

IN THE COURT OF THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR AT TEZPUR

Present : Smti. M. Nandi.,
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur

MAC Case No.01 of 2019(I)

1. Md. Ajgar Ali,
Son of Md. Abbash Ali,
R/O Vill. Batamari,
P.O. Kaliabhumura,
P.S. Tezpur,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Arup Gogoi,
Son of Late Debendra Nath Gogoi,
R/O Vill. Majgaon,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam,
(Owner-cum-driver of the vehicle No.AS-12AC/4078(Dumper)
2. Cholanmandalam M/S General Insurance Co. Ltd.
Guwahati Branch,
Opposite S.B. Deorah College,
Guwahati,
Dist. Kamrup(M), Assam,
(Insurer of the vehicle No.AS-12AC/4078(Dumper)

ADVOCATES APPEARED

For the claimant	:- S. Khan, Advocate.
For the O.P. No. 1	:- B. Borthakur, Advocate.
For the O.P. No.3	:- S.K. Singh, Advocate.

Date of Argument	:- 30-12-2019.
Date of Judgment	:- 02-01-2020.

J U D G M E N T

This is an application u/s 163(A) of M.V Act, 1988 filed by the claimant Md. Ajgar Ali, claiming compensation on account of injuries sustained by his minor son Md. Soleman Ali, in a motor vehicle accident.

1. The brief fact of the case is that on 27-07-2017 at about 1-00 p.m. one Dumper vehicle bearing No.AS-12AC/4078 was repairing at Batamari Air shop and the victim Sulman Ali was watching by touching the vehicle. Suddenly driver of the said vehicle lifted upper side of the vehicle which touched the electric line. As a result electric power spread over the vehicle and right hand of Soleman Ali was burnet. The injured was immediately shifted to Kanaklata Civil Hospital, Tezpur and thereafter he was referred to GMCH, Guwahati wherein he was treated as an indoor patient. Due to infection the right hand of the injured has been amputated and he has become permanently disable and always needs support of one person.

2. After the accident, one case was registered vide Tezpur P.S. case No.1849/17 u/s- 279/338 IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with Cholamandalam M/S General Insurance Co. Ltd.

3. Against the claim petition, O.P. No.1 owner-cum-driver of the alleged offending vehicle bearing No. AS-12AC/4078(Dumper) has submitted written statement and it is submitted that on the date of accident he took his Dumper bearing No.AS-12AC/4078 to Batamari Air shop to repair punctured tyre of the vehicle at about 10-30 a.m. in the morning. To open the punctured tyre he had to held upward the lift of the dumper. At that moment, the lift of the dumper touched the electric line passing and loud sound occurred. Hearing the sound he lowered down the lift and came down from the driving seat. That time O.P.No.1 saw the victim Suleman Ali was shouting by holding his burnet hand. Then the O.P. No.1 took the victim to Kanaklata Civil Hospital, Tezpur for his immediate treatment and at that time the O.P. NO. 1 came to know that the victim was not from the garage but he was playing along with the other village boy behind the dumper. It is further stated that at the relevant time of accident the alleged offending vehicle was duly insured with Cholamandalam M/S General Insurance Co. Ltd. Hence, if any liability arises that will be borne by the insurer of the said vehicle and prayed to exonerate O.P. No. 1 from the liability of paying any compensation to the claimant.

4. O.P. No. 2, Cholamandalam M/S General Insruance Co. Ltd. i.e. insurer of the vehicle bearing No. AS-12AC/4078(Dumper) has submitted written statement wherein it denies the allegation regarding manner in which the alleged

accident said to have occurred. It is denied that on 27-07-2017 the alleged offending vehicle was involved in any accident directly or indirectly which occurred at Batamari under Tezpur P.S. It is further alleged that the son of the claimant was himself negligent and to hide the same an unusual story has been portrayed and prayed to dismiss the claim petition with cost.

5. On the pleadings aforesaid, the following issues were framed –

I. Whether the accident took place on 27-07-2017 at about 1-00 P.M. by use of the vehicle bearing No. AS-12AC/4078(Dumper) and whether Soleman Ali has sustained injury due to the alleged accident?

II. Whether the claimant is/are entitled to get any compensation as prayed for and if so, from whom and to what extent?

6. I have heard argument advanced by Learned Counsel of both sides. I have also perused the documents available in the record.

Issue No. 1

7. The claimant was examined in the case as CW-1 who has reiterated the same thing whatever stated by him in the claim petition.

8. CW-1 has exhibited the following documents-

Ext. 1 accident information report (Form 54).

Ext. 2 to 5 and 8 are documents relating to criminal case.

Ext. 6 to 11(13) are medical documents/cash memo/vouchers etc.

Ext. 12 to 14 are disability certificate/photo of injured/diet list.

Ext. 15 to 15(1) school certificate.

9. In his cross-examination, CW-1 has replied that the vehicle(Dumper) was in repairing shop. The vehicle was not moving. He was not at the place of accident. He never visited the place of accident. His injured son voluntarily went near the vehicle and touched the vehicle. When his son was touching the vehicle the driver could not see his son. After the accident his son admitted to Kanaklata Civil Hospital, Tezpur. After one day he was referred to GMCH. In the accident the right hand of his son got burnt.

10. CW-2 is the victim Sulman Ali, who deposed in his evidence that on 27-07-2017 at about 1-00 p.m. one dumper vehicle bearing No. AS-12AC/4078 was in Batamari Air shop for repairing and he was watching the same by touching the vehicle. Suddenly the driver of the vehicle lifted upper side which touched the electric line. As a result the electric power spread over the vehicle and his hand got burnt. He was treated at Kanaklata Civil Hospital, Tezpur and GMCH, Guwahati. During treatment his right hand has been amputated.

11. In his cross-examination CW-2 has replied that he along with his friend was playing near the vehicle. He was touching rear side of the vehicle. The vehicle was standing on the left of the road on the mud portion to repair the puncture of the vehicle. For the first time he had seen the vehicle for which he touched the vehicle.

12. CW-3 is Md. Mafiz Alam who deposed in his evidence that he has a Air shop for repairing tyre at Batamari under Tezpur P.S. On 27-07-2017 at about 1-00 p.m. one dumper bearing No. AS-12AC/4078 was repairing in his Air shop and the victim Suleman Ali was watching by touching the vehicle. Suddenly driver of the vehicle lifted upper side which touched the electric line. As a result the electric power spread over the vehicle and Suleman Ali sustained burnt injury on his right hand. Subsequently his right hand has been amputated.

13. In his cross-examination CW-3 has replied that he has a tyre repairing shop. The dumper vehicle was in his shop. The vehicle was in the mud portion of the road. He could not say how the accident took place. He heard hue and cry and came out from his shop. After the accident the boy was taken to Kanaklata Civil Hospital, Tezpur.

14. Ext. 1 (carbon copy) is the accident information report which reveals that an accident occurred on 27-07-2017 at about 1-00 p.m. at Batamari and Soleman Ali was the victim of the said accident. The vehicle bearing No. AS-12AC/4078(Dumper) was shown to be the offending vehicle. Ext. 2 is the Ejahar lodged by the claimant Ajgar Ali alleging involvement of the vehicle bearing NO. AS-12AC/4078(Dumper) causing injury to his son Soleman Ali due to negligence of the driver of the vehicle. On the basis of the ejahar, one case was registered vide Tezpur P.S. case No. 1849/17 u/s- 279/338 IPC. Ext. 4 is the seizure list of seizing the vehicle bearing No. AS-12AC/4078(Dumper) and its documents. Ext. 5 is the MVI report of the said vehicle. Ext. 8 is the charge sheet submitted against

the driver of the vehicle bearing No. AS-12AC/4078(Dumper) Arup Gogoi u/s-338 IPC.

15. *It has to be borne in mind that [Motor Vehicles Act](#) does not stipulate holding a trial for petition preferred under [section 166](#) of the Act. Under [Section 168](#) of the Act, a Claims Tribunal holds an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal as was held in [State of Mysore v. S.S. Makapur, 1993 \(2\) SCR 943](#) by Hon'ble Apex Court.*

16. *[In Bimla Devi and ors. v. Himachal Road Transport Corporation and Ors \(2009\) 13 SC 530](#), Hon'ble Supreme Court held that Claims Tribunals should not insist on strict proof of an accident caused by a particular vehicle in a particular manner and that taking holistic view of the matter, evidence should be examined on the touch stone of preponderance of probability and not beyond reasonable doubt.*

17. *The Judgment of Bimla Devi (supra) was relied on by Hon'ble Supreme Court in its latest judgments in [Parmeswari v. Amir Chand, \(2011\) 11 SCC 635](#) and [Kusum Lata v. Satbir \(2011\) 3 SCC 646](#).*

18. In view of the aforesaid legal proposition as well as documents available in the record, I am of the opinion that the claimant is able to prove that his minor son Soleman Ali sustained grievous injury on his person by use of the vehicle bearing No.AS-12AC/4078 (Dumper). Hence, issue No. 1 is decided in affirmative.

Issue No. 2

19. According to the claimant, immediately after the accident his injured son was taken to Kanaklata Civil Hospital, Tezpur and thereafter the injured was referred to GMCH, Guwahati wherein he was treated as an indoor patient. Ext. 6 is the discharge certificate of Kanaklata Civil Hospital, Tezpur which shows that the injured Soleman Ali was admitted to Kanaklata Civil Hospital, Tezpur on the date of accident i.e. on 27-07-2017 and discharged on 28-07-2017. On examination doctor found injury on the person of Soleman Ali due to

electrocution and patient was referred to Tezpur Medical College & Hospital for needful. Ext. 7 is another discharge certificate which shows that the injured Soleman Ali was admitted to GMCH , Guwahati on 29-07-2017 and discharged on 28-08-2017. On examination doctor found electric burn injury of forearm and hand and full thickness burn below left dorsum of foot. Treatment was given forearm level amputation right and surgery over left thigh and below left foot. Ext. 12 is the disability certificate of the injured Suleman Ali which reveals that it was diagnosed in his below elbow amputation of right forearm(upper 1/3rd) and he has 75% permanent physical impairment.

20. From the medical documents as well as disability certificate it reveals that the injured son of the claimant i.e. injured Suleman Ali got burn injury on his right hand due to use of a vehicle, as a result his right hand has been amputated.

21. The claimant has submitted school certificate of the injured Suleman Ali which reveals that Date of Birth of the injured is 25-07-2005. The accident occurred on 27-07-2017. It transpires that the injured was around 12 years of age when the accident took place.

22. The Hon'ble Apex Court in Mallikarjun Vs. National Insurance Co. Ltd. reported in 2014 (14) SCC 396 held that computation of compensation in a claim petition under Motor Vehicle Act for personal injuries of children in a Motor Vehicle Accident causing permanent disability should be strictly adhering to the structure of compensation formulated thereon.

Disability upto 10% = Rs. 1,00,000/-,

Above 10% and upto 30% to the whole body= Rs. 3,00,000/-

Upto 60%= Rs. 4,00,000/-,

Upto 90% = Rs. 5,00,000/-

And above 90% = Rs. 6,00,000/-.

23. In the case in hand, the disability of the injured Soleman Ali has been assessed as 75% as per disability certificate vide Ext. 12.

24. In view of the aforesaid legal proposition the injured is entitled to get compensation with the tune of Rs.5,00,000/-(Five lakhs).

25. So, in view of the aforesaid discussion, in the instant case the computation of compensation is awarded as follows :-

A) Loss of disability	= Rs. 5,00,000/-
B) Pain and suffering	= Rs. 3,00,000/-
C) Loss of amenities	= Rs. 3,00,000/-
D) Medical expenses	= Rs. 24,101/-
E) Attendant charges	= Rs. 20,000/-

TOTAL= Rs. 11,44,101(Rupees eleven lakhs forty four thousand one hundred one)only.

26. Hence, issue No. 2 is decided accordingly.

O R D E R

In the result, the claim petition is allowed, awarding **Rs. 11,44,101(Rupees eleven lakhs forty four thousand one hundred one)only** with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 05-01-2019 till full and final realization.

O.P. No. 2 i.e. Cholamandalam M/S General Insurance Co. Ltd. is directed to discharge the liability of the award within a period of 30(thirty) days from the date of receipt of the order.

The claimant Md. Ajhar Ali, father of the injured(minor son): A sum of **Rs. 11,44,101(Rupees eleven lakhs forty four thousand one hundred one)only** along with proportionate interest thereon is awarded to the minor injured, Soleman Ali. Out of the said amount **Rs. 3,44,101(Rupees three lakhs forty four thousand one hundred one)only** along with proportionate interest thereon be immediately released to the claimant on his savings account and amongst balance amount of **Rs. 8,00,000/- (Rupees eight lakhs), Rs. 4,00,000/- (Rupees four lakhs)** each along with proportionate interest thereon be kept in the name of the injured Soleman Ali in the Form of FDRs for 5 years and for 10 years respectively.

The deposition of awarded amount with the United Bank of India, Tezpur Branch.

The O.P. No. 2 i.e. Cholamandalam M/S General Insurance Co. Ltd. is directed to deposit **Rs. 11,44,101(Rupees eleven lakhs forty four thousand one hundred one)only** in favour of the claimant with United Bank

of India, Tezpur Branch within a period of 30 (thirty) days from the date of receipt of the order.

Upon aforesaid amount being deposited, the Branch Manager, United Bank of India, Tezpur Branch is directed to keep the awarded amount in the FDRs/Savings Account in the following manner-

(i) The interest of the fixed deposits be paid to the claimant Md. Ajgar Ali by Automatic credit of interest in his Savings bank account with United Bank of India, Tezpur Branch.

(ii) No cheque book be issued to the claimant Md. Ajgar Ali without the permission of the court.

(iii) The original fixed deposit receipts shall be retained by the bank in the safe custody. However, the original pass book shall be given to the claimant Md. Ajgar Ali along with photocopy of the FDRs.

(iv) The original fixed deposit receipt shall be handed over to the Claimant Md. Ajgar Ali on the expiry of the period of the FDRs.

(v) No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of the court.

(vi) Half Yearly statements of account be filed by the Bank in this court.

(vii) The claimant Md. Ajgar Ali, father of the injured Soleman Ali, shall furnish all the relevant documents for opening of their Savings Bank Accounts and fixed deposit account to the Branch Manager, United Bank of India, Tezpur Branch.

The O.P. No. 2 i.e. Chola mandalam M/S General Insurance Co. Ltd. is directed to submit the compliance report of having deposited the awarded amount with United Bank of India, Tezpur Branch in this Tribunal within a period of 30(thirty) days from the date of receipt of the order.

The O.P. No. 2 shall intimate to the claimant Md. Ajgar Ali about it having deposited the cheque in favour of the claimant Md. Ajgar Ali, in terms of the award, at the address of the claimant mentioned at the title of the award, so as to facilitate him to withdraw the same.

Given under my hand and seal on this 2nd day of January, 2020.

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

(M. Nandi.)
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

A N N E X U R E

1. Witness of the Claimant:

- (i) Md. Ajgar Ali.
- (ii) Md. Soleman Ali.
- (iii) Md. Mafiz Alam.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 accident information report (Form 54).

Ext. 2 to 5 and 8 are documents relating to criminal case.

Ext. 6 to 11(13) are medical documents/cash memo/vouchers etc.

Ext. 12 to 14 are disability certificate/photo of injured/diet list.

Ext. 15 to 15(1) school certificate.

4. Exhibits of the defence

NIL.

(M. Nandi.)
Member
MACT, Sonitpur, Tezpur