

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

MAC Case No.22/2013

Parties:-

Saker Ali
S/O: Late Tapa Sk
VILL: Pasuarkhal Part-II
P.S: Bilasipara
Dist: Dhubri, Assam
..Claimant

Vs.

1.Sri Alok Mukherjee
S/O: Amulya Mukherjee
VILL: Bagribari
P.O. & P.S: Bagribari
Dist: Kokrajhar, BTAD
(Owner of the Bus No.17/1279)

2.Monohar Roy
S/O: D. Roy
VILL: Paglahat
P.S: Golakganj
Dist: Dhubri, Assam
(Driver of the Bus No.AS-17/1279)

3.The Branch Manager
Oriental Insurance Company Limited
Dhubri Branch

4.Jamidar Prasad Mehta
S/O: Mahabir Mehta
18 Gaon Kurha P.S. No.579 Chak
Hazaribag, Jharkhand
(Owner of the Truck No.JH-02-R/4329)

5.Prabhu Mehta
S/O: Sri Kedar Prasad Mehta
VILL: Kurha
P.O. & P.S: Easar
Dist: Hazaribag, Jharkhand
(Driver of the Truck No.JH-02-R/4329)

6.The Branch Manager
ICICI Lambard General Insurance Company Limited
Guwahati Branch
Mayur Garden, 4th Floor
ABC Bus Stop, G.S. Road
Guwahati-5

..Opp.

Parties

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

Appearance:-

Sri Naser Ali Sk, Advocate for the claimant

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

Sri Dibakar Ghosh, Advocate for OP No.6

Date of hearing : 13-12-2017

Date of judgment: 21-12-2017

Judgment

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

The claimant's case in brief is that on 17-04-2012 at around 8:00 AM the claimant was a passenger on the board of the passenger bus bearing registration No.AS-17/1279 on his way from Pasuarkhal to Bilasipara Town. On the way on NH-31 at Bangalipara Tiniali under Balasipara P.S. the said Bus came into head on collision with a truck bearing registration No.JH-02-R/4329. As a result of the accident the claimant had sustained injuries comprising fracture of

proximal humerus of left leg rendering him permanently disabled. Following the accident Bilasipara P.S. Case No.262/12 u/s 279/338/304-A of IPC had been registered. The claimant claims Rs. 5,00,000/- in compensation.

The case proceeded ex-parte against Sri Alok Mukharjee, owner of the bus bearing registration No.AS-17/1279 and Monohar Roy, the driver of the said bus.

OP No.3, 4, 5 and 6, the branch manager of Oriental Insurance Company Limited, Dhubri Branch, insurer of the bus, Jamida Prasad Mehta, Prabhu Mehta, ICICI Lambard General Insurance Company Limited, the owner, driver and insurer of vehicle No.JH-02-R/4329 had contested the case by submitting their respective written statements.

OP No.3, insurer of the bus bearing registration No.AS-17/1279 and OP No.6, ICICI Lambard General Insurance Company Limited, insurer of the truck bearing registration No.JH-02-R/4329 had submitted their respective written statements. Both answering insurers in their respective written statements inter-alia denied the contention raised by the claimant. The answering Ops 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 Ops in their respective written statements claim exemption on the ground of violation of specified conditions of policy as envisaged in Section 149 (2) (a) (i) of the M.V. Act. Thus, the answering O.Ps are not liable to indemnify their respective insured in the payment of compensation to the third party.

OP No.4 and 5, the owner and driver respectively of the vehicle bearing registration No.JH-02-R/4329 also inter-alia denied the contention raised by the claimant in their joint written statements. Answering OPs denied that any accident had taken place at all on 17-04-2012 and also denied that the claimant had sustained injuries in the said accident. Answering OPs also denied that the accident had taken place due to rash and negligent driving of the vehicle No.JH-02-R/4329. According to answering OPs the vehicle was duly insured with Lombard General Insurance Company Limited and compensations, if any, allowed by the learned MACT is to be borne by the insurer of the vehicle.

Upon above pleadings following issues were framed:

- 1 Whether the accident had taken place due to rash negligent driving of the vehicle No.AS-17/1279 (bus) and the vehicle No.JH-02-R/4329 (truck) and the claimant had sustained injuries in the said accident?
- 2 Whether the offending vehicles were insured with M/s. Orietal Insurance Company Limited and M/s ICICI Lombard General 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 two other witnesses. None of the Ops adduce any evidence.

I have heard Sri Naser Ali Sk, learned counsel for the claimant, Sri S.K. Das, learned counsel for OP No.3 and Sri Dibakar Ghosh, learned counsel for OP No.6.

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.

PW-1 had attributed the cause of accident on 17-04-2012 to negligence of the drivers of both the bus he was travelling in and the offending truck. According to PW-1 the accident had resulted due to head on collision between both the vehicles. PW-1 further deposed that after having received initial treatment at Bilasipara Hospital he was admitted into Dhubri Civil Hospital. Subsequently on 20-04-2012 he got admitted into GMCH, Guwahati for treatment where he had undergone treatment for a week. The PW-1 in course of his evidence had exhibited following documents; Form No.54, FIR, certified copy of the Charge Sheet of Bilasipara P.S. Case No.262/12, certified copy of the injury report, attendant card of Dhubri Civil Hospital, discharge slip of Dhubri Civil Hospital, X-Ray report dated 18-04-2012, advice slip of GMCH, Guwahati, ECG report, GMCH, Guwahati, requisition slip for X-Ray at GMCH, Guwahati, pathological report of GMCH, Guwahati, advice slip of GMCH, prescription of Dhubri Civil Hospital, prescription of Dr A.M. Sk, advice slip of Bilasipara CHC, pathological report and prescriptions. Ext-1 to 19 are those documents relating to report on diagnosis with regard to injuries sustained by the claimant. Ext-22 to ext-41 are the money receipts and cash memos, the claimant claimed to have obtained in lieu of expenditure incurred on his medical treatment.

In his cross examination PW-1 admitted not having produced the disability certificate in the instant case but claimed to have received injuries while still being a passenger inside the bus that had come in to head on collision with the truck. He denied the suggestion that the Oriental Insurance Company Limited is not liable to pay compensation.

In his cross examination by ICICI Lombard General Insurance Company Limited PW-1 had claimed that at the time of the alleged occurrence the bus was in motion. PW-1 had attributed the cause of accident to negligence of drivers of both the truck and the bus. He denied the suggestion that ICICI Lombard General Insurance Company Limited is not liable to bear the compensation.

PW-2, Fazal Hoque, a day labourer, had been travelling in a trolley of a tractor that was trailing the bus where the claimant Saker Ali was travelling in as a passenger. He then suddenly saw the bus coming into head on collision with a truck. He was aware of injuries sustained by the claimant.

In his cross examination by ICICI Lombard General Insurance Company Limited, the PW-2 had denied the suggestion that he did not see the alleged occurrence. In his cross examination by Oriental Insurance Company Limited PW-2 admitted not having been examined by police about the accident and admitted not being aware about any case, registered by the police, following the accident. PW-2 reiterated to sitting in the trolley of a tractor that was trailing the bus from a distance of around 30 to 40 feet from the place of accident. He had seen the truck coming from the opposite direction and striking the bus.

PW-3, Dr Rabindra Sarma in his evidence stated to have prepared and issued ext-4, injury report in respect of injuries sustained by injured Saker Ali following his examination by him. According to PW-3 he had found 1/3rd of left humerus of Saker Ali fractured as per X-Ray done and he had also found lacerated injury on the scalp. According to PW-3 injury No.1 was grievous resulting from blunt impact. Ext-5, discharge slip issued by Dhubri Civil Hospital to Saker Ali bear his signature also the signature of Superintendent of Dhubri Civil Hospital.

In his cross examination PW-3 had reiterated to Saker Ali having undergone treatment at Dhubri Civil Hospital from 17-04-2012

to 20-04-2012. PW-3 stated to have examined the injured Saker Ali for the first time on 17-04-2012.

Now, as per the Charge Sheet, ext-3 drivers of both vehicles involved in the accident had been charge sheeted. A prima facie case of negligence is found established against drivers of both vehicles, the bus bearing registration No.AS-17/1279 and the truck bearing registration No.HR-02-R/4329. PW-1, the injured Saker Ali had been a passenger of the bus involved in the accident and PW-2, Fazal Hoque a passenger in a trolley of a tractor trailing the bus involved in the accident are both eye witnesses. Both PW-1 and PW-2 attributed the cause of accident to head on collision between both vehicles and to negligence of drivers of both vehicles. Thus the evidence in ext-3 and the oral testimony of both PW-1 and PW-2 clearly indicate that the injuries sustained by the claimant is attributable to composite negligence on the part of drivers of both vehicles.

Coming to issue No.2, ext-1 AIR in form No.54 indicates that the offending truck No.JH-02-R/4329 and the offending bus No.AS-17/1279 had been insured with ICICI Lombard General Insurance Company Limited and Oriental Insurance Company Limited respectively. The validity of the insurance policy cover in respect of the bus bearing registration No.AS-17/1279 had been effective from 08-10-2011 to midnight of 07-10-2012 and the validity of the insurance policy cover in respect of truck No.JH-02-R/4329 had been effective from 30-09-2011 to midnight of 29-09-2012. Considering no rebuttal evidence has been adduced disputing the contract of insurance with the insured, by insurers of both vehicles I am inclined to hold that both vehicles involved in the accident had valid and effective insurance policy cover on 17-04-2012, the day of the alleged occurrence. Both these issues are accordingly decided in favour of the claimant.

ISSUES 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 I am inclined to rely on the evidence of PW-3 Dr Rabindra Sarma under whom the injured had undergone treatment at Dhubri Civil Hospital vis-à-vis ext-4 issued by him. Thus in absence of any permanent disability having been suffered by the claimant the tribunal is not required to ascertain the future loss of earnings of the claimant. Thus the assessment of compensation to be paid is confined to the nature of injuries sustained by the claimant. Now, in the present case Saker Ali is reported to have had his 1/3rd of his left humerus fractured and laceration on the scalp. The evidence of PW-3, the doctor who had issued ext-4 injury report and under whom the claimant is reported to have received treatment does not indicate continuous treatment required by the injured. Further going by nature of injuries sustained, it does not appear that the injured claimant was required to forego his daily activities for long considering the time required for recovery from a simple fractured injury should not be more than thirty days. Thus accordingly I am inclined to assess the compensation to be awarded under non-pecuniary head of pain and sufferings to the tune of Rs. 25,000/- as the injury sustained by the injured claimant though is grievous injury but there is no medical certificate on record produced by the claimant injured with regard to any permanent disability suffered by the claimant as a result of the injury sustained by him.

Coming to the assessment of compensation on the pecuniary head of expenditure incurred on medical treatment I am inclined to allow following expenditures incurred on medical treatment; Rs. 200/- vide ext-15, Rs. 200/- vide ext-22 money receipt, Rs. 581/- vide ext-24, 581/- vide ext-25, Rs. 1044/- vide ext-26, Rs. 122/- vide ext-27, Rs. 993/- vide ext-28, Rs. 170/- vide ext-29, Rs. 150/- vide ext-30, Rs. 50/- vide ext-31, Rs. 110/- vide ext-32, Rs. 150/- vide ext-33, Rs. 198/- vide ext-34, Rs. 639/- vide ext-35, Rs. 2,362/- vide ext-37, Rs.2831/- vide ext-40 totalling Rs. 10,181/-. I find that price of medicines in cash memos, ext-38 and ext-39 are not only inflated but

also have not been supported by proper prescriptions. In addition I am inclined to allow Rs. 5,000/- on loss of income during treatment.

Now, coming to issue by whom payable, the learned advocate for the OP No.3 and 6, Oriental Insurance Company Limited and ICICI Lombard General Insurance Company Limited had claimed that this being a case where injured had no role to play in the cause of the accident and as such the question of contributory negligence of the injured is not required to be looked into. The tribunal's decision in issue No.1 that injuries sustained by the injured in the accident having resulted from composite negligence of two wrongdoers, in the present case the drivers of both vehicles involved in the accident, both insurers are jointly and severally liable to pay the compensation.

The legal principle behind composite negligence had been discussed in the decision of Hon'ble Justice - Ranjan Gogai while disposing the Civil Appeal No. 5906 of 2008 in para 6 of the decision. Which runs as such "6 The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:-

"WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent

defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous.....”

In another decision of Hon’ble Supreme Court, Khenyei – Vs- New India Assurance Co. Ltd. and others as reported in “2015(2) T.A.C. 677(S.C.) it was held in Para No. 14 as such” 6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong doers. In such a case, each wrong doer, is jointly and severally liable to the injured for the payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case the injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately.

In the light of the law laid down in above decisions it is clear that where the injuries sustained by the injured results from composite negligence of two or more wrong doers the injured is not required to establish the tort feisor, for whose negligence he had received his injuries, he can claim compensation against both or any of them. This being the position both insurers of offending vehicles are jointly and severally are liable to pay the compensation allowed, apportionment not being contemplated in a case of composite negligence.

ORDER

In the result, claim petition is allowed awarding Rs. 25,000/- on the head of pain and sufferings + Rs. 10,181/- on the head of expenditure incurred on medical treatment + Rs. 5,000/- on the head of loss of income during treatment = Rs. 40,181/- (Rupees Forty Thousand One Hundred Eighty One) only to the claimant payable through an account payee cheque by OP No.3 and OP No.6 jointly and severally, apportionment of the award allowed not being contemplated in a case of composite negligence the claimant may realize the total

amount of compensation awarded from one of the insurance companies. 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. 10-06-2013.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.22/2013

Claimant's witness : PW-1 Saker Ali

PW-2 Fazal Hoques

PW-3 Dr Rabindra Sarma

Exhibits

Ext-1	Accident Information Report in Form
No.54	
Ext-2	Certified copy of FIR
Ext-3	Certified copy of Charge Sheet
Ext-4	Certified copy of Injury Report
Ext-4 (A)	Attendant Card
Ext-5	Discharge Slip of Dhubri Civil Hospital
Ext-6	X-Ray Report
Ext-7	Advice Slip of GMCH, Guwahati
Ext-8	ECG Report
Ext-9	Requisition Slip
Ext-10 & 11	Pathological reports
Ext-12 to 16	Advice slip and prescriptions
Ext-17	Medical Certificate

Ext-18

Ext-19 & 21

Ext-22 & 23

Ext-24 to 40

Ext-41

Advice Slip

Pathological report and prescriptions

Money Receipt and Advice Slip

Cash Memos and Money Receipts

X-Ray Plate

Member: MACT: Dhubri.