

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

MAC Case No.454/2014

Parties:-

Faruque @ Md. Sofiqul Islam
S/O: Abu Bakkar
VILL: Kesharbhita
P.O: Jhowdanga
P.S: Mankachar
Dist: Dhubri, Assam

..Claimant

Vs.

1.Branch Manager
National Insurance Company Limited
Dhubri Branch
P.O., P.S. & Dist: Dhubri, Assam

2.Abdul Gafur Sk
S/O: Alhaz Iman Ali
C/O: Mukut Baishya
P.O: Panzabari
H.No.38, Sukafa Path, Ghy
Kamrup (M), 781037
(Owner of the vehicle No.AS-01-DD/7213)

3.Md. Salim Hussain
S/O: Late R. Rahman
R/O: Old MLA Hostel
Dispur, Guwahati
Dist: Kamrup, Assam
(Driver of the vehicle No.AS-01-DD/7213)

..Opp.

Parties

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

Appearance:-

Sri A.K. Azad, Advocate for the claimant

Sri B.N. Agarwal, Advocate for OP No.1

Date of hearing : 09-10-2017

Date of judgment: 13-10-2017

Judgment

This is an application filed u/s.166 of the M.V. Act, 1988 by the claimant, Abu Faruque alias Md Safiqul Islam, who shall herein after be referred to as claimant, claiming compensation for injuries sustained by him in a Road Traffic Accident.

The claimant's case in brief is that on 05-04-2013 at about 4:30 AM, the claimant had been a passenger in a TATA sumo on his way to Guwahati. On the way at Betabari under Dhupdhara Police station on NH37 the said vehicle met with an accident. The claimant had sustained injuries comprising loss of four teeth in the upper jaw and other injuries. Hence this claim petition under section 166 of MV Act.

OP No.1 National Insurance Company Limited had contested the case by submitting written statement, inter-alia denying the contention raised by the claimant. The answering O.P. further contended that as documents regarding the insured were not made available to them by the I.O. of the criminal case within 30 days of recording of the FIR, 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 non-availability of documents concerning the insured deprived them of the defence, exemption to pay compensation on the ground of breach of specified conditions of policy as envisaged in Section 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.

OP-2 Abdul Gafur, the owner of the offending vehicle claimed in his written statement that the vehicle AS-01/DD-7213 owned by him is insured with National Insurance Company limited with Insurance policy No.55270031126300077695 and the policy had been valid for the period from 31/03/2013 to 30/032014 and as such the insurer is liable to indemnify the insured for the compensation to be paid as the accident had taken place within the period of validity.

Upon above pleadings following issues were framed:

- 1 Whether the accident had taken place due to rash negligent driving of the driver of vehicle No.AS-01-DD-7213 (Tata Sumo) and the claimant had sustained injuries in the said accident?
- 2 Whether the offending vehicle was insured with M/s. National Insurance 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 and one another witness. OPs did not adduce any evidence.

I have heard Khalilur Rahman learned counsel for the claimant and Sri B. Agarwala, learned counsel for OP No.1.

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

DECISION AND REASONS THEREOF

ISSUE NO. 1 AND 2 : Both these issues are taken up together as both these issues are inter-related.

CW-1 the injured victim in his affidavit had attributed the cause of accident to the rash and negligent manner the vehicle he was travelling in as passenger was being driven. CW-1 did not relate to involvement of any other vehicle. According to CW-1 following the accident Dhupdhara PS case No.32/2013 u/s 279/337/3338/427 IPC had been registered against the driver of the offending vehicle. The CW-1 had to undergo treatment for injuries sustained by him at a Goalpara Civil Hospital for five days. In course of his evidence CW-1 had exhibited following documents, copy of the FIR, copy of the charge sheet, copy of the seizure list, copy of the discharge slip, the copy of the X-RAY report, medical examination report, advice slips and cash memos. Ext-1to ext-8 are those documents.

In cross examination the CW-1 had stated that the vehicle he was travelling in had capsized when trying to take over another vehicle on the way. However the CW had ruled out any collision with the other vehicle. He admitted not having produced the injury report in respect of injuries sustained by him. CW-1 had denied the suggestion that cash memos ext-8(i) and ext-8(ii) are fabricated as these are not supported by corresponding prescriptions.

CW-2 Chan Mia, a co-passenger corroborated the CW-1 on all material particulars and CW-2 had also attributed the cause of the accident to rash and negligent manner, the vehicle they were travelling as passengers was being driven.

Now, in the light of the evidence of CW-1 and cw-2, both eye witnesses and in consideration that the standard of proof in an enquiry in MAC Case to be adopted as per catena of decisions of both our Apex court and High court being preponderance of probabilities of evidence on claimant side, I am inclined to hold in light of evidence of CW-1 and CW-2, on the face of there being no rebuttal evidence adduced, that the cause of the accident is attributable to rash and negligent act of the driver of the offending TATA sumo as according to

CW-1 there was no other vehicle involved in the accident. Issue No.1 is accordingly decided in favour of the claimant.

Coming to issue No.2, ext-3, the seizure list reveals that the offending TATA Spacio, No.AS-01/DD/7213 had an insurance coverage and the insurance policy had been issued by National Insurance Company Limited, Bhangagarh Branch, Guwahati in the name of the owner Abdul Gaffur. It is further revealed that the driver Salim Hussain was in possession of a license No.DL-1419980013300 issued by DTO Nalbari. There is no evidence adduced in rebuttal questioning the validity of the insurance coverage of the insured vehicle and as such I am inclined to hold that on the day of the alleged occurrence the offending vehicle, TATA Spacio, No.AS-01/DD/7213 had a valid insurance coverage issued by OP No.1. This issue is accordingly decided in favour of the claimant.

ISSUE NO. 3 AND 4 : Both these issues are taken up together as both these issues aim at the same objective, relief.

Now, coming to determination of just compensation to be awarded on the head of pain and sufferings, the injured was required to with stand following injuries suffered I come to ext-6 medical examination report of the victim. Ext-6 is silent with regard to injuries received by the injured victim. This leaves us with ext-4, the discharge certificate of the injured victim revealing that the victim had been under treatment at Goalpara Civil Hospital from 5/4/2013 to 8/4/2013 and was diagnosed to have lost four teeth.

Apart from this document there is neither injury report nor X-Ray report for that matter and as such considering the period of stay in the hospital, four days I am inclined to hold the injury reported sustained in the discharge certificate by the claimant to be simple grievous injury as claimant was not required to forego his daily activities relating to his livelihood during treatment and as such I am not inclined to allow any compensation for loss of income during the period of treatment. Thus in the circumstances I am inclined to allow

Rs. 25,000/- under non-pecuniary head of pain and sufferings keeping with guidelines of our High court that has provided Rs.25,000/- for simple grievous injuries though those guide lines are meant for Lok Adalat.

Coming to pecuniary head of expenditure on medical treatment I am inclined to allow Rs. 200/- vide ext-7 (vi), Rs. 746/- vide ext-8 (i), Rs. 212/- vide ext-8 (ii), Rs. 188/- vide ext-8 (iii), Rs. 10,679/- vide ext-8 (iv), totalling Rs. 12,025/-.

ORDER

In the result, claim petition is allowed awarding Rs. 25,000/- + Rs. 12,025/- = Rs. 37,025/- (Rupees Thirty Seven Thousand Twenty Five) only to the claimant payable by OP No.1, M/s National Insurance Company Limited through an account payee cheque. An interest at the rate of 9% per annum is allowed on the total compensation from the date of filing of claim petition i.e. 28-11-2014.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.454/2014

Claimant's witness : CW-1 Abu Faruque @ Md. Sofiquil Islam

CW-2 Chan Miah

Exhibits

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|---------------------|------------------------------------|
| Ext-1 | Certified copy of the FIR |
| Ext-2 | Certified copy of the Charge Sheet |
| Ext-3 | Certified copy of the Seizure List |
| Ext-4 | Discharge Slip |
| Ext-5 | X-Ray Report |
| Ext-6 Report | Certified copy Medical Examination |
| Ext-7 (i) to 7 (vi) | Treatment Slip |
| Ext-8 (i) to 8 (iv) | Cash Memos |

Member: MACT: Dhubri.