

BEFORE THE MEMBER ::::::::::: MACT ::::::::::: DHUBRI

**MAC Case No.769/2006**

Parties:-

Md. Sohijol Hoque  
S/O: Md. Aynal Hoque  
VILL: Moynabandha  
P.S: South Salmara  
Dist: Dhubri, Assam  
..Claimant

Vs.

1.Md. Shamin Ameen  
S/O: Late Ashraful Ameen  
P.O. & P.S: Mankachar, Assam  
(Owner of the Bus No.ML-08-A/0775)

2.The New India Assurance Company Limited  
CDO III, Guwahati  
Represented by D.O., Bongaigaon

..Opp.

Parties

Present: - Sri Rajib Goswami, Member, MACT, Dhubri

Appearance:-

Sri R. Karim, Advocate for the claimant

Smt. Prabha Jain, Advocate for OP No.2

Date of hearing : 08-12-2017

Date of judgment: 11-12-2017

Judgment

This is an application filed u/s.166 of the M.V. Act, 1988 by the claimant, Sohjol Hoque claiming compensation for the injuries sustained by him in a Road Traffic Accident.

Claimant's case in brief is that on 03-11-2005 at about 3:00 PM the claimant along with others were passengers in a Bus bearing registration No.ML-08-A/0775 from Agia towards Fekamari. On the way near Khamari on NEC Road under Phulbari P.S. due to rash and negligent manner the said Bus was being driven, met with an accident. As a result of the accident the claimant had sustained multiple injuries with left wrist fractured.

The case proceeded ex-parte against Md. Shamin Ameen, the owner of the Bus.

The insurer of the offending vehicle OP No.2, New India Assurance Company Limited in its written statement inter-alia denied the contention raised by the claimant. The answering O.P. further contended that as documents regarding the insured were not made available to them either by the insured as required u/s 134 (c) of the MV Act or by the I.O. of the criminal case within 30 days of recording of the FIR as required u/s 158 (6) of the MV Act, the answering O.P. is not aware of any subsisting contract of insurance with the owner of the offending vehicle as contract of insurance is subject to compliance of section 64 VB of Insurance Act, proof of payment of premium etc. Further, the answering OP claims protection u/s 170 of the MV Act and the defence of exemption on the proof of breach of specified conditions of policy envisaged in Section 147 and 149 (2) (a) (i) of the M.V. Act. Thus, the answering O.P. is not liable to indemnify the insured in the payment of compensation to the third party.

Upon above pleadings following issues were framed:

- 1 Whether the accident had taken place due to rash negligent driving of the vehicle No.ML-08-A/0775 (Bus)

- and the claimant had sustained injuries in the said accident?
- 2 Whether the offending vehicle was insured with M/s. New India Assurance Company Limited at the time of accident?
  - 3 What shall be the just and proper compensation and by whom payable?
  - 4 Whether the claimant is entitled to get the relief as prayed for?

During the course of the enquiry, the claimant examined himself as his sole witness. OP No.2 did not adduce any evidence.

I have heard Sri R. Karim, learned counsel for the claimant and Smt. Prabha Jain, learned counsel for OP No.2.

I have also carefully gone through the case record including the evidence, both oral and documentary.

#### **DECISION AND REASONS THEREOF**

Saijul Hoque, the claimant as CW-1 in his affidavit claimed to have sustained injuries in the accident on 03-11-2005 at around 3:00 PM that the CW-1 had attributed to rash and negligent manner the said passenger Bus was being driven at the relevant point of time. He had been brought to Tikrikhila PHC for initial treatment and later admitted into Dhubri Civil Hospital on 04-11-2005 in OPD. On 08-11-2005 he was admitted into GMCH, Guwahati where he had undergone treatment for three months. According to CW-1 following the above accident Phulbari P.S. Case No.53 (11)/05 u/s 279/338/427/304-A of IPC had been registered. CW-1 had produced following documents in his evidence; prescription of Dr Sirajul Islam, Dhubri Civil Hospital and GMCH, money receipt, cash memos, X-Ray reports and X-Ray plate. Ext-1 to ext-9 are those documents.

CW-1 in his cross examination admitted to having not submitted Charge Sheet, Seizure List, FIR, Form No.54 along with his

affidavit. He denied the suggestion that the insurance company is not liable to pay any compensation.

Now, considering that the claimant has failed to produce AIR in Form No.54 or for that matter the Seizure List or Charge Sheet filed in the criminal case registered following the accident. Thus the tribunal is not in a position to entertain the claim of the claimant for compensation for want of any supporting document to show that the accident as described by him in his claim petition involving the vehicle No.ML-08-A/0775 (Bus) had at all taken place. The claim u/s 166 of the MV Act, 1988 is accordingly dismissed.

#### ORDER

In the result, claim petition is dismissed.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.769/2006

Claimant's witness : CW-1 Sohijol Hoque

Exhibits

Ext-1 First Prescription of Dr Sirazul Islam

Ext-2 Prescription of Dhubri Civil Hospital

Ext-3 Prescription of G.M.C.H

Ext-4 Money Receipt

Ext-5 & 6 Cash memo of medicine

Ext-7 & 8 X-Ray report

Ext-9 X-Ray plate

Member: MACT: Dhubri.