

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

**MAC Case No.197/2012**

Parties:-

Sokina Bibi  
W/O: Aharuddin Sk  
VILL: Jogir Mahal Part-II  
P.O. & P.S: Bilasipara  
Dist: Dhubri, Assam  
..Claimant

Vs.

1.Jiar Rahman  
S/O: Late Umar Ali  
VILL: Bangalipara Part-I  
P.S: Bilasipara  
Dist: Dhubri, Assam  
(Owner of the Auto Rickshaw)

2.Aktar Hussain  
S/O: Abdul Baten  
VILL: Bangalipara  
P.O. & P.S: Bilasipara  
Dist: Dhubri, Assam

3.The Branch Manager,  
United India Insurance Company Limited  
Bongaigaon, Branch  
Represented by  
Branch Manager, Dhubri  
United India Insurance Company Limited  
D.K. Road, Dhubri, Assam

..Opp.

Parties

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

Appearance:-

Sri M. Seal Sarma, Advocate for the claimant

Sri S.K. Das, Advocate for OP No.3

Date of hearing : 12-12-2017

Date of judgment: 14-12-2017

### Judgment

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

The claimant's case in brief is that on 10-02-2012 at around 4:45 PM the claimant was on her way from village Jugir Mahal to Bilasipara town in an auto rickshaw along with other four passengers. On the way due to rash and negligent manner the said auto rickshaw was being driven it had met with an accident on NH-31 near Surjakhata Nathpara Tiniali. All passengers were badly injured. The claimant had initially received her treatment at Bilasipara SHC and later she was admitted into Dhubri Civil Hospital where she had undergone treatment from 11-02-2012 to 13-02-2012.

The case proceeded ex-parte against OP No.1 & OP No.2, driver and owner respectively of the offending vehicle.

The Branch Manager of United India Insurance Company Limited had submitted 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 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. 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.AS-19-C/11 (Auto Rickshaw) and the claimant had sustained injuries in the said accident?
- 2 Whether the offending vehicle was insured with M/s. United India 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 herself as her sole witness. OP No.3 did not adduce any evidence.

I have heard Sri M. Seal Sarma, learned counsel for the claimant and Sri S.K. Das, learned counsel for OP No.3.

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 Sokina Bibi reiterated to having sustained injuries in the accident on 10-12-2012 when the auto rickshaw bearing registration No.AS-19-C/11, she was travelling in, had

met with an accident on NH-31 at Surjakhata Nathpara Tiniali. CW-1 claimed that the accident had taken place due to rash and negligent manner the said auto rickshaw was being driven. According to CW-1 Bilasipara P.S. Case No.92/2012 u/s 279/338 of IPC had been registered following the accident. CW-1 claimed to have spent Rs. 1,50,000/- on her treatment and claims Rs. 3,00,000/- in compensation. The claimant also further claimed that the three wheeler was insured with United India Insurance Company Limited, Bongaigaon bearing cover note No.174346 and the policy had been valid from 09-110-2011 to 08-10-2012. The CW-1 had produced following documents; AIR in form No.54, certified copy of FIR, certified copy of Ejahar, prescription issued by Bilasipara SHC, attendant card and cash memo. Ext-1 to ext-7 are those documents.

In her cross examination CW-1 admitted to there being five passengers inside the auto rickshaw. She denied the suggestion that the accident had taken place due to overloading. CW-1 denied the suggestion that she is not entitled to receive any compensation from the insurance company.

It is clear from the evidence of CW-1 that apart from the public service vehicle, the auto rickshaw involved in the accident and in which she had sustained injuries there was no other vehicle involved in the accident. CW-1 being passenger of the said public service vehicle is least likely to contribute to the cause of accident. Thus the question of contributory negligence on the part of the claimant is ruled out. Thus in the light of the evidence of CW-1 I am inclined to hold that the accident in which the claimant had sustained injuries had taken place due to rash and negligent manner, the said vehicle was being driven. This issue is accordingly decided in favour of the claimant.

Coming to issue No.2, the AIR in form No.54, ext-1 as well as the deposition of CW-1 reveal that the offending three wheeler bearing registration No.AS-19-C/11 was duly insured with United India Insurance Company Limited, Bongaigaon Branch with office code

130600. The OP No.3, United India Insurance Company Limited neither raised any objection on the validity of contract of insurance with the owner of the three wheeler nor sought to defend itself on the ground of violation of specified conditions of policy envisaged in Section 149 (2) of MV Act. Thus both issues are 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 I come to the advice slip, ext-4, issued by Bilasipara SHC prescribing some medicines and the discharge slip, ext-6 showing that Sokina Bibi had undergone treatment from 11-02-2012 to 13-02-2012 at Dhuburi Civil Hospital. However, ext-6 is a photo copy of the original and as such not admissible in evidence. Apart from these two documents the claimant has not produced any injury report to show nature of injuries sustained by him. Thus considering the claimant is the injured in ext-1, AIR in form 54, I am inclined to hold that the claimant had sustained simple injuries and accordingly I allow a sum of Rs. 5,000/- on the non pecuniary head of pain and sufferings. Coming to allowing compensation on the pecuniary head, expenditures claimed to have incurred by the claimant, I am inclined to allow Rs. 6,000/- on the head of expenditure incurred on medical treatment on the basis of ext-7 cash memo. I hold that the above amount allowed in compensation is just compensation in the circumstances of the present case.

Coming to the issue by whom payable I am inclined to hold that OP No.3, the insurer of the offending three wheeler, United India Insurance Company Limited is liable to pay compensation as it is established in issue No.2 that the validity of the insurance policy cover of the offending three wheeler also covers the date of accident.

ORDER

In the result, claim petition is allowed awarding Rs. 5,000/- + Rs. 6,000/- = Rs. 11,000/- (Rupees Eleven Thousand) only to the claimant payable by OP No.3, M/s United India 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. 05-11-2012.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.197/2012

Claimant's witness : CW-1 Sokina Bibi

Exhibits

Ext-1 No.54	Accident Information Report in Form
Ext-2	Certified copy of FIR
Ext-3	Certified copy of Ejahar
Ext-4	Prescription of Bilasipara SHC
Ext-5	Attendant Card
Ext-6	Discharge Slip of Dhubri Civil Hospital
Ext-7	Cash memo

Member: MACT: Dhubri.