

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

M.A.C Case No. 57/2016 (Injury)

U/S 166 M.V. Act

Present :- Mr. P. Das,
Member, M.A.C.T.,
Morigaon.

Petitioner:- Sri Sintu Kalita @ Chintu Kalita

-Vs-

Opp. Parties :- 1. New India Assurance Company Ltd.

Policy No. 23010131150350004117, Valid upto 23.12.2016,
(Insurer of the vehicle bearing registration No. AS-02-P-7475
(Bolero).

2. Sri Bastab Jyoti Baruah

(Owner of vehicle No. AS-02-P-7475(Bolero).

Appearance of the Parties

Advocate for Claimant :- Mr. R. Amin , Ld. Advocate

Advocate for the O.P. No. 1 :- Mr. K. Medhi, Ld. Advocate

Advocate for the O.P. No. 2 :- Mr. J. Rahman, Ld. Advocate

Date of Argument :- 15.03.2019 & 04.05.2019.

Date of Judgment :- 01.06.2019.

J U D G M E N T

1. The instant claim case has been filed by the claimant Sri Sintu Kalita @ Chintu Kalita U/s 166 of the M.V. Act, 1988 seeking compensation for injuries stated to be sustained by him in a road accident on 11.02.2016 at 12:30 AM at Mouchanda Pathar on NH-37 (A), under Uluani P.S in the district of Nagaon. It

is the case of the claimant that on 11.02.2016, at about 12:30 AM, while he was coming from Tezpur towards Nagaon in a Bolero vehicle bearing Registration No.AS-02-P-7475, it met with an accident on the aforesaid place, as a result of which the claimant sustained grievous injuries and had to undergo sustained treatment and also suffered disability. It is stated that the claimant is presently residing in Moirabari in the district of Morigaon. The respondent No.1, New India Assurance Company Ltd., is stated to be the insurer of the vehicle bearing registration No.AS-02-P-7475. Sri Bastab Jyoti Baruah respondent No.2, is stated to be the owner of the offending vehicle.

2. Upon issuance of notices, the respondent No. 1 & 2 appeared and filed their respective written statements. On the basis of the pleadings of the parties the following issues were framed :-

- i) Whether the accident took place on 11.02.2016 at 12:30 AM at Mouchanda Pathar on NH-37 (A), due to rash and negligent driving on the part of the driver of the vehicle bearing registration No. AS-02-P-7475(Bolero)?
- ii) Whether Sri Sintu Kalita @ Chintu Kalita was injured in the said accident that took place on 11.02.2016 at 12:30 AM?
- iii) Whether 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 on behalf of the respondent No.2 stated to be the insurer of the offending vehicle. The claimant has also adduced evidence of Dr. A.K. Nath as PW-2, who was also cross-examined by the insurance company i.e. respondent No.1. The Respondent No. 1, the insurer of the offending vehicle, adduced the

evidence of Sri Sankar Chakrabarty as DW-1, who was duly cross-examined on behalf of the claimant.

4. It may be mentioned herein that in a claim proceeding under Motor Vehicle Act before Motor Accident Claims Tribunal, the nature of the proceeding is by way of an inquiry by summary procedure and the standard of proof is at best preponderance of probability.

5. In his evidence on affidavit, PW-1/claimant has stated that on 11.02.2016, at about 12:30 AM, while he was coming from Tezpur towards Nagaon in a Bolero vehicle bearing Registration No. AS-02-P-7475, it met with an accident at Mouchanda Pathar on NH-37 (A), under Uluani P.S in the district of Nagaon, as a result of which the claimant sustained grievous injuries and had to undergo sustained treatment and also suffered disability.

In his evidence, the claimant as PW-1 has stated that the accident took place due to rash, negligent and high speed driving of the offending vehicle. In cross-examination, he reiterated that the accident took place due to fault of the driver of the offending vehicle.

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

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|------|------------------|---|
| i) | Exhibit – 1 | : Accident Information Report, Form-54. |
| ii) | Exhibit – 2 | : GD Extract Copy. |
| iii) | Exhibit – 3 to 4 | : MVI Report, Police Report regarding the accident and Seizure lists. |
| iv) | Exhibit – 5 | : Disability Certificate. |
| v) | Exhibit – 6 | : Gaonburha Certificate showing income of the claimant. |
| vi) | Exhibit – 7 | : Advice Slip of Baptist Christian Hospital |

(Tezpur)

- vii) Exhibit – 8 : Patient referral letter of BCH.
- viii) Exhibit – 9 : Discharge Certificate of GNRC Hospital, Guwahati.
- ix) Exhibit – 10 to 70 : Advice Slips.
- x) Exhibit – 71 to 85 : Laboratory test reports.
- xi) Exhibit – 86 to 217 : Bill, Vouchers & Cash memos amounting to Rs. 3,94,669/-.
- xii) Exhibit – 218 : Driving License.

6. In Form-54 exhibited as Ext.1, the name of the injured is mentioned as Sintu Kalita @ Cintu Kalita and the offending vehicle No. as AS-02-P-7475 (Bolero) and also the name of the owner-cum-driver as Bastab Jyoti Baruah. It is also stated that Uluani PS GDE No. 165 dated 11.02.2016 was registered in connection with this case. The Extract Copy of the said GD entry has been exhibited as Ext.2, which narrates the details of the accident. A copy of the police report dated 18.03.2016 issued by the O.C. of the Uluoni PS has been exhibited as Ext.4 in which it is stated about the accident and that the accident took place due to rash and negligent driving of the offending vehicle No. AS-02-P-7475

The claimant as PW-1 has stated that he suffered injuries including head injuries as a result of the accident for which he underwent treatment at GNRC Hospital, Guwahati including as inpatient. In cross-examination, he stated that he underwent two surgeries on head and that he underwent treatment at GNRC Hospital for about one month. I have perused the connected medical documents annexed and exhibited as part of the evidence.

7. On the basis of the aforesaid evidence on record, I come to the considered finding that on 11.02.2016, the claimant Sintu Kalita @ Chintu Kalita

was injured in a road traffic accident caused by Bolero vehicle bearing registration No. AS-02-P-7475, which took place near Mouchanda Pather on NH-37(A), under Uluoni PS. I also come to the finding that the accident took place due to rash and negligent driving of the driver of the said Bolero vehicle bearing registration No. AS-02-P-7475. The issue No.1 and 2 are accordingly decided.

8. The claimant having suffered injury in an accident arising out of use of motor vehicle is entitled to get compensation under the provisions of MV Act, 1988.

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. In his claim petition, the age of the claimant has been stated as 27 years, at the time of the accident. In his evidence on affidavit, the age is indicated as 28 years at the time of filing evidence on affidavit in the year 2017 and the accident took place on 11.02.2016. Therefore, the age of the claimant at the time of accident can be taken as about 27 years. In his evidence, he stated that, he incurred expenses of Rs. 5,00,000/- for his medical treatment pursuant to the injuries sustained in the road accident. However, he submitted medical vouchers amounting to Rs.3,94,669/-. I have perused the said medical vouchers. Though these do not fully meet the standard of proof required of documentary evidence, but considering the nature of the claim proceeding and the standard of proof, applicable therein, I am of the considered view that these can be taken into account to some extent to come to the finding about the treatment undergone by the claimant and the cost borne by him in such treatment. Accordingly, striking a balance, an amount of Rs. 3,00,000/- is hereby awarded to the claimant for expenses (medical as well as connected

non-medical) incurred by him during treatment for his injuries sustained in the accident.

I have perused the medical documents pertaining to the treatment of the claimant which have also been exhibited as part of the evidence on affidavit. The PW-1 in his evidence on affidavit has stated that he suffered injuries including head injuries as a result of the accident for which he underwent treatment at GNRC Hospital, Guwahati including as inpatient. In cross-examination, he stated that he underwent two surgeries on head and that he underwent treatment at GNRC Hospital for about one month. I have perused the Ext.9 Discharge summary from the GNRC Hospital which mentions about head injury with *Acute Subdural Hematoma in right fronto Temporo Parieto occipital region with mass effect* with regard to injury sustained in a road traffic accident. The discharge summary was issued from the department of Neuro Surgery. I have also perused the test reports of the claimant exhibited from Ext. 71 to Ext.85 which included several CT Scans of his brain. I have perused the medical vouchers submitted by the claimant as part of his evidence in support of his treatment. As part of the evidence on affidavit, the claimant has exhibited the disability certificate as Ext.5 issued by Dr. A.K. Nath M.O., who also adduced evidence as PW-2. The said disability certificate indicates the injury in the form of acute subdural haematoma due to road traffic accident and quantifies the disability percentage of the claimant as 45%.

In the context of the nature of injuries sustained by the claimant as revealed from the aforesaid materials, I am of the considered view that he would need some amount for treatment in the future to stabilize and improve his condition and accordingly an amount of Rs. 50,000/- is awarded to the claimant for future medical treatment. Further, considering the injury sustained by him, treatment undergone and the disability incurred, I award an amount of Rs. 50,000/- to the claimant for pain, suffering and trauma as a result of injuries sustained in the accident.

11. I also award an amount of Rs. 25,000/- towards loss of amenities and another Rs. 15,000/- towards loss of expectation of life.

12. In his evidence, the claimant has stated that, he was a fruit and vegetable vendor at Moirabari and he has reiterated the same in his cross-examination. In support of the same, he has exhibited as Exhibit 6 (1), a certificate issued by the Gaonburah. As regards the income, in his claim petition, the claimant has stated that he was earning Rs. 15,000/- per month, but in his cross examination he stated that he was earning Rs. 12,000/-, from his shop of fruits and vegetables in Moirabari Bazar. Moreover, the claimant has not adduced any documentary evidence in support of his income. Therefore, the aforesaid materials, put forth by the claimant in support of his income, are not very reliable and his income, therefore, has to be arrived at by a process of some guesswork. In the given facts and circumstances, I am of the considered view that taking the monthly income of the claimant at the time of the accident as Rs. 9000/- per month would meet the ends of justice and the same would also be compatible with the standard of minimum wages applicable in the state of Assam. Accordingly, the income of the claimant at the time of the accident is taken as Rs. 9,000/- per month.

13. In his evidence, the claimant has stated that after the accident, he undertook treatment as indoor patient at GNRC, Guwahati from 11.02.2016 to 02.03.2016 (14 days). I have perused Exhibit 9 in this regard. Accordingly, I award an amount of Rs.4200/- (Rs. 300 per day) for loss of income during the period of treatment.

14. In his evidence on affidavit, the claimant has stated that he incurred permanent disability as a result of the injury sustained by him in the accident,

which was quantified as 45% by the Medical Board by examining him. In his cross-examination, the claimant has stated that he has sustained disability due to the extent of 45%.

The M.O. Dr. A.K. Nath, who issued the disability certificate, has adduced evidence as PW-2 in which he stated that as part of the Medical Board at Morigaon Civil Hospital, he examined the claimant and found injuries in the form of acute subdural haematoma due to road traffic accident. He assessed the permanent disability at 45%. He proved the disability certificate as Exhibit-5 and his signature thereon as Exhibit – 5(1). The said testimony of PW-2 has remained unshaken in his cross-examination.

15. Upon perusing the medical certificates and considering the evidence of Medical Officer as well the evidence of claimant, I take the functional disability of the claimant as 20%. Taking the age of the claimant as 27 years as already stated, the multiplier would be taken as 17 in this case and accordingly, the loss of income due to permanent disability is quantified as Rs.9000/- x 12 x 17 x 20% = Rs. 3,67,200/- (Rupees three lakhs sixty seven thousand two hundred only).

16. Finally, an amount of Rs. 10,000/- is awarded to the claimant by way of litigation costs.

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

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|------|-------------------------------|------------------|
| i. | Loss of income for disability | : Rs. 3,67,200/- |
| ii. | Medical expenditure | : Rs. 3,00,000/- |
| iii. | Future treatment expenses | : Rs. 50,000/- |
| iv. | Pain, suffering & trauma | : Rs. 50,000/- |
| v. | Loss of amenities | : Rs. 25,000/- |

| | | |
|-------|---|----------------|
| vi. | Loss of expectation of life | : Rs. 15,000/- |
| vii. | Loss of income during the period of treatment | : Rs. 4,200/- |
| viii. | <u>Cost of litigation</u> | : Rs. 10,000/- |

Total : Rs. 8,21,400/-

(Rupees Eight lakhs Twenty one thousand four hundred only).

18. The copy of the insurance policy is available on record as part of the written statement filed by the owner of the offending vehicle as Respondent No. 2. Upon perusing the same, I find that it indicates Policy No. 23010131150350004117 in the name of the owner with regard to the offending vehicle, issued by the respondent No. 1. The validity of the insurance policy is indicated as up to 23.12.2016. The accident took place on 11.02.2016. DW-1 addressing evidence on behalf of the insurer has also stated in his cross examination that the offending vehicle was covered by valid insurance policy and that the driving license of the driver was also valid at the time of accident. However, DW-1 has stated in his evidence that the offending vehicle in question is a private vehicle which was carrying passenger on hire basis and in cross-examination, he stated that the occupants can travel in such a private vehicle, but not as hired passengers. In his evidence, the claimant as PW-1 has stated that they were coming in a hired vehicle and in his cross-examination, PW-1 has also stated that the offending vehicle was hired by them. However, upon perusal of the insurance policy of the offending vehicle, I find that it is a private car package policy. In this context, the learned counsel for the claimant submitted a decision rendered by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. v. Balakrishnan & another (2013) 1 SCC 731*. I have perused the said decision in which the Hon'ble Supreme Court dealt into the aspect of package policy and liability of the Insurer thereof.

Considering the nature of the policy and upon perusing the aforesaid decision of the Hon'ble Supreme Court and in view of the materials on record, I am of the considered view that the offending vehicle had a valid insurance coverage on the date of the accident and the respondent No. 1 is liable to indemnify the owner with regard to the compensation awarded to the claimant.

19. Accordingly, in view of above discussion, the claimant Sri Sintu Kalita @ Chintu Kalita, the injured of the accident, is hereby awarded an amount of Rs. 8,21,400/- (Rupees Eight lakhs twenty one thousand four hundred only) along with an interest at the rate of 7.5% from the date of filing of the claim petition till payment and the awarded amount shall be paid by the respondent No.1 (insurer) to the claimant within 3 (three) months.

Considering the medical condition of the claimant, out of the awarded amount, an amount of Rs. 2,00,000/- (Rupees Two lakhs) shall be kept in a fixed deposit in a Scheduled Bank for a period of 3 (three) years in the name of claimant. The rest of the amount shall be released to the claimant.

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

Judgment is delivered in the open Court on this 01st day of June, 2019 under my hand and seal

Dictated and corrected by me

Member, MACT
Morigaon.

Member, MACT
Morigaon.

APPENDIX**A. Claimant's witness**

PW-1 :- Sri Sintu Kalita @ Chintu Kalita

PW-2 :- Dr. A. K. Nath

B. Opposite parties witness :

DW-1 :- Sri Sankar Chakraborty.

C. Claimant's exhibits :-

- i) Exhibit – 1 : Accident Information Report, Form-54.
- ii) Exhibit – 2 : GD Extract Copy.
- iii) Exhibit – 3 to 4 : MVI Report, Police Report regarding the accident and Seizure lists.
- iv) Exhibit – 5 : Disability Certificate.
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- x) Exhibit – 71 to 85 : Laboratory test reports.
- xi) Exhibit – 86 to 217 : Bill, Vouchers & Cash memos amounting to Rs. 3,94,669/-.
- xii) Exhibit – 218 : Driving License.

D. Opposite Party's Exhibit :

Ext. A - Certified to be true copy of the Insurance Policy.

Member, M.A.C.T.
Morigaon.

MAC (Injury) Case No. 57/2016

01.06.2019:

Both sides have been represented by their respective learned counsels.

Judgment is ready and pronounced in the open Court.

The claim of the claimant Sri Sintu Kalita @ Chintu Kalita is allowed on contest for an award of Rs. 8,21,400/- (Rupees Eight lakhs Twenty one thousand four hundred only) along with an interest at the rate of 7.5% from the date of filing of the claim petition till payment to be payable by the insurer/respondent No.1 within a period of three months

Out of the awarded amount an amount of Rs. 2,00,000/- (Rupees Two lakhs) shall be kept as fixed deposit in the name of the claimant in a Scheduled Bank and rest of the amount shall be released to the claimant.

Send a copy of this order to the respondent No.1/insurer for doing needful at their end, in the light of the directions passed in this judgment and order.

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

P Das
Member, MACT, Morigaon