

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL**TINSUKIA : : : : ASSAM**

District: Tinsukia

Present: **Sri C. Das,**
Member,
Motor Accident Claims Tribunal,
Tinsukia

M.A.C.T. Case No. 39 of 2017

Smti Maha Sundari Devi,

W/o Sri Saukilal Sah,

R/o Dhekiajuri,

P.O., P.S. & Dist: Tinsukia (Assam).....Claimant

- Versus -

1. M/s. Vision Ispat Pvt. Ltd.,
H.S. Road, Dibrugarh,
P.O., P.S. & Dist: Dibrugarh (Assam)
(Owner of vehicle No.AS-06-AC-1521)
Corresponding Address:
Industrial Estate, Borguri, P.O. Borguri,
P.S. & Dist: Tinsukia (Assam)
2. Sri Deepak Prasad,
S/o Sri Raju Prasad,
R/o Bormura Miri Pathar, Dholla,
P.O. & P.S. Dholla,
District: Tinsukia (Assam)
3. United India Insurance Co. Ltd.,
Divisional Office: Rangagora Road, Promode Market,
P.O., P.S. & District: Tinsukia (Assam)
4. United India Insurance Co. Ltd.,
Ajmira House, R.N. Chang Kakati Path, Dibrugarh,
P.O., P.S. & District: Dibrugarh (Assam)
(Insurer of vehicle No.AS-06-AC-1521) (Policy issuing branch)

5. Sri Pradeep Ray,
S/o Kamakhya Ray,
R.O. Makum Krishna Nagar, P.O. Makum Jn.,
P.S. Makum, District: Tinsukia (Assam)
(Driver of vehicle No.AS-23-8832, Truck)
6. New India Assurance Co. Ltd.,
Rangagora Road, Tinsukia,
P.O., P.S. & Dist: Tinsukia (Assam)
(Insurer of vehicle No.AS-23-8832,Truck).....Opposite Parties

Appearance:

Sri A.K. Choubey,
Advocate.....For the Claimant

Sri A. Agarwal,
Advocate.....For the O.P. No.1

Sri A.K. Karmakar,
Advocate.....For the O.P. No.3 &4

Sri G. Chakraborty,
Advocate.....For the O.P. No.6

Date of evidence : 01.8.18, 03.4.19, 10.7.19 & 30.8.19

Date of Argument : 06.11.2020 & 21.11.2020

Date of Judgment : 27.11.2020

J U D G M E N T

1. This is an application u/s.166 of the Motor Vehicles Act, filed by the claimant above named, claiming compensation on account of damage to her vehicle in a motor vehicle accident.

2. The brief fact of the case, is that on 4.3.2016 at night, the vehicle of the claimant bearing No.AS-23-8832(Truck) was going towards Tinsukia from Panitola side, being driven by its driver Pradeep Ray in a moderate speed and

while the said vehicle reached near Laipuli NRL petrol pump, at about 9.05 P.M., one truck bearing No.AS-06-AC-1521 driven in a rash and negligent manner, coming from the opposite side, hit the front right side of the truck of the claimant and thus, caused damage to the front show/radiator/cabin/W.S. glass/front suspension/front chassis and also, damaged other parts of the vehicle. Thereafter, police arrived at the spot, examined the spot and took both the vehicles to the police station. Both the vehicles were inspected by the MVI, Tinsukia. Though the said accident took place due to rash and negligent driving by the driver of vehicle No.AS-06-AC-1521, but Tinsukia police registered the case being Tinsukia P.S. Case No.286/2016 against Sri Pradeep Ray, driver of damaged vehicle No.AS-23-8832, in collusion with the owner of the offending vehicle. Then the claimant started running pillar to the post. After that, the representative of the owner of the vehicle Sri Hari Prasad Sharma accepted the guilt of his driver and assured the owner/claimant of the damaged vehicle that he would pay for the damages, but later on, reluctant to do so. Thereafter, the husband of the claimant approached the insurance company of his damaged vehicle, who appointed a surveyor namely; Sri Ashish Kumar Das to survey and to assess the loss and damages. Accordingly, the said surveyor inspected the vehicle and assessed the damage of the vehicle to the tune of Rs.1,52,935/- only. It is further stated that entire family of the claimant was fully dependent upon the income of the said vehicle. As a result of the accident, the claimant sustained heavy loss and as such, prayed for compensation of Rs.1,52,935/- only.

3. The Opposite Party No.1 i.e. owner of the offending vehicle No. AS-06-AC-1521, filed its written statement, wherein it is stated that the claim petition is bad for suppression for material facts. The accident did not take place because of negligence of the driver of the offending vehicle. Moreover, the I.O. after investigation of the case, submitted charge-sheet against the driver of the vehicle bearing No.AS-23-8832. It is also, stated that the offending vehicle was duly insured with United India Insurance Co. Ltd. at the relevant time of occurrence. As such, Opposite Party No.1 is not liable to pay any compensation to the claimant. Hence, the claim petition is liable to be

dismissed.

4. The Opposite Party No.3 & 4, United India Insurance Co. Ltd. also filed written statement, wherein it is stated that the claim is false, frivolous and speculative and the claimant has filed this case for illegal gain and hence, the claimant is not entitled to get any relief. It is further stated that the Truck bearing No.AS-23-8832 being driven by its driver Pradip Ray (opposite party No.5) in a most rash and negligent manner, caused the accident by hitting the other Truck bearing No.AS-06-AC-1521 and same is evident from the relevant documents submitted by the police in connection with the accident, in question. It is stated that the police after thorough investigation, rightly registered a case against the driver Pradip Ray for his rash and negligent driving. Hence, the Opposite Party No.3 and 4 have prayed to dismiss the claim with cost.

5. The Opposite Party No.6, i.e. New India Assurance Co. Ltd. also filed its written statement, wherein it is stated that the accident took place only due to rash and negligent driving by the driver of the offending vehicle bearing No.AS-06-AC-1521 (Truck). No fault has been attributed to the vehicle bearing No.AS-23-8832 (Truck). The claimant also, has not claimed any compensation from the Opposite Party No.6 and as such, Opposite Party No.6 prayed to dismiss the claim with cost.

6. The Opposite Party No.2 Sri Deepak Prasad, driver of the offending vehicle No.AS-06-AC-1521 and Opposite Party No.5 Sri Pradeep Ray, driver of vehicle No.AS-23-8832 did not contest the case, in spite of receipt of notice of the instant case. Hence, case was proceeded ex parte against them.

7. On the basis of pleadings of the parties, following issues were framed in the case :

- (i) Whether the claimant sustained loss of property due to the accident occurred on 04.03.2016?
- (ii) Whether the claimant is entitled to get compensation?
If so, to what extent and from whom?

8. I have heard learned counsel for the claimant as well as, learned counsels appeared for opposite parties at length and perused the evidence on record with documents submitted in the case. In the written argument, it is submitted by the opposite party No.3 and 4 that the claim petition deserves to be rejected against the opposite party No.3 and 4. In fact, the truck No.AS-23-8832 of the claimant, is the offending vehicle which is insured with opposite party No.6 and that the vehicle of the claimant caused the alleged accident by rash and negligent driving of its driver being opposite party No.5. The vehicle of the claimant dashed against the truck No.AS-06-AC-1521 and damaged it, which is insured with the opposite party No.3 and 4. Hence, the police rightly registered the Tinsukia P.S. Case No.286/16 u/s.279/427 IPC against the driver Sri Pradeep Ray, the vehicle of the claimant and accordingly, the charge-sheet was filed against the said driver. The claimant has created a false story against vehicle No.AS-06-AC-1521 to receive wrongful gain or compensation from its insurer but the said vehicle was not the offending vehicle of the accident. The second vehicle No.AS-06-AC-1521 was also, substantially damaged by the offending vehicle No.AS-23-8832 of the claimant. The opposite party No.3 and 4 already paid own damage claim amounting to Rs.82,000/- on 11.7.17 since the said vehicle was covered by its package policy No.130301/31/15/P/114527108. Since vehicle of the claimant is insured with under opposite party No.6 and is the offending vehicle, no claim can be made by the claimant against the insurer of vehicle No.AS-06-AC-1521. In the present case, the claimant only can claim compensation from its insurer. In view of facts and circumstances of the case, the claim against the opposite party No.3 and 4 deserves to be rejected for ends of justice.

9. **Issue No.(i):** The claimant examined three witnesses in support of her claim and the witnesses reiterated the same facts, what have been narrated in the claim petition. The claimant as CW1, stated inter-alia that on the fateful day, while her truck was coming from Panitola side towards Tinsukia side, it met with an accident at Laipuli near NRL petrol depot with a TATA truck bearing No.AS-06-AC-1521, which was coming from opposite

direction, in a rash and negligent manner, dashed the front side of her truck and thus caused damaged of show, radiator, cabin, WS glass, front suspension, front chassis and other parts of truck. Further, CW1 has also, exhibited some documents, which are marked as Ext.1 to Ext.15.

10. CW1 stated that her husband incurred more than Rs.2,50,000/- for repairing of the truck. Her husband brought her damaged truck to a garage of Sri Ashok Kr. SHarma & Brothers and prepared the repairing estimate to the tune of Rs.2,76,000/- only and approached her insurer. The insurer New India Assurance Co. Ltd., who appointed a surveyor & loss assessor to survey and assess the loss. Accordingly, the surveyor inspected and verified the damaged vehicle on 14.9.16 at the motor garage of Ashok Kr. Sharma. The surveyor assessed the damage to the tune of Rs.1,52,935/- only.

11. In her cross-examination, claimant as CW1 replied that she is the registered owner of the Truck No.AS-23-8832. In the accident, her vehicle was involved with the other vehicle No.AS-06-AC-1521. She did not witness the incident, but her driver informed her about the accident. She did not know, if the insurance company i.e. United India Insurance Co. Ltd. had paid Rs.82,600/- on 11.01.2017 to the vehicle No.AS-06-AC-1521. Her vehicle is insured with the Opposite Party No.6; New India Assurance Co. Ltd. She further replied that she stated in her evidence that police filed a charge-sheet against her driver Pradip Ray, treating her vehicle as the offending vehicle. In this case, she lodged the ejahar lately. She denied the suggestion that the accident took place because of fault of her driver. She also, stated that since the accident was caused because of fault of vehicle No.AS-06-AC-1521, she is claiming compensation from its owner. She stated that at one point of time, the owner of vehicle No.AS-06-AC-1521 assured her that she should not file any case and he would compensate her for the loss suffered by her in the said accident, but he did not pay her any compensation, rather, after expiry of six days, he filed a police case against her vehicle. Since the accident was caused because of negligence of other vehicle, she had not prayed for any compensation from the insurance company of her vehicle i.e. Opposite Party

No.6.

12. CW2 is Saukilal Sah, husband of the claimant, who supported the version of CW1. According to him, his wife Mahasundari Devi (CW1) is the registered owner of a Tata Truck bearing No.AS-23-8832 and he was looking after the business of said truck since the day of its purchase. On 4.3.2016, when the said Truck was coming from Panitola side towards Tinsukia, met with an accident at Laipuli near NRL petrol pump with another Tata Truck bearing No.AS-06-AC-1521. After getting the information about the accident, he immediately rushed to the place of accident and saw that the accident was caused due to total negligence by the driver of vehicle No.AS-06-AC-1521. When he was at the place of accident, the Tinsukia traffic police also, arrived there and after observing some formalities, both the vehicles were taken to Tinsukia Police Station. In the next morning of the accident, the representative of vehicle No.AS-06-AC-1521, requested him for not lodging any FIR to the police and assured CW2 that he would pay the expenses of damages of the vehicle, but on 10.3.2016, Sri Hara Prasad Sharma, representative of owner of vehicle No.AS-06-AC-1521 lodged an FIR with false allegation against his driver.

13. In his cross-examination, CW2 replied that at the time of accident, he was in his house. At about 9.05 P.M., his driver called him over phone and informed him about the accident. He went to the place of accident, but by that time, police had already reached there and did all the legal formalities after the accident. Police filed the charge-sheet against his driver Pradip Ray. Although police registered the case against his driver treating his vehicle as the offending vehicle, but he claimed that the accident took place because of fault of the driver of other vehicle. He further replied that his evidence in this case is based on whatever he had heard from his driver. The owner of vehicle No.AS-06-AC-1521 told CW2 not to file any case against him and assured him to pay the compensation to CW2, but later on, the owner of the said vehicle filed the case against his driver. The surveyor surveyed his vehicle. CW2 did not make any formal claim to his insurance company.

14. CW3 is Ramanand Barhoi, who also, supported the claim of CW1, deposed in his evidence that on 4.3.2016 at about 9 P.M., while he was in front of his shop after his dinner, at that moment, one Tata Truck bearing No.AS-06-AC-1521 loaded with iron rods, coming from Tinsukia side towards Panitola in a very rash and negligent manner, dashed against a Truck coming from Panitola side towards Tinsukia side bearing No.AS-23-8832. He witnessed the incident and it was occurred only because of negligence on the part of the driver of Tata Truck bearing No.AS-06-AC-1521. Thereafter, he informed one traffic police. In the mean time, he along with other persons brought out the driver of vehicle No.AS-23-8832 from the vehicle, who sustained some injuries on his person. The driver of the offending vehicle No.AS-06-AC-1521 fled away after the said incident from the place of occurrence. The Traffic police of Tinsukia along with Hijuguri T.O.P. police arrived at the place of occurrence and sent the injured driver to Tinsukia Civil Hospital for treatment and thereafter, seized both the vehicles. The representative of the vehicle No.AS-23-8832 arrived at the place of occurrence and since then he knows him.

15. In his cross-examination, CW3 replied that he has been shown as a witness in the charge-sheet relating to the police case that arose on the basis of the accident. On the date of the incident, police recorded his statement. He denied the suggestion that the accident took place because of the fault of vehicle No.AS-23-8832.

16. From the evidence of the CW1 and 2 and particularly, the evidence of eye-witness; CW3 and in absence of contrary evidence, it is apparently clear that the accident occurred due to rash and negligent driving by the driver of the offending vehicle i.e. Tata Truck bearing No.AS-06-AC-1521. No doubt, the police filed charge-sheet against the driver of the vehicle of the claimant. But that does not able to demolish the evidence of CW3, who was the direct witness of the accident. Therefore, the claimant is entitled to get compensation from the owner of the truck No.AS-06-AC-1521.

17. The said vehicle No.AS-06-AC-1521 is duly insured with United India Insurance Co. Ltd., who is the opposite party No.3 and 4 herein at the time of accident. Hence, the insurance company is liable to indemnify the owner of truck No.AS-06-AC-1521. So, issue No.(i) is decided in affirmative in favour of the claimant accordingly.

18. **Issue No.(ii):** It is already found from the evidence of CW1 that the surveyor was appointed by the insurer of truck No.AS-23-8832, who assessed the damage of the said vehicle to the tune of Rs.1,52,935/- only although the claimant stated to have spent Rs.2,50,000/- for repairing of her vehicle for the damage caused in the accident. Ext.8 is the surveyor report. No dispute raised by any party over the finding of surveyor for the damage of the vehicle No.AS-23-8832 belonged to the claimant. There is also, consistency between Ext.8 with Ext.5(ii) issued by District Transport Authority. From the evidence of CW1, supported by CW2 and 3 and other related documents on record, it appears that the truck No.AS-23-8832, driven by its driver Pradeep Ray, got damages over various parts of it on account of the accident that occurred on fateful day. In view of above, there is no hesitation to hold that the claimant sustained loss due to damages caused to her truck No.AS-23-8832 in the accident. Hence, the issue No.(ii) is decided in affirmative and in favour of the claimant.

19. In view of decisions made in the above issues, it is held that the claimant is entitled to get a compensation of Rs.1,52,935/- only for the loss sustained by her due to damages of her vehicle, which was duly assessed by the surveyor.

A W A R D

20. Accordingly, the claimant is awarded with compensation of Rs.1,52,935/- only for the loss suffered by her on account of damages caused to her truck No.AS-23-8832 in the accident that occurred on 4.3.2016. The insurance company i.e. United India Insurance Co. Ltd., is here by directed to

pay the above amount of compensation to the claimant with interest @ 6% per annum from the date of filing of the claim petition, till realization.

21. Given under my hand and seal of this Tribunal on this the 27th day of November, 2020.

Dictated and corrected by me.

Member, MACT
Tinsukia

C. Das
Member, MACT
Tinsukia

