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

MAC Case No.387/2009

Parties:-

Md. Sopial Hoque
S/O: Late Abdur Rashid
VILL: Pathuria
P.S: Mankachar
Dist: Dhubri, Assam

..Claimant

Vs.

1.Md. Zakir Hussain

VILL: Diara

P.O: R.M. Hat

Dist: Dhubri, Assam

(Owner of the Tempo No.ML-08-A/7309)

2.The Bajaj Allianz General Insurance Company Limited

3.Ranjan Kumar Singh
VILL: Tilapara
P.O. & Dist: Goalpara, Assam
(Owner of the Motor Cycle No.AS-18-A/1988)

4.The United India Insurance Company Limited
Represented by Bongaigaon Divisional Office ..Opp. Parties

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

Appearance:-

Sri A.Q. Ahmed, Advocate for the claimant

Sri B.K. Das, Advocate for OP No.4

Date of hearing : 29-11-2017

Date of judgment: 04-12-2017

Judgment

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

The claimant's case in brief is that on 13-11-2007 at about 10:00 AM the claimant was on his way from Jhalorchar Bus Stand towards Hatsinghimari in an auto rickshaw bearing registration No.ML-08-A/7309. On the way at Sonapur, on PWD Road, the auto rickshaw, the claimant was travelling in had come into collision with a motor cycle bearing registration No.AS-18/1988 coming from the opposite direction. The claimant attributed the cause of accident to negligence of both vehicles. The claimant had received his initial treatment at Gajarikandi PHC and later at Dhubri Civil Hospital. Hence this claim for compensation.

The claim against OP No.2, Bajaj Allianz General Insurance Company Limited, insurer of the auto rickshaw bearing registration No.ML-08-A/7309 had been settled in the Lok Adalat, the claimant having received Rs. 30,000/- in compensation with 6% interest per annum till payment.

The case proceeded ex-parte against Ranjan Kumar Singh, owner of the motor cycle No.AS-18-A/1988.

OP No.4, United India Insurance Company Limited contested the case by submitting 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. The answering OP claims to defend itself and claims to be exempted on the proof of violation of specified conditions of policy u/s 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/7309 (Auto Rickshaw) and the vehicle No.AS-18-A/1988 (Motor Cycle) and the claimant had sustained injuries in the said accident?
2 Whether the offending vehicle was insured with M/s. Bajaj Allianz General Insurance Company Limited and United India Insurance Company Limited respectively 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.4 did not adduce any evidence.

I have heard Sri A.Q. Ahmed, learned counsel for the claimant and Sri B.K. Das, learned counsel for OP No.4.

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

DECISION AND REASONS THEREOF

Issue No.1 & 2: CW-1, Sofiul Hoque attributed the cause of accident on 13-11-2007 in which he had sustained injuries to rash and negligent manner both auto rickshaw bearing registration No.ML-08-A/7309 and motor cycle No.AS-18/1988 were being driven at the relevant point of time. So according to CW-1 the injuries he had sustained in the accident had resulted from composite negligence of drivers of above vehicles involved in the accident. CW-1 who claimed to be a passenger inside the auto rickshaw is not definitely a party to the cause of accident. Had he been a party, then only the question of contributory negligence of the claimant in causing the accident will come in for consideration.

However, in his cross examination CW-1 admitted to the Charge Sheet in the criminal case, registered following the accident, the driver of the auto rickshaw he was travelling in had been charge sheeted since prima facie case of negligence was found well established against him. He also admitted having received Rs. 30,000/- in his claim against Bajaj Allianz General Insurance Company Limited, that had been settled in the Lok Adalat. He also admitted though he claimed having spent Rs. 25,000/- on his medical treatment he failed to produce expense vouchers with regard to his medical treatment. However, Charge Sheet has not been produced in evidence.

Thus in view of the evidence of CW-1 it is established that the accident in which the claimant had sustained injuries had resulted due to composite negligence on the part of the drivers of the auto rickshaw and the driver of the two wheeler.

Coming to issue No.2, ext-1 AIR in Form No.54 reveals that the vehicle auto rickshaw, bearing registration No.ML-08-A/7309, had been insured with Bajaj Allianz General Insurance Company Limited with insurance policy No.CW0610182927 and the validity of the insurance policy had been effective till 14-02-2008.The motor cycle, bearing registration No.AS-18-A/1988 that was involved in the accident

had been insured with United India Insurance Company Limited Goalpara Branch with policy No.130604/31/06/01/00004445 and the validity of the insurance policy cover had been effective till 19-03-2008. Neither OP No.2, the insurer of the auto rickshaw nor OP No.4, the insurer of the two wheeler had adduced any evidence disputing the validity of respective insurance policy covers of both offending vehicles. These two issues are accordingly decided in favour of the claimant.

ISSUE No.3 & 4: Coming to issues with regard to assessment of just compensation and by whom payable I come to ext-2. Ext-2 is the injury report issued by Medical and Health Officer of Gajarikandi PHC following examination of Sofial Hoque on 13-11-2007 for injuries sustained by him in a road traffic accident. As per ext-2 the injured is reported diagnosed with both grievous and simple injuries but the injury report is not supported by any X-Ray report. Ext-8 the prescription issued by Medical and Health Officer, Gajarikandi PHC on 13-11-2007 reveals that X-Ray was advised and the injured was also referred to Dental Surgeon of Dhubri. The advice slip, ext-10 of Dhubri Civil Hospital where the injured was examined at the OPD again shows that X-Ray of left lateral oblique view of mendable had been advised and fracture of permanent teeth of the injured had been reported. X-Ray plate ext-11 shows fracture of upper premolar on the upper jaw. But the X-Ray plate is not accompanied by X-Ray report. However, considering the opinion of doctor dated 16-11-2007 in ext-10, revealing fracture of permanent teeth, I am inclined to hold that the X-Ray plate relates to the opinion of the doctor in ext-10 and am inclined to assess the compensation on the non-pecuniary head on basis of pain and suffering the claimant was required to withstand knowing fully well that he is not going to get back his lost teeth. Thus I am inclined to allow Rs. 30,000/- on the non-pecuniary head of pain and sufferings. There are no medical vouchers seen on the record produced by the claimant along with his affidavit. Thus the tribunal is not required to grant compensation on the pecuniary head. I am not inclined to allow any

compensation on the head of loss of income during treatment as the injured was not required to be admitted in to any hospital and loss of tooth definitely would not pose a hindrance to pursuing any avocation. Further the injury reported is not serious in nature to consider payment of compensation on the head of loss of amenities.

Now coming to the issue with regard to whom the liability to pay the compensation rest I am first inclined to discuss the law laid down by Hon'ble supreme court with regard to injury or death as the case may be that had resulted to the victim in an accident that had been due to composite negligence of two or more wrong doers and the victim was not a party to the cause. 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 feasor, for whose negligence he had received his injuries, he can claim compensation against both or any of them. The claimant, since he has claimed compensation against insurers of both offending vehicles (OP-2, Bajaj Allianz General Insurance Company Ltd andOP-4,United India Insurance Company Ltd / owners), has the option to claim the total amount from one of the insurers he chooses. Apportionment of the compensation amount not being contemplated in a case where the claimant had sustained injuries due to composite negligence of drivers of both vehicles in the light of the legal principles applicable when the compensation is to be paid jointly and severally by both insurers.

ORDER

In the result, claim petition is allowed awarding Rs. 30,000/- (Rupees Thirty Thousand) only to the claimant payable by OP No.2 and 4, jointly and severally through an account payee cheque.

Now, in the present case the claimant had already received Rs. 30,000/- in a settlement at the Lok Adalat from OP No.2, Bajaj Allianz General Insurance Company Limited and as such the compensation of Rs. 30,000/- allowed above is said to have been paid in full and final settlement of the entire amount of compensation allowed in the present case.

Dictated & corrected by me

Member, MACT, Dhubri. Member, MACT, Dhubri.

APPENDIX

MAC No.387/2009

Claimant's witness : CW-1 Sopial Hoque

Exhibits

Ext-1	Accident Information Report in Form No.54
Ext-2	Injury Report
Ext-3	Copy of the FIR (PIO)
Ext-4	Copy of Seizure List (PIO)
Ext-5 & 6	Copy of MVI Report (PIO)
Ext-7 & 8	Prescriptions of Gajarikandi PHC
Ext-9 & 10	OPD Slips of Dhubri Civil Hospital
Ext-11	X-Ray Plate

Member: MACT: Dhubri.