

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, MORIGAON

*Present:- Sri. S. K. Poddar, AJS
Member, MACT,
Morigaon.*

MAC (Injury) Case No. 49/2016

1. Smti. Sila Dewri
W/o – Sri Jaduram Dewri,
R/o – Markang Kuchi,
P.O & P.S - Jagiroad,
Dist:- Morigaon, Assam Claimant/Injured person

-VS-

1. The Oriental Insurance Company Limited.,
Ulubari Chariali, Guwahati-6, Kamrup(M), Assam.
(Insurer of the vehicle No. AS-02-L-0298, Alto Car).
2. Sri Ratul Kr. Engti,
S/o Late Kaliram Engti,
R/o - Borbila,
P.S. -Mikirbheta
Dist.- Morigaon, Assam.
(Owner-cum-driver of the vehicle No. AS-02-L-0298, Alto Car)
.....Opposite Parties

Advocate Appeared:-

Mr. Palash Pator for the claimant.
Mr. Hiranya Kr. Nath for the O.P. No. 1
Mr. Bhaskar Jyoti Bezbruah for the O.P. No. 2

Date of Argument:- 08.01.2020

Date of Judgment:- 30.01.2020

JUDGMENT

1. The claim petition has been filed by the claimant/injured Smti. Sila Dewri, under section 166 of MV Act, 1988, claiming compensation of Rs. 4,00,000/- (Rupees Four lakhs) only on his grievous injury in motor vehicle accident dated on 29.05.2015,.

2. Claimant's case in brief is that, on 29.05.2015, at about 10.25 A.M, while she was proceeding from her house to Charankuchi on foot and reached near Charankuchi Bridge, the vehicle bearing registration No. AS-02-L-0298 (Alto Car) coming from Nagaon direction knocked her. As a result of the accident, she sustained multiple grievous injuries in different parts of her body. Immediately, she was taken to Nakhola S.H.C, Jagiroad wherefrom considering the severity of her injuries and critical condition, she was referred to Guwahati. Accordingly, she was admitted at GMCH, Guwahati. She took treatment there as an indoor patient from 29.05.2015 to 06.06.2015. She has been taking treatment as an outdoor patient for one year. The accident took place due to rash and negligent driving of the driver of the offending vehicle. It is further stated that the claimant was 50 years of age at the time of the accident. The claimant was a business woman who used to earn monthly Rs. 6,500/- per month from her occupation. Further, the claimant stated that she is the only earning member of her family which consists of several members. With regard to the accident, Jagiroad Police station registered a case vide Jagiroad P.S Case No. 209/2015, U/S-279/338 IPC.

3. On receipt of notices, both the opposite parties have submitted their respective written statements after entering their appearance. The Opposite party No. 1/ Oriental Insurance Company Limited, in its written statement denied all the averments made and stated inter-alia that they had no authenticated information regarding the accident. The insurance company declined to accept the liability, if there was violation of the terms and conditions of the policy or the driver did not have valid and effective driving license. They also stated that they had no information regarding the age, business and income of the deceased. In absence of proper documents, the income of the injured could not be accepted to be true. The amount of compensation claimed by the claimants is highly exaggerated and without any basis.

4. The Opposite Party No. 2, the owner-cum-driver of the offending vehicle No. AS-02-L-0298, Alto Car in his written statement while admitting the accident occurred on 29.05.2015 but denied the allegation of negligence and pleaded that it was purely an accidental one. It is stated that he has a valid driving license at the time of accident and the vehicle is duly insured with Oriental Insurance Company Limited bearing policy No. 321201/31/2015/7103, valid up to 16.10.2015 and the policy was in force at the time of accident. If any award is passed, then the entire liability is to be fastened upon the O.P. No. 1/Oriental Insurance Company Limited.

5. Upon the above pleading of the parties, the following issues framed by the Presiding Officer:-

i) Whether the accident took place on 29.05.2015 at 10.25 A.M. at N H Way 37 Charankuchi Bridge due to rash and negligent driving on the part of driver of the vehicle bearing registration No. AS-02-L-0298?

ii) Whether Smt. Sila Deori, injured in the said accident that took place on 29.05.2015 at 10.25 A.M. at N H Way 37 Charankuchi?

iii) Whether the claimant is entitled to get compensation, if yes by whom it is payable and to what extent?

6. During trial, in support of claim petition, the claimant/injured Sila Dewri has examined himself as PW 1, Dr. A.K. Phukan as PW- 2 and proved several documents. The opposite parties did not adduce any evidence.

7. I have heard arguments of both the parties and perused the materials on records.

DECISIONS AND REASONS THEREOF

8. **ISSUE NO. 1 and 2:-** The claimant in the claim petition and also in her evidence on affidavit deposed that on 29.05.2015, at about 10.25 A.M, while she was proceeding from her house to Charankuchi on foot and reached near Charankuchi Bridge, the vehicle bearing registration No. AS-02-L-0298 (Alto Car) coming from Nagaon direction knocked her. As a result of the accident, she sustained multiple grievous injuries in different parts of her body.

Immediately, she was taken to Nakhola S.H.C, Jagiroad wherefrom considering the severity of her injuries and critical condition, she was referred to Guwahati. Accordingly, she was admitted at GMCH, Guwahati. She took treatment there as an indoor patient from 29.05.2015 to 06.06.2015. She has been taking treatment as an outdoor patient for one year. The accident took place due to rash and negligent driving of the driver of the offending vehicle. With regard to the accident, Jagiroad Police station registered a case vide Jagiroad P.S Case No. 209/2015, U/S-279/338 IPC. In support her averments, PW 1, proved the Form No. 54 as Exbt. 1, and various medical reports, bill/vouchers of expenses/money receipts etc. as Exbt. 6 to 56, C/Copy of the FIR, Ejahar, Charge Sheet, sketch map, MVI report, Seizure list and Medical report of injured as Exbt. 57 to 63. In her cross-examination, she denied the defence suggestions that accident occurred for her carelessness. From the aforesaid document particularly Exbt. 7 discharge certificate issued by the GMCH as well the medical report of the injured vide Exbt. 63 clearly shows that the injured has sustained multiple fracture on her right leg and ORIF with K Nail plus encirclage was done on 04.06.2015 at GMCH. She was admitted at GMCH on 29.05.2015 and was discharged on 06.06.2015. Thus the fact of sustaining injury was proved by the medical documents. In Exbt. 7 there is mention that the injuries were sustained in RTA dated 29.05.2015. The fact of accident is not denied by the OP No. 2 and is also stand proved by the police papers particularly by the FORM No. 54.

9. So far negligence aspect in the accident is concerned, the pleaded case is that the alto car dashed the injured. Injured in her evidence as PW 1 deposed that while she was going by foot, the alto car being driven in rash and negligent manner knocked her and sustained fracture injuries. This part of evidence of PW 1 remained unshaken so far the fact of getting grievous injuries in the road traffic accident due to negligent driving of Alto Car as pleaded. The plea that accident was purely accidental is not proved by the OP No. 2. By issuing form 54 against the Alto Car driver and subsequently submitting charge sheet against Op No. 2 police has also supported the case of claimant so far

negligence of Alto driver is concerned. The Ops have not adduced any rebuttal evidence against above materials on negligence.

10. Hon'ble Gauhati High Court in the reported case of Godavari Devi Sharma and ors -vs- United India Insurance Company Ltd. and ors [2012 (4) GLT 516] held as follows:-

(14) Moreover, while conducting the inquiry into a claim under Section 166 of the M. V. Act, the Tribunal is not expected to search for proof or evidence beyond reasonable doubt, rather it is preponderance of probability, what the tool is, for assessment of the evidence. The Tribunal can arrive at its finding on the prima facie materials, such as the First Information Report to presume existence of the certain facts, in absence of other evidence which might debase such presumption."

11. From the material available in record, it is proved that accident took place on 29.05.2015, at about 10.25 A.M, while the injured/claimant was coming on foot, the Alto Car No. AS-02-L-0298 being driven in rash and negligent manner knocked the injured. As a result of the accident, Smt. Sila Deori sustained multiple fracture of right leg. These 2 issues are decided in favour of the claimant.

12. **ISSUE NO. 3:-** Now coming to the quantum of compensation to which the claimant is entitled, during argument hearing, learned advocate for the claimant have vehemently argued that apart from the expenses on treatment, the injured is entitled for compensation on account of loss of income during treatment, frequent transportation form Morigaon to Guwahati, expenses made on attendant etc. and for his permanent disablement for whole the life due to injuries on right leg. Learned advocate for the claimant has also argued that while computing the amount of compensation for his permanent disablement due to shortening of leg by 1½ inch, this tribunal should take care of necessity of future expenses on treatment, loss of amenities of life, depression and mental state, shortening of life etc. It is also argued that though vide Exbt. 5, the disability was assessed at 40% and the same should be taken as functional disability to his income by applying multiplier formula. Learned Advocate of Op No. 1 objected to this argument and submitted that assessment

of disability was not in accordance with rules and the disability of 50% was related to particular limb and that the claimant can do her previous job of vegetable vendor with some discomfort. Learned defence counsel has also challenged the admissibility of few vouchers of expenses for want of corresponding medical prescriptions. I have considered the submissions.

13. In his evidence, PW 1 has proved various documents showing taking treatment at GMCH Guwahati and from the discharge certificates it was clear that he has to undergo operation and implants were fixed. Thomas splint was applied at the leg. She again consulted orthopedic department of GMCH on 19.06.2015, 17.07.2015. Exbt. 5 dated 22.03.2016 show that the disability board under District Social Welfare Office, Morigaon has issued the disability certificate showing percentage of disability at 40% due to shortening of length by 1 ½ inch and deformities. This fact was duly proved by PW 2 Dr. A K Phukan, the member of District Disability Board. In his cross-examination, PW 2 has however deposed that in the previous medical documents perused at the time of examination of injured, have no mention of shortening of leg. He further admitted that the disability as assessed is for the particular limb only. The above documents and evidence of sustaining fracture injury on right leg and on disability found reliable.

14. Now the question arose is as to what will be the functional disability in this case. Admittedly the injured was a vegetable vendor by profession she claimed her earning as Rs. 6500/- per month. No evidence is lain on that aspect. From the nature of fracture of femur and release from GMCH with improved condition, the disability shown being not permanent in nature and curable and may improve and only for particular limb i.e. right leg, I find it justified to take the functional disability to the extent of 10% (ten) only effecting his income in near future. The injured will definitely be in a position to do his previous job with some restrictions.

15. Hon'ble Supreme Court of India in the reported case of Raj Kumar v. Ajay Kumar and another, **[(2011) 1 SCC 343]**, considered in great detail

the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it and made the following observations:

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability."

16. Hon'ble Supreme Court of India in the reported case of Govind Yadav v. New India Insurance Co. Limited [(2011) 10 SCC 683], has laid down as under:

"In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Limited and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

17. Recently Hon'ble Supreme Court of India in the case of Anant v. Pratap, [(2018) 9 SCC 450] has reiterated the law on the point of compensation to a person disabled due to injury as follows:-

12. In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries.

13. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident. This Court in Yadava Kumar v. National Insurance Co. Ltd [(2010) 10 SCC 341] explained "just compensation" in the following words:

"15. It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and courts. This reasonableness on the part of the tribunal and court must be on a large peripheral field."

18. Keeping the above law in mind for granting compensation in the case where the injured has proved to have sustained functional disability to the tune of 10% (ten), let me evaluate the evidence in respect of income and age of the injured and effect of disablement on his income. PW 1/claimant and injured claimed that prior to accident, she used to earn Rs. 6500/- per month. No document on income is proved. Considering that the incident happened in the year 2015, it can safely be held that the monthly income of the injured was Rs. 5000/- per month.

19. Regarding age of the injured, in the claim petition and during evidence, the injured has claimed his age as 50 years. In Exbt. 3, voter I-Card, issued on 01.10.2013 mentioned her date as 53 years. Accident occurred on 29.05.2015. As such, I find it to fit to take the age as 55 years. On this age, the multiplier to be adopted will be 11 as fixed for the age group of 51 years to 55 years.

20. Relating to expenses on treatment is concerned, in the course of evidence, PW 1 has proved various medical bills showing spending some amount on treatment. On careful scrutiny of the medical vouchers/bills etc. as proved by the claimant vide Exbt. 31 to 51, claimant has been able to prove expenses of Rs. 14,188/- only. Claimant is entitled for above amount as part of expenses. It may be noted here that while calculating above amount, Exbt. 52 for Rs. 4711/-, Exbt. 53 for Rs. 3442/-, Exbt. 54 for Rs. 5109/-, Exbt. 55 for Rs. 5878/-, Exbt. 56 for Rs. 6470/- were not taken into account as same medicine vouchers were issued on 12.05.2017 showing purchase of drugs on 01.06.2015. The aforesaid vouchers do not backed by any prescription of GMCH where the

patient took treatment and hence rejected being unacceptable as not related to accident and treatment. Claimant is not entitled for above amount as part of expenses. Apart from the above pecuniary damage, injured is also entitled to get compensation on various heads like cost of attendant, transportation, loss of amenities of life, loss of future income on multiplier basis, discomfort of life etc. etc.

21. Thus, having considered the nature of injury sustained by the injured and expenditures incurred 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.

| | | |
|------|---|-------------------------|
| i) | Pecuniary damages (Special damages) | |
| (i) | A) Expenses relating to treatment, hospitalization, medicines, | Rs. 14,188/- |
| | B) Expenses made on attendant (assumptive) | Rs. 3,000/- |
| | C) Nourishing food, and miscellaneous expenditure, transportation, etc. during treatment (assumptive) | Rs. 10,000/- |
| | D) Expenses on transportation (assumptive) | Rs. 6,000/- |
| (ii) | Loss of earnings on account of permanent disability Rs. 5000/- x 12 x 11 x 10% | Rs. 66,000/- |
| ii) | Non-pecuniary damages (General damages) | |
| (a) | Damages for pain, suffering and trauma as a consequence of the injuries. | Rs. 75,000/- |
| (b) | Provision for discomfort for shortening of leg | Rs. 25,000/- |
| (c) | <u>Damages for loss of amenities in life</u> | <u>Rs. 50,000/-</u> |
| | | Total ...Rs. 2,49,188/- |

Rounded off to Rs. 2,50,000/- (Rupees two Lakhs fifty thousand) only.

22. There is no dispute to the fact that at the relevant time of accident, the offending Alto Car No. AS-02-L-0298 was duly insured with O.P No. 1 vide No. 321201/31/2015/7103, valid up to 16.10.2015 and was owned driven by O.P No. 2 having valid Driving Licence. As such, the compensation as determined shall have to be paid by OP No. 1, New India Assurance Co. Ltd. OP No. 2 being insurer of non offending vehicle has no liability to the injured/

insured except under the contract for PA coverage, for which the insured is at liberty to approach the OP No. 2.

AWARD

23. Claimant/Injured namely Sri Sila Deuri is entitled to get Rs. 2,50,000/- (Rupees two Lakhs fifty thousand) only with interest @ 7.5% (seven point five) p.a. from the date of filing of the claim-petition i.e. 12.05.2016 till payment, from the opposite party no. 1, M/S Oriental Insurance Co. Ltd.

24. To protect the interest of the injured, it is directed that, on receiving payment of award with interest, Rs. 1,00,000/- (one Lakh) be kept in 2 FIXED DEPOSITS of a Nationalized Bank in the name of the injured for @ 50,000/- for 1 (one) and 2 (two) years respectively.

25. The OP No. 1, M/S Oriental Insurance Co. Ltd. is directed to pay the award amount within 30 (thirty days) from today.

26. Furnish a free copy of this judgment to claimant and Op No. 1 as provided u/s 168(2) M V Act within 7 (seven) days from the date of judgment.

Given under my hand and seal of this Court on this the 30st day of January, 2020 at Morigaon.

Member, MACT
Morigaon.