

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

MAC Case No.198/2012

Parties:-

Hajarat Ali (Minor)
Represented by
Aharuddin Sk (Father)
P.O: 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, Aharuddin Sk claiming compensation for the injuries sustained by his minor son Hajarat Ali in a Road Traffic Accident.

The claimant's case in brief is that on 10-02-2012 at around 4:45 PM the minor son of the claimant was on his way from village Jugir Mahar 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's minor son had initially received her treatment at Bilasipara SHC and later he was admitted into Dhubri Civil Hospital where he 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. 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.AS-19-C/11 (Auto Rickshaw) and the claimant's minor son 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 himself and one another 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, father of the minor injured reiterated with regard to having sustained injuries by his minor son Hazarat Ali on 10-12-2012 at about 4:45 PM when the auto rickshaw his minor son Hazarat Ali was travelling in, bearing registration No.AS-19-C/11 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 the treatment of his minor son and claims Rs. 3,00,000/- in compensation. The claimant also 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, discharge slip issued by Dhubri Civil Hospital and cash memo. Ext-1 to ext-8 are those documents.

In his cross examination CW-1 admitted to his wife, minor son, minor daughter and other relatives travelling in the auto rickshaw at the relevant point of time. CW-1 denied the suggestion that the auto rickshaw his wife and children were travelling in was carrying passengers beyond the permissible seating capacity mandated in registration certificate and permit. He also denied the suggestion that cash memos and vouchers are all false and fabricated. CW-1 further denied the suggestion that the driver of the auto rickshaw did not possess a valid and effective driving license.

CW-2, Sokina Bibi the mother of the injured victim corroborated CW-1 on all material particulars. CW-2 also attributed the cause of accident on 10-12-2012 at Surjakhata Nathpara Tiniali on NH-31 in which she and her minor son had sustained injuries to rash and negligent manner the three wheeler was being driven at the relevant point of time.

In her cross examination CW-2 admitted to five passengers travelling in the auto rickshaw at the relevant point of time and denied the suggestion that passenger in excess of the permitted

numbers were travelling in the auto rickshaw at the relevant point of time.

It is clear from the evidence of CW-1 that apart from the public service vehicle, the auto rickshaw that was involved in the accident, in which his minor son, his wife and his minor daughter had been travelling there was no other vehicle involved in the accident. CW-1's minor son being passenger of the said public service vehicle is not likely to contribute to the cause of accident. Thus the question of contributory negligence on the part of the claimant's minor son is ruled out. Thus in the light of the evidence of CW-1 and CW-2, an eye witness I am inclined to hold that the accident in which the claimant's minor son 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 from the deposition of CW-1 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 as to the validity of contract of insurance with the owner of the three wheeler nor sought to defend itself on the ground 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 have come across the advice slip, ext-4, issued by Bilasipara SHC prescribing some medicines and the discharge slip, ext-6 showing that Hazarat Ali had undergone treatment from 11-02-2012 to 13-02-2012 at Dhubri 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 the claimant's minor son. Thus considering Hazarat Ali, the minor son of the claimant has been shown as injured in ext-1 AIR in form No.54, I am inclined to hold that the injured had received simple injury and accordingly allow a sum of Rs. 5,000/- on the head of pain and sufferings. Coming to allowing compensation on the pecuniary head of expenditures, claimed to have incurred by the claimant, I am inclined to allow Rs. 2,500/- on the head of expenditure incurred on medical treatment, on the basis of ext-7 and 8. I am inclined to hold that the above amount allowed in compensation to be 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. 2,500/- = Rs. 7,500/- (Rupees Seven Thousand Five Hundred) 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.198/2012

Claimant's witness : CW-1 Aharuddin Sk

CW-2 Sokina Bibi

Exhibits

Ext-1 Accident Information Report in Form
No.54

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

Ext-8 Cash memo

Member: MACT: Dhubri.