

HEADING OF JUDGMENT AND AWARD IN M.A.C. CASES :  
BEFORE THE MEMBER, MOTOR ACCIDENT CLAIM TRIBUNAL,  
GOLAGHAT.

**Ref. :** MAC Case No. 55/2007.

Sri Arjun Bawri.

Represented by -

Sri Kelton Bawri ..... Claimant.

Vs.

1. Md. Arifur Rahman,

2. Sri Bijoy Swaraj,

3. The Branch Manager,

The New India Assurance Co. Ltd.

Nagaon Branch,

Nagaon.

..... Opposite parties.

Date of final hearing ..... 20.11.2013.

Date of Judgment &  
Award. .... 20.11.2013.

For the Claimants ..... Mr. R.N. Baksh,  
Advocate, Golaghat.

For the Opposite parties ..... Mr. P. K. Borthakur,  
Advocate, Golaghat.

P R E S E N T :  
SHRI T. LOHAR,  
MEMBER, M.A.C.T.,  
GOLAGHAT.

**J U D G M E N T :**

1. Sri Arjun Bawri, Son of late Ganesh Bawri, resident of Numaligarh Tea Estate, Borline, Police station Bokakhat, district Golaghat filed an application u/s 163-A of the M.V. Act against the opposite parties Md. Arifur Rahman, the owner of vehicle No. AS-02-A/1247 (Bus), Sri Bijoy Swaraj, the driver of the said vehicle and the Branch Manager, New India Assurance Co. Ltd., Nagaon Branch, the insurer of the aforesaid vehicle claiming total amount of compensation of Rs. 8,08,000'00 for the injury sustained by him in a motor vehicle accident which was occurred on 13.11.2006 at around 1 P.M.

2. The facts giving rise to this proceeding, in brief, is that on 13.11.2006, at around 1 P.M., while Arjun Bawri was travelling from Numaligarh towards Babathan by Bus No. AS-02-A/1247 as a fair paid passenger, on the way, the driver (O.P. No.2) who was driving the siad vehicle started to move suddenly before the claimant could enter into the vehicle. As a result, the claimant fell down from the bus and the rear wheel of the said bus ran over on his right leg and he sustained fracture injury. After the accident, the injured/claimant was taken to Kushal Konwar Civil Hospital, Golaghat. On 16.11.2006, he was admitted at Assam Medical College & Hospital, Dibrugarh and discharged on 19.1.2007. The claimant was advised to check-up after one month and to continue to take medicine. As a result of the injury sustained by him, he became a permanent disabled person and lost his earning capacity at 100%. He was working as a helper of mason and he used to earn Rs.2,600/- per month. After the accident, he is totally unfit to the job of helper or any other works.

3. The O.P. No.3, the New India Assurance Co. Ltd. on receipt of the notices of this case, appeared before the Tribunal and contested the case by submitting the written statements stating inter-ali that the answering O.P. No.3 is the insurer of the vehicle No. AS-02-A/1247 (Bus), but no information about the alleged accident was obtained by the said answering opposite party. The answering O.P. No.3 has challenged the age, monthly income and occupation of the injured/claimant. Apart from it, the O.P. No.3 has stated that the claimant was not a fare paid passenger of the impleaded vehicle. That the claimant has never sustained injury nor admitted in the hospital and nor incurred the amount of Rs.45,000/- for the injury sustained by him. The O.P. No.3 has further stated

that the vehicle was duly insured with this answering opposite party vide Policy No. 530701/31/05/82446 covering the risk from 24.12.2005 to 23.12.2006. That the amount of compensation as claimed by the claimant is highly excessive and the same is not based on law. That the driving licence of the O.P. No.2 has not been mentioned in the claim petition. Under the aforesaid grounds, the O.P. No.3 prays for dismissal of the claim petition.

4. The O.P. No.1, the owner of the vehicle No. AS-02-A/1247 (Bus) also contested the case by submitting the written statement stating inter-alia that there is no cause of action to file the case ; the case has not been filed by the proper person ; further the case is bad for non-joinder and mis-joinder of necessary party and the case is barred by limitation. Further, the O.P. No.1 admitted that the vehicle in question was duly insured with the O.P. No.3 vide Policy No.530701/31/05/82446, valid up-to 23.12.2006.

5. The O.P. No.2 did not contest the case.

6. After hearing from both the sides, the following issues are framed to decide the claim case.

#### ISSUES :

- (1) Whether the claim petition is maintainable in law ?
- (2) Whether the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing Regd. No. AS-02-A/1247 (Bus) ?
- (3) Whether the claimant is entitled to get any compensation? If so, what is the quantum of compensation and from whom ?
- (4) Any other relief/reliefs ?

7. The claim petition on behalf of Arjun Bawri was filed by his brother Kelton Bawri. During trial, Arjun Bawri, the injured person in the instant case, has submitted his affidavit evidence U/O 18 Rule 4 of CPC as C.W.1. and claim/petitioner Kelton Bawri has submitted his affidavit evidence as C.W.2. The Doctor has been examined as C.W.3. The opposite party did not adduce any evidence.

All the C.Ws. have been thoroughly cross examined by the learned counsel of the opposite party.

8. Heard argument of both the sides.

**DISCUSSIONS, DECISION AND REASON**

**THEREOF** :

9. Let me decide the aforesaid issues on the basis of the evidence on record.

**ISSUE NOS. 1 & 2** :

10. Both the Issues No. 1 and 2 are taken up together for discussions as both the issues are interrelated to each other.

11. As the claimant filed the claim petition u/s 163-A of the M.V. Act, hence, the fact of rash and negligent driving on the part of the driver of the offending vehicle is not requires to be proved in this case. C.W.1, who is the injured person in this case, has exhibited the accident report, Admission and Prescriptions of Vivekananda NRL Hospital, dated 13.11.2006, Diagnosis, prescriptions, referral certificate, discharged certificate of AMCH, dated 17.7.07, Diseases, treatment, Instruction to patient, prescriptions from Sl. No. 4(1) to 4(18), pathological reports, Disability certificate, cash memos and receipts, X-Ray report of AMCH, Dibrugarh, X-Ray report (AP & Lat.) view of right leg, X-Ray rept (AP & Lat.) view of right leg of M/S Devi X-Ray Clinic, X-Ray(AP & Lat.) of right foot, X-Ray (AP & Lat.) view of ankle joint, X-Ray (AP & Lat.) view of Patella, X-Ray (AP & Lat.) view of right leg, X-Ray of chest from Ext-1 to Ext-20. Ext-1 the accident report which was given by the I/C of Numaligarh police Out Post stating that the occurrence took place on 13.11.2006 at 1 P.M. on NH-39 in front of Babathan and the offending vehicle No. AS-02-A/1247 (Bus) driven by Bijoy Swaraj (P.W.2) was involved in the said accident. The O.P. No.1 is shown as the owner of the said vehicle. Sri Arjun Bawri shown as the injured person in this case. The said vehicle was insured with the O.P. No.3 , the New India Assurance Co. Ltd. vide Policy No. 530701/31/05/82446, valid up-to 23.12.2006. The particulars of driving licence of the O.P. No.2 is 10202/N/Pvt./88, valid up-to 10.6.2007. The said licence was issued by DTO, Nagaon. The contents of Ext-1 has not been challenged by the opposite party. From the contents of Ext-1, it is found that the accident took place on 13.11.2006 at around 1 P.M. on NH-39, in front of Babathan, Numaligarh, where the vehicle No. AS-02-A/1247(Bus) was involved in the

accident. The O.P. No.1 is the owner of the said offending vehicle, whereas, the O.P. No.2 was the driver of the said vehicle. The O.P. No.3 is the insurer of the said offending vehicle. The injured was sustained injury in the road accident caused by the said offending vehicle. Hence, the claimant has sufficient cause to file the claim application u/s 163-A of the M.V. Act to get the compensation.

Hence, both the issues are decided in affirmative.

**ISSUE NOS. 3 & 4. :**

12. Both the issues No. 3 and 4 are interrelated to each other, therefore, both the issues are taken up together for discussions.

13. As I have already stated while deciding the Issue Nos. 1 and 2 that the injured/claimant has sustained injury in the road traffic accident, therefore, he is entitled to get the compensation. The O.P. No.3, the New India Assurance Co. Ltd., Nagaon Branch, is the insurer of the said offending vehicle and at the time of accident, the said vehicle was duly insurance coverage with valid insurance policy. The O.P. No.3 also admitted in their written statement that the vehicle in question, in the instant case, was duly insured with them. Therefore, the O.P. No.3 is liable to pay the compensation, if any, to the injured/claimant.

14. The claimant/injured has stated in his claim petition as well as, in his affidavit evidence that prior to the accident, he was working as helper of mason and he used to earn Rs.2,600/- per month. But no documentary evidence has been submitted to prove the said fact. As per the evidence of C.W.3, the Medical Officer, it is found that the injured/claimant became permanent physical disablement extended to 45% and accordingly, C.W.3 issued the physical disability certificate vide Ext-6.

In cross examination, C.W.3 has stated that the age of the injured person has been recorded as 55 years in Ext-6, the physical disability certificate. No document has been submitted by the claimant to prove that at the time of accident, the age of the injured/claimant was 25 years old. As no document has been submitted to prove the actual age of the claimant, for the sake of justice, the age of the injured/claimant at the time of accident should be assumed as 50 years. Except Ext-6, the physical disability certificate, there is no other document found in the record for consideration of the fact that the injured/claimant has been suffering from 45% permanent physical disablement. We can

not solely rely on the Ext-6 for holding that the injured/claimant sustained 45% physical disablement in absence of other medical documents evidencing the said fact. For the sake of justice of both the parties, as well as after considering other medical papers, we can safely be assumed that the injured/claimant has been suffering from 30% physical disablement.

15. The injured/claimant has stated that at the time of accident, he was working as helper of mason and used to earn Rs.2,600/- per month. We all know that a person at the age of 50 years, working as a helper of mason, can easily earn Rs.100/- per day. In the claim petition, it is stated that the injured/claimant used to earn Rs.2,600/- per month by working as helper of mason. We can safely accept the said version of the claimant. The claimant/injured has been suffering from 30% physical disablement. Therefore, the claimant/injured has lost Rs.780/- per month. The claimant lost his income Rs.780/- X 12 = Rs.9,360'00 per year. In the age group of 50 years, the appropriate multiplier would be 13. Hence, the amount comes to -

$$\begin{aligned} & \text{Rs. } 9,360'00 \times 13 \\ & = \text{Rs. } 1,21,680'00. \end{aligned}$$

The claimant has stated in the claim petition, as well as, in his affidavit evidence that he incurred Rs.45,000/- for his medical treatment due to injury sustained by him in the motor vehicle accident. But no expenditure statement has been submitted by the claimant. As the Motor Vehicle Act is a beneficial and social legislation, so, without hesitation, we can accept the said version of the claimant that he had incurred Rs.45,000/- for his medical treatment due to the injury sustained by him in the motor vehicle accident. Therefore, he is entitled to get the said amount. Apart from it, the claimant is entitled to get Rs.20,000/- on the head of Pain & sufferings, Rs.20,000/- for the lost of amenities of life and Rs.20,000/- for the future costs of his medical treatment. Hence, the claimant/injured is entitled to get the total amount of Rs.2,26,680'00 (Rupees two lakhs twenty six thousand six hundred eighty)only, as compensation.

16. The O.P. No.3, the New India Assurance Co. Ltd., the insurer of the aforesaid offending vehicle is liable to pay the aforesaid amount of compensation to the claimant.

17. In my considered opinion, the above amount of Rs.2,26,680'00 (Rupees two lakhs twenty six thousand six hundred eighty) only, would be the

just and reasonable amount of compensation in the instant case.

Accordingly, both the issue Nos. 3 and 4 are decided in affirmative.

**ORDER :**

18. In the result, the claim petition is allowed on contest against the O.P. No.3, the New India Assurance Co. Ltd. for the amount of Rs. 2,26,680'00 (Rupees two lakhs twenty six thousand six hundred eighty)only, to be paid to the claimant Sri Arjun Bawri along with simple interest @ 6% per annum from the date of filing of the claim application, i.e. from 16.3.2007 till realisation of the entire amount. The O.P. No.3 shall deposit the awarded compensation with interest thereon in the Claim Tribunal within 60 days from the date of the judgment and award.

19. Let a copy of the judgment & Order be sent to the O.P. No.3, the New India Assurance Co. Ltd., Nagaon Branch, Nagaon for information and necessary action.

Given under my hand and seal of the Tribunal on this the 20<sup>th</sup> day of November, 2013.

( T. Lohar),  
MEMBER,  
M.A.C.T., GOLAGHAT.

Dictated & Corrected  
by me.

( T. Lohar ),  
MEMBER,  
M.A.C.T., GOLAGHAT.

Dictation taken & Transcribed  
by me :- S. Borpatra, Steno.