

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL : LAKHIMPUR :
AT NORTH LAKHIMPUR.**

PRESENT : M.A. Choudhury,
Member, M.A.C.T.
Lakhimpur, North Lakhimpur.

MAC CASE NO. 16 OF 2018.

Smti Sunmai Neog. ... Claimant.

-Vs-

1. Md. Khusidgouse Alam. (Driver)
2. Md. Muftahizar Rahman. (Owner)
3. National Insurance Company Ltd.
North Lakhimpur Branch.
North Lakhimpur.
4. Oriental Insurance Company Ltd.
North Lakhimpur Branch.
North Lakhimpur.

... Opposite Parties.

Advocates appeared in the case :

Mr. Tirtha Das, Advocate.	... For the Claimant.
Mr. S.R. Dey, Advocate.	... For the OP No.3, National Insurance Company Ltd.
Mr. S. Sarkar, Advocate.	... For the OP No.4, Oriental Insurance Company Ltd.

Date of hearing Argument. : 13.06.2019.

Date of delivery of Judgment. : 29.06.2019.

J U D G M E N T

1. This claim case arises out of a petition filed by the claimant, Smti Sunmai Neog under section 166 of the M. V. Act, 1988 claiming compensation for the injuries sustained by her husband, Sri Bhupen Neog in a motor vehicle accident on 12.05.2018 involving

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vehicles bearing registration No.AS.07.L/7556 (Scooty) and No.AS.07.J/ 4236 (Hero motorcycle), which were insured with the Opp. Party No.4, Oriental Insurance Company Ltd. and the Opp. Party No.3, National Insurance Company Ltd. respectively.

2. The facts giving rise to this case is that on 12.05.2018 at about 6 pm, the victim, Sri Bhupen Neog was coming to his house from Moidomia market by riding a scooty bearing registration No.AS.07.L/ 7556. At that time, on the way, the motorcycle bearing registration No.AS.07.J/ 4236, which was coming in high speed and also in rash and negligent manner knocked the scooty of Sri Bhupen Neog from his front side in high speed and also in rash and negligent manner. As a result, Sri Bhupen Neog fell down on the road with the scooty and sustained grievous injuries upon different parts of his body. Soon after the accident, the local people assembled and forwarded him at North Lakhimpur Civil Hospital. From North Lakhimpur Civil Hospital, on 14.05.2018, Sri Bhupen Neog was taken to Mid Town Hospital & Research Institute, North Lakhimpur, where he had undergone treatment as indoor patient. Due to the accident, Sri Bhupen Neog sustained fracture injuries over the patella of his right leg as well as tibia. Regarding the accident, a case was registered vide North Lakhimpur P.S. Case No.524/2018 under Sections 279/ 338/ 427 IPC.

3. The all Opp. Parties contested the case by filing their written statements.

4. The Opp. Party No.1, Md. Khusidgouse Alam, the driver of the motorcycle bearing registration No.AS.07.J/ 4236 in his W.S. besides denying all the averments made in the Claim Petition stated that there was no rash and negligent driving of the motorcycle by him at the time of accident. It is stated in the W.S. that the accident had taken place due to negligence of the driver of the scooty. It is also stated that at the time of accident, he had a valid Driving License and the motorcycle was duly insured with the National Insurance Company

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Ltd., and therefore, in case of any liability, it would have to be borne by the Opp. Party No.3, National Insurance Company Ltd..

5. The Opp. Party No.2, Md. Muftahizar Rahman, the owner of the motorcycle bearing registration No.AS.07.J/ 4236 in his written statement, besides denying all the averments made in the Claim Petition stated that at the time of accident, there was no rash and negligent driving of the motorcycle. It is stated in the W.S. that the accident had taken place due to negligence of the driver of the scooty. It is also stated that at the time of accident, the driver of the motorcycle had a valid Driving License and his motorcycle was duly insured with the Opp. Party No.3, National Insurance Company Ltd. and therefore, in case of any liability, it would have to be borne by the Opp. Party No.3, National Insurance Company Ltd..

6. The Opp. Party No.3, National Insurance Company Ltd., the insurer of the motorcycle bearing registration No.AS.07.J/ 4236 in its written statement besides denying all the averments made in the Claim Petition stated that the compensation claimed by the claimant side is excessive, exaggerated and having no real basis. In the W.S. it is stated that in the accident, there was no rash and negligent driving of the motorcycle. The accident had taken place due to the negligence of the driver of the scooty. It is further stated that the Insurance Company would not be liable to pay any compensation until and unless, it is proved that the driver of the motorcycle bearing registration No.AS.07.J /4236 had the a Driving License and the conditions of the Insurance policy were not violated by the insured i.e., the owner of the motorcycle.

7. The Opp. Party No.4, Oriental Insurance Company Ltd., the insurer of the scooty bearing registration No.AS.07.L/ 7556 in its written statement besides denying all the averments made in the Claim Petition stated that the accident had taken place due to the fault of the motorcycle bearing registration No.AS.07.J/4236, which was

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insured with the Opp. Party No.3, National Insurance Company Ltd. Therefore, the Opp. Party No.4 has no liability in the case.

8. Upon the pleadings of both sides, the following issues were framed for the just decision of the case:

- I) Whether Sri Bhupen Neog sustained injuries in the alleged motor vehicular accident dated 12.05.2018 involving vehicles bearing registration No. AS.07.L/7556 (scooty) and No.AS.07.J / 4236 (Hero motorcycle), and whether the said accident had taken place due to rash and negligent driving of the aforesaid offending vehicles?
- II) Whether the claimant side is entitled to any compensation, and if yes, to what extent and by whom amongst the Opp. Parties, the said compensation amount will be payable?

9. To prove the case, the claimant side examined 2 (two) witnesses. The Opposite Party side examined no witness.

10. Heard Argument from the learned advocates of both sides. Perused the materials on record and upon consideration of the same, the issues are decided as under :

11. **ISSUE NO.1**

The claimant, Smti Sunmai Neog is the wife of the victim, Sri Bhupen Neog. The claimant, Smti Sunmai Neog has been examined as Claimant Witness No.1 and the victim Sri Bhupen Neog has been examined as Claimant Witness No.2. The claimant, Smti Sunmai Neog has averred in the Claim Petition and also stated in her evidence that the victim, Sri Bhupen Neog is her husband. The claimant, Smti Sunmai Neog stated in her evidence that on 12.05.2018 at about 6 pm, her husband victim, Sri Bhupen Neog was coming to his

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house from Moidomia market by riding a scooty bearing registration No.AS.07.L/ 7556. She also stated that at that time, on the way, the motorcycle bearing registration No.AS.07.J/ 4236, which was coming in high speed and also in rash and negligent manner knocked the scooty of her husband, Sri Bhupen Neog from his front side in high speed and also in rash and negligent manner, and as a result, her husband Sri Bhupen Neog fell down on the road with the scooty and sustained grievous injuries upon different parts of his body. She also stated that soon after the accident, the local people assembled and forwarded her husband victim, Sri Bhupen Neog at North Lakhimpur Civil Hospital, and from North Lakhimpur Civil Hospital, on 14.05.2018, Sri Bhupen Neog was taken to Mid Town Hospital & Research Institute, North Lakhimpur, where he had undergone treatment as indoor patient. She also stated that due to the accident, her husband Sri Bhupen Neog sustained fracture injuries over the patella of his right leg as well as tibia. She also stated that regarding the accident, a case was registered vide North Lakhimpur P.S. Case No.524/2018 under Sections 279/ 338/ 427 IPC. She in her evidence specifically stated that the accident causing injuries upon the person of her husband, Sri Bhupen Neog had taken place due to rash and negligent driving of the motorcycle bearing registration No.AS.07.J/4236. In support of her oral evidence, she has submitted before the Tribunal, the copy of the Accident Information Report being marked as Ext-4, 4(1) and 4(2), Discharge Certificate -cum- Bill of the victim Sri Bhupen Neog from Mid Town Hospital & Research Institute, North Lakhimpur, being marked as Ext.16, Medical Examination Reports, Advice Slips and cash memos being marked as Ext.5 to 13, Ext.15 and Ext.17 to Ext.28. The factum of the accident involving the motorcycle causing injuries upon the husband of the claimant remains unshaken in her cross-examination.

The Claimant Witness No.2 is the victim, Sri Bhupen Neog. The Claimant Witness No.2, Sri Bhupen Neog in his evidence stated that on 12.05.2018 at about 6 pm, he was coming to his house from Moidomia market by riding a scooty bearing registration

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No.AS.07.L/ 7556. He also stated that at that time, on the way, the motorcycle bearing registration No.AS.07.J/ 4236, which was coming in high speed and also in rash and negligent manner knocked his scooty from his front side in high speed and also in rash and negligent manner, and as a result, he fell down on the road with the scooty and sustained grievous injuries upon different parts of his body. He also stated that soon after the accident, the local people assembled and forwarded him at North Lakhimpur Civil Hospital, and from North Lakhimpur Civil Hospital, on 14.05.2018, he was taken to Mid Town Hospital & Research Institute, North Lakhimpur, where he had undergone treatment as indoor patient. He also stated that due to the accident, he had sustained fracture injuries over the patella of his right leg as well as tibia. He also stated that regarding the accident, a case was registered vide North Lakhimpur P.S. Case No.524/2018 under Sections 279/ 338/ 427 IPC. He in his evidence specifically stated that the accident causing injuries upon his person had taken place due to rash and negligent driving of the motorcycle bearing registration No.AS.07.J/4236. The factum of the accident involving the motorcycle causing injuries upon his person remains unshaken in his cross-examination. The Opp. Party while cross-examining him failed to bring out any reason to show that he has been deposing falsely in the case.

12. The Opp. Party did not adduce any rebuttal evidence. Even the Opp. Party No.1, driver of the motorcycle bearing registration No.AS.07.J/4236, who had personal knowledge regarding the accident only filed written statement in the case and thereafter opted not to face the case and avoided the witness box. In view of the above evidence of the claimant side and in the absence of any evidence contrary there to, there can be no escape from the conclusion that the accident causing injuries upon the person of the victim, Sri Bhupen Neog, had taken place due to rash and negligent driving of the motorcycle bearing registration No.AS.07.J/4236. Hence, the Issue No.1 is decided in favour of the claimant side.

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13. **ISSUE NO.2**

In view of the discussion and decision made in Issue No.1, I am of the opinion that the claimant side is entitled to compensation.

The victim, Sri Bhupen Neog in his evidence stated that due to the accident, he had sustained fracture injury over his right patella and tibia of his right leg. He also stated that due to the injuries sustained by him in the motor vehicular accident, he has not yet recovered. At present, he has been suffering from the aforesaid injuries. In support of the injuries sustained by the victim, Sri Bhupen Neog and the treatment underwent there for, the claimant side has submitted before the Tribunal the Discharge Certificate -cum- Bill of the victim, Sri Bhupen Neog from the Mid Town Hospital & Research Institute, North Lakhimpur, being marked as Ext.16, his X-Ray Report being done at Bailey's Clinic, North Lakhimpur, being marked as Ext.14, the Medical Examination Reports, Advice slips and cash memos being marked as Ext.5 to Ext.13, Ext.15, Ext.17 to 28.

Perused the Ext.16, Discharge Certificate -cum- Bill of the victim, Sri Bhupen Neog from the Mid Town Hospital & Research Institute, North Lakhimpur. From the Ext.16, it is found that the victim, Sri Bhupen Neog got admitted at Mid Town Hospital & Research Institute, North Lakhimpur on 14.05.2018 and he underwent treatment therein as indoor patient till 16.05.2018. From the Ext.16, it is found that the victim, Sri Bhupen Neog had undergone treatment as indoor patient for 2 (two) days at Mid Town Hospital & Research Institute, North Lakhimpur. Ext.14 is the X-Ray Report of the right knee joint (AP & lateral view) of the victim, Sri Bhupen Neog done at Bailey's Clinic, North Lakhimpur. From the Ext.14, it is found that due to the motor vehicular accident, the victim had sustained fracture in the patella and also soft tissue swelling. On a careful scrutiny of the Medical advice slips and cash memos, as mentioned here-in-above, it is found that the

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claimant had incurred an expenditure of Rs.43,926/- only towards the treatment of the victim, Sri Bhupen Neog as medical expenses. As the claimant had undergone treatment as Indoor patient at Mid Town Hospital & Research Institute, North Lakhimpur, from 14.05.2018 to 16.05.2018 i.e., for 2 (two) days, certainly the claimant side had incurred some incidental expenditure towards conveyance, maintaining attendants, special food etc. and therefore, the claimant side is entitled to some amount of pecuniary damages as incidental expenditure. As the victim, Sri Bhupen Neog due to the motor vehicular accident had sustained fracture over his right patella and tibia, so I am of the opinion that the claimant side is entitled to some amount of non-pecuniary damages on account of pain, shock and sufferings under which the victim had to pass over due to the motor vehicular accident. As the victim had sustained fracture of right patella and tibia, so such injuries certainly prevented the victim from performing his day-to-day work for at least 5 (five) months. Therefore, the claimant side is entitled to an amount of Rs.25,000/- towards the head of Loss of Work for 5 (five) months @ Rs.5,000/- per month.

The monthly income of the victim is fixed at Rs.5,000/- only per month as because from the evidence adduced by the claimant side, it is found that the victim is a mason by profession.

14. Having considered the nature of injuries sustained by the victim, Sri Bhupen Neog, the expenditure incurred there for and the facts and circumstances of the case, just and reasonable compensation to which the claimant side is entitled to is assessed as under :-

Medical expenditures -----	Rs. 43,926.00
Incidental expenditures -----	Rs. 10,000.00
Pain, shock and sufferings -----	Rs.1,50,000.00
Loss of Work for 5 months -----	Rs. 25,000.00
(@ Rs.5,000/- per month)	

Total -----	Rs. 2,28,926.00
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15. Because of my discussion and decision made in Issue No.1, it has been established that the accident causing injuries upon the person of the victim, Sri Bhupen Neog had taken place due to rash and negligent driving of the motorcycle bearing registration No.AS.07.J/ 4236, and at the time of alleged accident, the offending motorcycle bearing registration No.AS.07.J/ 4236 was duly insured with the Opp. Party No.3, National Insurance Company Ltd.. Therefore, it is the Opp. Party No.3, National Insurance Company Ltd., the insurer of the motorcycle, will have to satisfy the award.

16. Accordingly, the case is partly allowed on contest with cost.

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17. Rs.2,28,926.00 (Rupees Two Lakhs Twenty Eight Thousand Nine Hundred Twenty Six) only is awarded as compensation to the claimant side with interest @ 6% p.a. from the date of 30.03.2019 i.e., the date of framing of issues till payment. The Opp. Party No.3, National Insurance Co. Ltd., the insurer of the motorcycle bearing registration No.AS.07.J/ 4236, is directed to pay the award to the claimant side within one month from the date of this order. The amount, if any, paid as no fault liability, shall be adjusted.

18. Free copy of the Judgment be given to the both sides forthwith.

19. Given under my hand and seal of this court on this 29th day of June, 2019.

(M. A. Choudhury)
Member, MACT,
Lakhimpur, North Lakhimpur.

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Dictated & corrected by me -

(M.A.Choudhury)
Member, MACT,
Lakhimpur, North Lakhimpur.

Transcribed & typed by-
Sri Satyabrata Kshattri, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE CLAIMANT SIDE :

Claimant Witness No.1 - Smti Sunmai Neog, the claimant of the case.

Claimant Witness No.2 - Sri Bhupen Neog, the victim of the case.

2. WITNESSES EXAMINED BY THE OPP. PARTY SIDE :

Nil.

3. DOCUMENTS PRODUCED IN THE CASE :

Ext.1 - Driving License of the victim, Sri Bhupen Neog.

Ext.2 - Registration Certificate of the scooty.

Ext.3 - Insurance Certificate of the scooty.

Ext.4 - Accident Information Report.

Ext.5 to Ext.13 - Medical advice slips and cash memos.

Ext.14 - X-Ray Report.

Ext.15 - Money Receipt.

Ext.16 - Discharge Certificate -cum- Bill of the victim, Sri Bhupen Neog from Mid Town Hospital, North Lakhimpur.

Ext.17 to Ext.28 - Medical Examination Report, Advice Slips and cash memos etc.

(M. A. Choudhury)
Member, MACT,
Lakhimpur, North Lakhimpur.