan of the brain, which was done by her and the claimant was treated for the injuries.

14. The claimant has exhibited vouchers amounting to Rs.11,063/-. Claimant is held to be entitled to the said amount for the medical expenses. The claimant is also entitled

to some incidental expenses for the treatment as she was given treatment as an indoor patient. Besides the pecuniary damages claimant is also entitled to some amount of non-pecuniary damages on account of pain, shock and suffering.

15. 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 expences	:	11,063.00
Incidental expences towards attendant, special diet during and post discharge.	:	5,000.00
Pain, shock and suffering	:	7,500.00
Total	:	23,563.00

16. Evidently, Winger No. AS23-BC-0648 was insured with the New India Assurance Co. Ltd, the O.P. No.2. Hence, OP No.2, is liable to indemnify the owner of the vehicle and satisfy the award.

AWARD

Rs. 23,563/- (Twenty three thousand five hundred and sixty three only) is awarded with interest @ 9% p.a. from the date of filing the claim petition, i. e. 26.09.2016, till payment. The OP No. 2, the New India Assurance Co. Ltd, is directed to pay the award to the claimant, within one month from the date of order.

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 16th day of December, 2021

Member
Motor Accident Claims Tribunal
/ District Judge
Dibrugarh