

IN THE COURT OF MEMBER, M.A.C.T. ::: MORIGAON

MAC (Injury) Case No. 31/2014

U/S 166 M.V. Act

**Present: Mr. P. Das,
Member, MACT
Morigaon, Assam.**

Petitioner : Sri Bihar Brahma

..... (claimant)

-Versus-

Opp. Parties : 1. Regional Manager

National Insurance Company Ltd.

policy No. 55270031136300078931 valid upto 30.10.2014, Insurer of the vehicle bearing Registration No. AS-02-E-7592 (Tata Winger).

2. Sri Jugal Ch. Das

Owner of the vehicle bearing Registration No. AS-02-E-7592 (Tata Winger).

Appearance of the Parties

Advocate for Claimant : Mr. H. Rahman, Ld. Advocate.

Advocate for the OP No. 1 : Mr. J.C. Bhuyan, Ld. Advocate.

Advocate for the OP No. 2 : Nil.

Date of Argument : 31.08.2019.

Date of Judgment : 03.10.2019.

J U D G M E N T

1. The instant claim petition has been filed by the claimant Sri Bihar Brahma u/s 166 of the M.V. Act, 1988, seeking compensation for the injuries stated to be

sustained by him in a road accident on 08.05.2014 at 11.30 AM at HPC Jagiroad near D/Type Quarter Colony, under Jagiroad PS, Morigaon, involving a Tata Winger vehicle bearing registration No. AS-02-E-7592. The claimant is stated to be a resident of village Madhab Nagar under Jagiroad police station in the district of Morigaon. The respondent no. 1-National Insurance Company Ltd. is stated to be the insurer of the said offending vehicle (Tata Winger) having registration No. AS-02-E-7592. Sri Jugal Ch. Das, the respondent No.2 is stated to be its owner.

2. Upon issuance of notices, the respondent No.1-Insurer appeared and filed its written statement. However, the respondent No.2-Owner did not appear and the case proceeded ex-parte against him vide order dated 25.09.2018. On the basis of the pleadings of the parties, the following issues were framed :-

- i) Whether the accident took place on 08.05.2014, at about 11.30 AM, at HPC Jagiroad near D/Type Quarter Colony under Jagiroad PS, Morigaon due to rash and negligent driving on the part of the driver of the Tata Winger vehicle bearing registration No. AS-02-E-7592?
- ii) Whether Sri Bihar Brahma was injured in the said accident that took place on 08.05.2014 at about 11.30 AM at HPC Jagiroad near D/Type Quarter Colony under Jagiroad PS, Morigaon?
- iii) Whether the claimant is entitled to get compensation, if so, by whom it is payable and to what extent?

3. At the proceeding, the claimant adduced evidence as PW-1 and he was cross-examined by the insurance company i.e. respondent No.1. He has also exhibited some documents as part of his evidence. The respondents did not adduce any evidence.

4. In his evidence as PW-1, the claimant has stated that on 08.05.2014, at about 11.30 AM, he was going by a bicycle on his legal side from Jagiroad towards Amlighat and when he reached at HPC Jagiroad near D/Type Quarter

colony, one Tata Winger vehicle bearing registration No. AS-02-E-7592 coming from Nagaon side towards Guwahati and being driven in a rash and negligent manner and in a high speed hit the claimant's bicycle from front side, as a result of which, he fell down and sustained multiple injuries. He was initially taken to the HPC Hospital at Jagiroad for treatment and from there he was taken to Down Town Hospital, Guwahati, where he underwent inpatient treatment for 10 days. In cross-examination, he denied that the accident took place due to his own fault. As mentioned earlier, PW-1 in his evidence has stated that at the time of accident, the offending vehicle was driven in a rash and negligent manner. The said testimony of PW-1 has remained unshaken in cross-examination.

As part of the evidence on affidavit, the PW-1/claimant has exhibited the following documents:-

- i) Exhibit – 1 : Accident Information Report, Form-54.
- ii) Exhibit – 2 : Certified Photostat copy of FIR, Ejahar of Jagiroad PS Case No. 153/2014.
- iii) Exhibit – 3 : First advice slip, HPC Hospital.
- iv) Exhibit – 4, 5 & 6 : Discharge Certificate, Down Town Hospital.
- v) Exhibit – 7 to 9 : Advice Slips.
- vi) Exhibit – 10 to 17 : Medical Vouchers amounting to Rs. 79,440/-.
- vii) Exhibit – 18 : Occupation Certificate, Deosal Gaon Panchayat.
- viii) Exhibit – 19 : Gaonburah Certificate.

5. The Accident Information Report (Form-54) has been exhibited as Ext.1 which narrates the aforesaid details of the accident, mentioning the name of the injured as Sri Bihar Brahma; the date, time and place of accident as 08.05.2014 at around 11.30 AM at HPC Jagiroad near D/Type Quarter Colony, the name and registration number of the offending vehicle is mentioned as Winger bearing registration No. AS-02-E-7592; the name of the driver as Moon Boidya and the name of the owner of the said Winger vehicle mentioned as Jugal Ch. Das. It is also stated in Form-54 that Jagiroad PS Case 153/2014 was registered in

connection with the accident U/s 279/338 IPC. I have perused the ejahar and FIR of Jagiroad PS Case 153/2014 exhibited as Ext.2 series. However, the outcome of the police investigation in the form of charge-sheet or otherwise is not available on the record.

6. I have also perused Ext. 4, 5 & 6, the discharge certificate from Down Town Hospital, Guwahati, indicating inpatient treatment of the claimant from 08.05.2014 to 18.05.2014. The diagnosis has been stated as compound depressed fracture of left parital bone. I have also perused exhibit 7, 8 & 9- advice slips from Down Town Hospital and other medical documents and vouchers pertaining to the treatment of the injured/claimant. However, the testimony of PW-1/Claimant about rash and negligent driving of the vehicle at the time of accident has remained unshaken and the said claimant-cum-victim being the eye witness to the accident, the said testimony can be relied to hold that the accident took place due to rash and negligent manner.

7. On the basis of the aforesaid evidence and materials, I come to the considered finding that on 08.05.2014, at about 11.30 AM, Tata Winger vehicle bearing registration No. AS-02-E-7592 was involved in an accident under Jagiroad PS in which the claimant was injured and that the accident took place due to rash and negligent driving of the driver of the said offending vehicle. Accordingly, the issue No.1 and 2 are accordingly decided.

8. The claimant having suffered injuries in an accident arising out of use of motor vehicle is entitled to get compensation.

9. Now, the question as to what would be the quantum of compensation payable to the claimant and who would be liable to pay the sum.

10. As stated earlier, Ext. 4, 5 & 6 by way of a discharge certificates from Down Town Hospital, Guwahati, where the claimant is stated to have taken

major part of the treatment for the injuries sustained and diagnosis mentioned as compound depressed fracture of left parital bone. It is also stated in discharge certificate about the patient coming to the hospital for the history of road traffic accident and also stated that the patient was treated surgically during the treatment.

11. As part of the evidence on affidavit, the claimant as PW-1 has stated that he submitted medical vouchers of Rs. 79,440/-. I have perused the said medical vouchers and in the context of the other medical documents, I award an amount of Rs 80,000/- as compensation for expenses incurred by the claimant on treatment upon medical and non-medical component. I also award an amount of Rs. 80,000/- towards pain and suffering undergone by the claimant due to the injuries sustained by him and treatment taken thereof. Finally, Rs.10,000/- is awarded towards the cost of litigation.

12. Since there are no materials on record that the claimant sustained permanent disability, therefore, it is not required to award any compensation to the claimant for loss of income due to any permanent disability.

13. Accordingly, the compensation awarded to the claimant can be summarized as follows :-

i.	Medical expenditure	: Rs.	80,000/-
ii.	Pain, suffering & trauma	: Rs.	80,000/-
iii.	<u>Cost of litigation</u>	: Rs.	<u>10,000/-</u>

Total : Rs.1,70,000/-

(Rupees One Lakh Seventy thousand only).

14. As stated earlier that the respondent No. 2-Owner has not contested the case and copy of the insurance policy is not on the record. However, Form-54 indicates that the vehicle was covered by an insurance policy No. 55270031136300078931 issued by respondent No.1-National Insurance

Company Ltd. with validity upto 30.10.2014, thereby covering the date of accident i.e. 08.05.2014. The insurer has also not led any rebuttal evidence regarding the insurance coverage.

15. Therefore, on the basis of aforesaid evidence and materials, I come to the considered finding that the offending Tata Winger vehicle bearing registration No. AS-02-E-7592 was covered by a valid insurance policy at the time of accident issued by respondent No.1/insurer. Accordingly, the respondent No.1-National Insurance Company Ltd. is liable to indemnify the owner with regard to the compensation awarded to the claimant.

16. Thus, the claimant Sri Bihar Brahma is hereby awarded an amount of Rs. 1,70,000/- (Rupees One lakh Seventy thousand only) along with an interest at the rate of 6% from 15.12.2018-the date of filing of claimant's evidence, till payment and the awarded amount shall be paid by the respondent No.1 (insurer) to the claimant within 3 (three) months.

17. Send a copy of the Judgment and order to the respondent/insurer No. 1 for doing needful at their end.

Judgment is delivered in the open Court on the 03rd day of October, 2019 under my hand and seal.

Dictated and corrected by me

Member, MACT
Morigaon, Assam

Member, MACT,
Morigaon, Assam.

APPENDIX**A. Claimant's witness**

PW-1 : Sri Bihar Brahma,

B. Opposite parties witness :**C. Claimant's exhibits:**

- A. Exhibit – 1 : Accident Information Report, Form-54.
- B. Exhibit – 2 : Certified Photostat copy of FIR, Ejahar of Jagiroad PS Case No. 153/2014.
- C. Exhibit – 3 : Fist advice slip, HPC Hospital.
- D. Exhibit – 4, 5 & 6 : Discharge Certificate, Down Town Hospital.
- E. Exhibit – 7 to 9 : Advice Slips.
- F. Exhibit – 10 to 17 : Medical Vouchers amounting to Rs. 79,440/-.
- G. Exhibit – 18 : Occupation Certificate, Deosal Gaon Panchayat.
- H. Exhibit – 19 : Gaonburah Certificate.

D. Opposite Party's Exhibits:

Nil.

P Das
Member, MACT, Morigaon

MAC (Injury) Case No. 31/2014**03.10.2019:**

The claimant and the insurer are represented by their respective learned counsels.

Judgment is ready and pronounced in the open Court.

The claim of the claimant is allowed on contest for an award of Rs. 1,70,000/- (Rupees One lakh Seventy thousand only) along with an interest at the rate of 6% from 15.12.2018- the date of filing of claimant's evidence, till payment and the awarded amount shall be paid by the respondent No.1 (insurer) to the claimant within 3 (three) months.

Send a copy of this judgment to the Opposite Party No. 1 (National Insurance Company Ltd.) for compliance of this judgment.

The instant MAC case stands disposed of on the aforesaid terms.

Member,
MACT, Morigaon