

**BEFORE THE ADDL. MEMBER-2, MOTOR ACCIDENT CLAIMS  
TRIBUNAL TINSUKIA : ASSAM**

District : Tinsukia.  
Present : Md. A. Hakim, M.A, L.L.B,  
Addl. Member-2,  
Motor Accident Claims Tribunal,  
Tinsukia.

**M.A.C.T Case No. 74 of 2011**

1. Sri Anup Khatowal(Age about 26 years),  
S/O. Sri Biren Khatowal,  
Resident Borgaon Village  
P.O Borgaon, P.S Makum  
Dist. Tinsukia, Assam.

.....Claimant.

-Versus-

1. **Sri Manjit Singh,**  
S/o. Suresh Singh  
R/o. Jaypur Bagharor,  
P.S Jaypur,  
Dist. Dibrugarh, Assam,  
(Driver of vehicle no. AS-06-AC-0275, Tipper).
2. **Sri Dipen Gohain**  
S/o. Sri Guleswar Gohain,  
R/o. Nadua Gohain Gaon,  
P.S Chabua,  
Dist. Dibrugarh, Assam.  
(Owner of vehicle no. AS-06-AC-0275, Tipper).

- 3.** The Cholamandalam MS General Insurance Co. Ltd.,  
Having its Branch office at Shankar Complex,  
2nd floor, Christen Basti, G.S Road,  
Guwahati, Assam.  
(Insurer of vehicle no. AS-06-AC-0275, Tipper).  
.....Opposite Parties.

**Appearance:-**

Sri N. Prasad,  
Advocate.....For the Claimant.  
Sri S. Sarma  
Advocate.....For the Opposite Party no. 2.  
Sri B. Sarma  
Advocates.....For the Opposite Party no. 3.

Date of Argument : 20.05.2019

Date of Judgment : **29.05.2019**

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

- 1.** The instant case has been filed by claimant namely, Sri Anup Khatowal, S/o. Sri Biren Khatowal, Resident of Borgaon Village, P.O Borgaon, P.S Makum Dist. Tinsukia, Assam for seeking compensation on account of his injury in a Motor vehicular accident, which occurred on 19.10.2010 at 3:30 P.M.
- 2.** It is apparent that the claimant has filed the Petition U/s. 166 of Motor vehicle Act 1988, (which henceforth referred to as MV act for the sake of brevity), under which he is seeking the relief.

**3.** The claimant in his claim petition has drawn the attention of the Court that on 19.10.10 at about 3:30 p.m. while the claimant was going to his house from Tinsukia, situated at Borgaon Village via Makum in a passenger Auto, on the way N.H 37 near Steel Worth Tinkonia, one Tipper being Registration No. AS-06-AC-0275, coming in a rash and negligent manner from the opposite direction, directly dashed the auto rickshaw as a result the claimant No. 1 sustained grievous injuries on his body and his both hands and one leg had been broken in the said accident. The other passengers of the said auto rickshaw also sustained injuries. After the accident local people called the 108 - Ambulance and all the injured passengers were taken to the Civil Hospital, Tinsukia. But the injuries of the victim/claimant was serious as such the doctors of the Civil Hospital, Tinsukia referred him to Dibrugarh. In the mean time the family members of the victim arrived at Civil Hospital, Tinsukia and they took the victim/claimant and admitted at G.M Hospital, Dibrugarh. The doctors of the hospital seeing the seriousness of the injured admitted him on the same day in the hospital for his treatment. The injured/claimant sustained grievous injuries like extensive fractures of both bone left forearm and latle candyle and fracture left tibia and other injuries. He had undergone numbers of operation in the hospital in course of treatment. The financial condition of the victim/claimant family was not sound and as such he was discharged on 25/10/2010 from G.M Hospital, Dibrugarh due to shortage of money. The claimant is still under treatment. The claimant has incurred an amount of Rs. 81,266.02 against medical treatment in vouchers and Rs. 50,000/- against conveyance charges. The X-ray report and other report of the claimant

show that the bones of left forearm have been broken in pieces. The doctor opined that in spite of successful operation the full movement of the left hand of the claimant will be restricted in future and also advised him not to lift any hard substance by using his left hand. The above injuries have resulted in permanent disablement of left hand to the extent of 55% as per the certificate issued by the Doctors of Civil Hospital, Tinsukia. Due to the injuries sustained in the said accident, the claimant is not in a position to work for his livelihood. The claimant was as carpenter by profession and the nature of the injuries shows that the claimant will never be in position to work as a carpenter in future and as such he has no more source of income in future. The claimant prior to his accident was working as a carpenter & was earning Rs.7,500/- p.m from his said work. Due to the accident, he is unable to continue with his work and is totally dependent on others for his livelihood. The claimant has his wife, two children and ailing parents who have no source of income of their own and all of them are suffering for bread and butter.

**4.** The accident occurred due to the rash and negligent driving of the vehicle No. AS-06-AC-0275(Tipper) and a case is registered being Tinsukia P.S case no. 664/10 U/s. 279/337/338/427 IPC corresponding to G.R Case no. 1262/2010 and the said case is already charge-sheeted against the driver Sri Manjit Singh of the said case.

**5.** The claimant filed this present claim application claiming compensation on account of injuries sustained by him in the aforesaid accident. He claimed compensation of Rs. 25,71,266.02 in the following heads :

COMPUTATION OF COMPENSATION

1.	Medical expenses with Vouchers	Rs. 81,266.02
2.	Medical expenses without Vouchers	Rs. 50,000.00
3.	Future Medical Expenses	Rs. 2,00,000.00
4.	Expenses on conveyancing	Rs. 30,000.00
5.	Compensation for Permanent Disablement (Rs. 10000/- X 12 X 18 = Rs. 16,20,000/-)	Rs. 21,60,000.00
6.	Pain and sufferings	Rs. 50,000.00
	<b>TOTAL</b>	<b>Rs. 25,71,266.02</b>

(Rupees Twenty Five Lakhs Seventy One Thousand Two Hundred Sixty Six & Two Paise only)

**6.** The Opp. Party no. 1, the driver of the vehicle bearing No. AS-06-AC-0275(Tipper) has not contested the case. Hence the case proceeded ex-parte against him. The Opp. Party no. 2 & 3 the owner and insurer respectively of the vehicle bearing No. AS-06-AC-0275(Tipper) have contested the case by filing separate written statements. In their written statement they have taken all the routine pleas, denied the case of the claimant and prayed for dismissal of the claim petition.

**7.** This Tribunal has framed the following issues on the basis of aforesaid pleadings of the parties, which are mentioned herein under:

1. *Whether the claimant sustained grievous injuries in the accident due to the rash and negligent driving of the vehicle No. AS-06-AC-0275 which was occurred on 19.10.2010?*
2. *Whether the claimant is entitled to get compensation? If so from whom and what amount?*

- 8.** The claimant has examined himself alongwith three other witnesses in support of his claim, whereas the OPs have adduced evidence of one witness on their part.
- 9.** The Tribunal has heard the argument advanced by the parties at length and also, deciphered the materials on record for an appropriate outcome of the instant case.
- 10.** Before discussing the issues I would like to go through the evidence led by the claimant's side for better appreciation and comprehension of the matter.
- 11.** CW-1, Sri Anup Khatowal in his Evidence in affidavit has stated that he is the claimant of the case and applied for the grant of compensation on account of injuries sustained by him in a motor accident, which occurred on 19.10.10 at about 3:30 P.M over N.H 37 way Makum near Steel worth, Tinsukia due to rash and negligent driving of one Tipper bearing registration no. AS-06-AC-0275. He stated that on 19.10.10 at about 3:30 P.M while he was going to his house from Tinsukia, situated at Borgaon Village via Makum in a passenger Auto, on the way N.H 37 near Steel Worth Tinkonia, one Tipper being Registration No. AS-06-AC-0275, coming in a rash and negligent manner from the opposite direction, directly dashed the auto rickshaw as a result he sustained grievous injuries on his body and his both hands and one leg has been broken in the said accident. The other passengers of the said auto rickshaw also sustained injuries. After the accident local people called the 108 - Ambulance and all the injured passengers including himself were taken to the Civil Hospital, Tinsukia. But the injury sustained by him was serious as such the doctors of the Civil Hospital, Tinsukia referred him to Dibrugarh. In the mean time his family

members arrived at Civil Hospital, Tinsukia and they took him and admitted at G.M Hospital, Dibrugarh. The doctors of the hospital seeing his seriousness admitted him on the same day in the hospital for his treatment. There were grievous injuries on his body like extensive fractures of both bone left forearm and latle candyle and fracture left tibia and other injuries. He had undergone numbers of operation in the hospital in course of treatment. The financial condition of his family was not sound and as such he was discharged on 25/10/2010 from G.M Hospital, Dibrugarh due to shortage of money. He is still under treatment. He has incurred an amount of Rs. 81,266.02 against medical treatment in vouchers and Rs. 50,000/- against conveyance charges. The X-ray report and other report of the claimant show that the bones of left forearm have been broken in pieces. The doctor opined that in spite of successful operation the full movement of the left hand of the claimant will be restricted in future and also advised him not to lift any hard substance by using his left hand. The above injuries have resulted in permanent disablement of left hand to the extent of 55% as per the certificate issued by the Doctors of Civil Hospital, Tinsukia. Due to the injuries he is not in a position to work for his livelihood. He was as carpenter by profession and the nature of the injuries shows that he will never be in position to work as a carpenter in future and as such he has no more source of income in future. He prior to his accident was working as a carpenter in future and as such he has no source of income in future.

- 12.** The accident occurred due to the rash and negligent driving of the vehicle No. AS-06-AC-0275(Tipper) and a case is registered being Tinsukia P.S case no. 664/10 U/s. 279/337/338/427 IPC corresponding to G.R Case no.

1262/2010 and the said case is already charge-sheeted against the driver Sri Manjit Singh of the said case.

**13.** The claimant has exhibited the following documents in course of hearing of the case:

- (i) Ext. 1, Form No. 54,
- (ii) Ext. 2, Certified copy of the G.R case no. 1262/2010 consisting of Ejahar,
- (iii) Ext. 3, Charge-sheet,
- (iv) Ext. 4 & 5, Two numbers of seizure-list,
- (vi) Ext. 6, Sketch map,
- (vii) Ext. 7, Injury Report,
- (viii) Ext. 8 to Ext. 8(95) Medical & other bills and vouchers,
- (ix) Ext. 9 to Ext. 9(17), Medical report and x-ray plates of the claimant ,
- (x) Ext. 10, Disablement certificate,
- (xi) Ext. 11, Local man certificate,
- (xii) Ext. 12, Salary certificate issued by the Proprietor of M/s. Gabrari Modern Furniture, Tengapani Road, Makum.

**14.** The CW.1 has further stated that prior to his accident he was working as a carpenter & was earning Rs. 7,500/- p.m from his said work. Due to the accident, he is unable to continue with his work and now he is totally dependent on other members for his livelihood. But his other family members, viz. his wife, his two children and his ailing parents who has no source of income of their own and as such all of them are suffering for bread and butter. That the CW.1 has filed this present claim application for grant of compensation of Rs. 25,71,266.02 on account of injuries sustained by him in the following heads :

COMPUTATION OF COMPENSATION

1	Medical expenses with Vouchers	Rs. 81,266.02
2	Medical expenses without Vouchers	Rs. 50,000.00
3	Future Medical Expenses	Rs. 2,00,000.00
4	Expenses on conveyance	Rs. 30,000.00
5	Compensation for Permanent Disablement (Rs. 10000/- X 12 X 18 = Rs. 16,20,000/-)	Rs. 21,60,000.00
6	Pain and sufferings	Rs. 50,000.00
	TOTAL	Rs. 25,71,266.02

(Rupees Twenty Five Lakhs Seventy One Thousand Two Hundred Sixty Six & Two Paise only)

**15.** CW-1 in his cross-Examination by O.P no. 3 has deposed that at the time of incident he was in the auto. The auto was a passenger auto. He has not mentioned the registration no. of the auto, name of driver, owner or Insurance Company in his claim petition or he has not impleaded them. In Ext. 1, Form No. 54, Accident Information Report there is no mention of registration no. of the auto in which was boarded, name of driver, owner or Insurance Company. He denies the suggestion that as there is no mention of registration no. of the auto in which was boarded, name of driver, owner or Insurance Company, as such the Ext. 1 is not as per law or legal. The auto which was boarded by him was going from Tinsukia side to Makum and the Tipper vehicle bearing regn. no. AS-06-AC-0275 was coming from opposite direction and there was a head on collision between both the vehicles. At first he came to Tinsukia Civil Hospital and from there he was referred to Dibrugarh for treatment and he took treatment at G.M Hospital, Dibrugarh. He has not furnished the documents in the court by which he was referred him to Dibrugarh. He

cannot say if he was referred from Tinsukia Civil Hospital to AMCH.

**16.** CW-1 in his further deposed that the auto in which he was travelling had about 7/8 passengers. There were two passengers on both sides of the driver. He denies the suggestion that the auto was over crowded. He denies the suggestion that the accident took place due to fault of both the vehicles. He denies the suggestion that since he has not filed any case against the driver, owner and insurer of the auto, this case is defective and is liable to be dismissed. Ext. 5 is the seizure list pertaining to the seizure of the auto. As per Ext. 5, the fitness certificate of the auto had expired on 13.06.2009. He denies the suggestion that the accident took place due to the fault of the auto. He got admitted in GM Hospital on 19.10.10 and he was discharged from there on 25.10.10 and he did not attend any other hospital. He has not given any document pertaining to treatment undertaken by him after 25.10.10. He denies the suggestion that he is not still undergoing treatment and he denies the suggestion that he has fully recovered. He denies the suggestion that Ext. 8(38) is a fake document. He cannot say for what purpose Ext. 10 was not issued with proper authority and he denies the suggestion that it is a procured document. He is still not fully cured. He denies the suggestion that he is fully recovered. He denies the suggestion that his monthly income is not Rs. 7,500/-. Ext. 12 is the salary certificate issued by proprietor of Gabrari Furniture. He denies the suggestion that he is not a carpenter and he denies the suggestion that he is not working in Gabrari Furniture. He is a permanent employee of Gabrari Furniture shop. He has not submitted any document pertaining to registration of

the shop. He has not submitted any document pertaining to Provident Fund etc. He denies the suggestion that the Form 54 submitted by him is not valid, as the names of the driver, owner and insurer of the auto are not mentioned. He denies the suggestion that his claim is exaggerated. He denies the suggestion that he is not entitled to the compensation claimed by him. He has also denies the suggestion that he is not entitled to any future medical expenses. He denies the suggestion that he is not entitled to receive any money towards permanent disablement. He denies the suggestion that he is not entitled to receive any compensation from O.P. No. 3.

**17.** CW.2, Sri Eijeustain Saikia has stated in his examination in chief that he knows the claimant Anup Khatowal. He stays in Borgaon and he used to work under him. He had met with an accident on 19.10.10 while he was going towards Makum. He had suffered injuries on his legs and arms in the said accident. He has come to the Tribunal upon receiving summons from the Tribunal. Ext. 13 is the said summons. The name of his firm is Gabrari Modern Furniture and it is situated at Makum. Anup Sonowal was working in his firm since 2007 and he was working till he met with the accident. After the accident, he could no longer work under him due to his disablement. Generally, they used to pay Rs. 250/- per day as daily wages to carpenters and Sri Anup Khatowal was receiving approximate Rs. 7,500/- in a month. Ext. 12 is the income certificate issued by him with regard to Sri Anup Khatowal and Ext. 12(1) is his signature. He has mentioned in the said certificate that the injured Anup Khatowal was earning about Rs. 7,500/- per month. At present, Anup Khatowal is not working with him, because of his injuries sustained in

the accident. He knows that presently Anup Khatowal is not working anywhere. Presently, he has four carpenters working under him. He is also a carpenter himself and perform his work in his firm. Anup Khatowal could not be able to perform the work of carpenter in future.

**18.** In cross-Examination by O.P no. 3 the CW.2 has stated that Ext. 12 issued by him regarding income of Anup Khatowal, does not bear any date.

**19.** CW.3, Sri Prafulla Borah in his examination in chief has deposed that on receipt of summon issued by this Tribunal he has appeared to adduce evidence in this case. Ext. XIII is the said summon. He has deposed that on 19.10.10 he was posted at Traffic Branch, Tinsukia Police station. On that day an accident was occurred at Makum Road, near Shivdham and for that a G.D entry was made by Tinsukia P.S GDE no. 361 dated 19.10.10. He went to the place of occurrence on the basis of that G.D entry alongwith staff. He locally enquired the incident and found that one Auto Champion being registration no. AS-23-D-8294 was dashed by Tripper being regn. no. AS-06-AC-0275. In the said accident total 7 numbers of passengers of said auto champion were injured including the claimant of this case. After the accident he seized the vehicles alongwith documents vide Ext. IV and V. I also prepared sketch map of the P.O vide Ext. VI. During my preliminary investigation he also collected medical report of the claimant Sri Anup Khatowal from G.M Hospital Pvt. Ltd., Dibrugarh vide Ext. 7. In the said medical report it is mentioned that the claimant suffered injury on his forearm and left leg. Nature of injury was grievous.

**20.** On the basis of his investigation, S.I Ajit Hazarika of Tinsukia P.S submitted charge-sheet against the driver of Tripper being regn. no. AS-06-AC-0275. The name of the driver is Sri Manjit Singh. During my investigation he found that the accident was occurred only due to rash and negligent driving of the driver of the said Tripper being regn. no. AS-06-AC-0275. At the time of accident the documents of the Tripper was valid.

**21.** It is pertinent to mention here that the CW 3 was examined ex-parte as opposite party 3 was absent. But The CW 3 is not cross-examined by the opposite party later on after vacating ex-parte order.

**22.** CW.4, Dr. Nirod Kr. Borah has deposed in his examination- in- chief that upon receipt of summon from the Hon'ble Tribunal, he has appeared to depose evidence today. Ext. XIII is the said summon. On 09.04.11, he was posted at Tinsukia Civil Hospital as Sr. Medical & Health Officer. Earlier on 27.10.10, one Anup Khatowal came to the hospital for treatment alleging old injury and body weakness. Accordingly, we provided treatment to him. On 09.04.11 he again visited Civil Hospital alongwith some documents and after going through the documents he found that he was suffering from debridement, ORIF with intertochantary IM nailing, ORIF of both bone with DIP and percutaneous screw fixation of tibia condyle fracture.

**23.** He produced some x-ray reports which reveals manipulation of both bone fracture fragments with plate and screws, fracture, manipulation of fracture fragments with IM nail and screws. Manipulation of fracture fragments with plate and screws in radius and alna.

**24.** From the above reports I found that the patient is suffering from 50% disability and accordingly I issued Disability Certificate dated 09.04.11(Ext. X). Ext. X(1) is my signature. Ext. X (2) is the signature of the patient.

**25.** Now in view of proper decision and adjudication I am discussing the Issues as follows:

**ISSUE NO. 1**

**26.** With regard to the issue no. 1, Ld. Counsel for the claimant has submitted that the claimant sustained grievous injuries in the accident due to the rash and negligent driving of the vehicle No. AS-06-AC-0275 which was occurred on 19.10.2010 and hence the claimant claims compensation only from the vehicle No. AS-06-AC-0275.

**27.** In reply Ld. Counsel for the Opposite party no. 3 has submitted that the accident was occurred due to the rash and negligent driving of the driver of the vehicle No. AS-06-AC-0275 and the auto in which the claimant was travelling. Hence the accident was occurred due to the contributory negligence of the driver of the both the alleged vehicle hence the opposite party in not only alone liable to pay the compensation to the claimant.

**28.** Upon hearing both sides I have gone through the material evidence on record and found that the CW.1, i.e. the claimant has received injury while travelling in an Auto on 19.10.2010. It is stated by the claimant that the alleged accident is occurred due to the rash and negligent driving of the driver vehicle No. AS-06-AC-0275. The claimant has not made the Auto as a party in the case nor claims any compensation from it. But in course of cross examination CW 1 claimant has stated that the

auto in which he was travelling had about 7/8 passengers. There were two passengers on both sides of the driver.

**29.** There is no denying about the accident by the alleged Tipper but it appears from the evidence on record that the driver of the auto was driving the Auto by keeping two passengers on his both sides. Which proves that the driver of the auto was driving the vehicle in a negligent manner. Apart from this the accident was occurred due to head on collision hence it can be presumed beyond doubt that the accident was occurred due to the rash and negligent driving of the both the driver of the alleged vehicles. Hence I am of the considered opinion that the accident was occurred due to the contributory negligence of the driving of the driver of the alleged two vehicles. Thus the Issue no. 1 is decided accordingly.

### **ISSUE NO. 2**

**30.** With regard to the issue no. 2, i.e. Whether the claimant is entitled to get compensation? If so from whom and what amount? From the above discussion it is proved that the claimant has received injury due to the alleged accident. Hence, he is entitled to get the compensation as per law from both the alleged vehicles.

**31.** It is pertinent to mention here that the accident was occurred due to contributory negligence of the driver of the alleged vehicles i.e. the Tipper and the Auto but how much compensation the claimant will get and by whom the compensation will be paid would be decided after the discussion herein below.

**32.** With regard to the damages to the claimant I would

like to cite the case of **G. Ravindranath @ R. Chowdhary Vs. E. Srinivas and Anr., reported in (2013)12 SCC 455**, wherein the Hon'ble Supreme Court has held as follows:-

“13. It is settled law that compensation in personal injury cases should be determined under the following heads:

**Pecuniary damages (Special damages)**

- (i)** Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.
- (ii)** Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability.
- (iii)** Future medical expenses.

**Non-pecuniary damages (General damages)**

- (iv)** Damages for pain, suffering, and trauma as a consequence of the injuries.
- (v)** Loss of amenities (and/or loss of prospects of marriage).
- (vi)** Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account

of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

**33.** In the instant case, the claimant has stated that he has spent about Rs. 81,266.02 ( with vouchers) and Rs. 50,000/- (without vouchers) only for his medical treatment. But the Opposite Party no. 3 has not objected or shown any doubt so far as the bills and voucher submitted by claimant is concerned. In view of this and after enquiry about the medical bills and voucher I have found nothing suspicious about the medical bills and voucher. It is found that claimant has submitted proper receipt, bill and voucher of Rs. 81,266.02 only. Hence I hold that the claimant has spent an amount of Rs. 81,266.02 only for the medical treatment for his treatment. Therefore, the claimant is entitled to receive the said amount of **Rs. 81,266.02 only towards the expenses relating to treatment, hospitalization and medicines.**

**34.** The claimant has submitted the ambulance rent voucher of total amount of Rs. 14,000/- and the opposite party could not create any doubt about those rent vouchers. Hence the rent vouchers are accepted to be true. In view of the voucher or bill with regard to the transportation to and from medical hospital and in the interest of justice I hold that an amount of Rs. 14,000/- was spent on account of transportation and miscellaneous expenditure. Hence in total, the claimant is entitled to receive the aforesaid amount of Rs. 81,266.02/-only + Rs. 14,000.00 = **Rs. 95, 266.02/- only, towards expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.**

**35.** With regard to the damages for pain, suffering, and trauma as a consequence of the injuries the claimant has prayed an amount of Rs. 50,000/- from the opposite party. But the opposite party has vehemently objected to the claim of the claimant about the quantum of the claim. It is submitted that the injury of the injured is not so grave to claim for such a huge claim.

**36.** Upon hearing both sides I have gone through the material on record and found that the claimant has deposed that as a result of the accident the claimant No. 1 sustained grievous injuries on his body and his both hands and one leg had been broken in the said accident. The other passengers of the said auto rickshaw also sustained injuries. After the accident local people called the 108 - Ambulance and all the injured passengers were taken to the Civil Hospital, Tinsukia. But the injuries of the victim/claimant was serious as such the doctors of the Civil Hospital, Tinsukia referred him to Dibrugarh. In the mean time the family members of the victim arrived at Civil Hospital, Tinsukia and they took the victim/claimant and admitted at G.M Hospital, Dibrugarh. The doctors of the hospital seeing the seriousness of the injured admitted him on the same day in the hospital for his treatment. The injured/claimant sustained grievous injuries like extensive fractures of both bone left forearm and latle candyle and fracture left tibia and other injuries. He had undergone numbers of operation in the hospital in course of treatment. The financial condition of the victim/claimant family was not sound and as such he was discharged on 25/10/2010 from G.M Hospital, Dibrugarh due to shortage of money. The claimant is still under treatment.

**37.** From the deposition of the claimant and the relevant documents it indicates that the injured received sever injury and had to go through the tremendous pain and agony. In view of the nature of the injury and suffering by the injured, I am of the considered view that the claimant is entitled to get adequate compensation for his pain and trauma.

**38.** In view of the nature of the injury, pain and trauma of the claimant I am of the considered opinion that claimant should get an amount of **Rs. 40,000/-, towards damages for pain, suffering and trauma** which in my view is just and adequate. In total, the claimant is entitled to receive the aforesaid amounts of **Rs. 95, 266.02/- + Rs. 40,000/- = Rs. 1,35,266.02/- only in total as compensation.**

**39.** With regard to the future medical expenses the claimant has claimed an amount of Rs. 2,00,000/- but the claimant could not furnish any such authentic documents to prove that such huge amount is necessary for the further future medical treatment of his injury. On this point although the opposite party has tendered their objection yet upon going through the medical report and nature of the injury of injured I am of the considered view that the injured might have required some money for his future medical treatment since the date of discharge from hospital. Hence in the interest of justice and taking note of the nature and consequences of the injury and as there is no documents to prove that how much money is going to be required for the future of the claimant I am of the considered view that the claimant may be bestowed with an amount of **Rs. 10,000/-only for the future medical treatment** of the injured which in my considered view will be just and adequate. Hence, Rs. 1,35,266.02/- + 10,000/- = **1,45,266.02/- only in total compensation.**

**40.** With regard to the Loss of future earnings on account of permanent disability. Ld. Counsel for the claimant has submitted that the claimant is suffering from permanent disablement of left hand to the extent of 55% as per the certificate issued by the Doctors of Civil Hospital, Tinsukia. The claimant due to the injuries sustained in the said accident, is not in a position to work for his livelihood. The claimant was as carpenter by profession and the nature of the injuries shows that the claimant will never be in position to work as a carpenter in future and as such he has no more source of income in future. The claimant prior to his accident was working as a carpenter & was earning Rs.7,500/- p.m from his said work. Due to the accident, he is unable to continue with his work and is totally dependent on others for his livelihood. The claimant has his wife, two children and ailing parents who have no source of income of their own and all of them are suffering for bread and butter. It is further pointed out that CW 4 has deposed that the claimant is suffering from 50% disability and accordingly he issued Disability Certificate dated 09.04.11(Ext. X).

**41.** In reply Ld. Counsel for the opposite party no. 3 has vehemently denied the point of the claimant about the permanent disability and his monthly income. The salary certificate is without any date and hence the salary certificate should not be considered.

**42.** Upon hearing both sides I have gone through the material evidence on record and found that PW 4 has certified that the claimant has 50% disability and accordingly he issued Disability Certificate dated 09.04.11(Ext. X).

**43.** Here I would like to cite the case of **Sandeep Khanuja vs Atul Dande & Anr** Supreme Court Of India Civil Appeal No. 1329 OF 2017(Arising out of SLP (C) NO. 22790 OF 2013) wherein Hon'ble Supreme Court Of India has observed as follow:-

“The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity”.

**44.** Now coming back to the story of the claimant. It is admitted that the Ext. X medical certificate has certified that the percentage of handicap of the claimant is approximately 55%. Hence In view of the report of Ext. X it can be presumed that the claimant is suffering from the permanent disability of 55% on the left hand and left leg of the claimant.

**45.** So far the monthly income of the claimant is concerned it is found that the CW 2 has stated that the claimant was receiving an amount of Rs. 7500/-PM but at the same time he states that a carpenter was paid an amount of Rs. 250/- per day. If we presumed that the carpenter works 26 days per month then a carpenter shall get an amount of Rs. 6,500/-PM. In such calculation and as the opposite party could not create any doubt about the status of the claimant being a carpenter I am of the considered view that the claimant was earning an amount of Rs. 6500/-PM at the time of the accident.

**46.** In the case **Raj Kumar VS Ajay Kumar & Anr., (2011)1 SCC 343**, Hon'ble Supreme Court has held that:

"The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned as much as he used to earn or could have earned. Thus tribunal has to assess whether the claimant suffered loss of future earning on account of permanent disability"

- 47.** But what is disability? Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's

inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident.

**48.** In view of the aforesaid legal proposition and looking at the nature of injuries/disability it can be presumed that the claimant has partial Permanent disability which means the claimant's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. The claimant is a young boy of aged about 26 years and as there will be no difficulty in any reemployment and as he is still to be able to perform some work and is still able to engage in some gainful activity; the loss of earning capacity of the claimant is taken as 25% in relation to whole body. The salary of the claimant at the time of accident has been calculated at Rs. 6,500/-. Consequently the **loss of future income on account of disability thus comes to Rs. 1625/-per month** (which is 25% of Rs. 6,500/-).

**49.** At the time of accident the claimant was 26 years old and since then he is unable to do work as he did before the accident. As per **Sarla Verma & Ors. Vs Delhi Transport Corporation and another (2009 (6) SCC 121** the multiplier shall be of 17. Thus Rs. 1625/-PM X 17= 27625/-. Thus Rs. **1,45,266.02/-+ Rs. 27,625= Rs. 1,72,891.02/- Total compensation.**

**50.** Now the question is to be decided who will have to pay the compensation and what amount to the claimant on account

the injury of the injured caused in the accident.

**51.** In the case of **Khenyei Vs. New Indian Assurance Co. Ltd. and Ors. reported in AIR 2015, SC 2261** a three Judge Bench of the Hon'ble Supreme Court has held that " there is a difference between contributory and composite negligence. In the case of Contributory negligence a person who has himself contributed to the extend cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence, whereas in the case of composite negligence a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons”.

**52.** From the material evidence of the instant case it is revealed and proved that it is a case of composite negligence. Hence both the alleged vehicles are liable to pay the compensation to the claimant. Now the question is to be solved to what extent and from whom the said compensation should be paid to the claimant.

**53.** It has already been decided that the accident of the instant case is a case of contributory negligence as the drivers of both the vehicles equally contributed to the occurrence of the alleged accident. In view of the above discussion, I am of the considered opinion that the claimant is entitled to receive compensation from both the vehicles. Therefore, the claimant is entitled to receive 50% each of total amount of **Rs. 1,72,891.02/- as compensation** from both the alleged vehicles.

**54.** As the claimant has not made the driver and the owner of the alleged Auto as party to the instant case and as he has not claims any compensation against the alleged Auto, no

order is passed by this Tribunal against the alleged Auto.

**55.** Hence considering all facts and circumstances I am of the considered view that the OP no. 3 i.e. The Cholamandalam MS General Insurance Co. Ltd is liable to pay the compensation amount i.e. **Rs. 86,445.51/- only (Eighty Six Thousand Four Hundred Forty Five & Fifty One Paisa only) out of total compensation amount of Rs. 1,72,891.02/- only.**

**56.** In view of the above discussion and considering all facts and circumstances, it is decided that the injured complainant is entitled to get the award of compensation as calculated and computed above, under the law and equity. Thus, the issue no. 2 is decided accordingly.

### **ORDER**

**57.** In view of the above discussion and considering all facts and circumstances the prayer of the claim petition of the injured is allowed. An amount of **total Rs. 1,72,891.02/- only** so computed on different heads is awarded to the injured claimant. **Thus OP No. 3 i.e. The Cholamandalam MS General Insurance Co. Ltd is directed to pay the compensation amount i.e. Rs. 86,445.51/- only (Eighty Six Thousand Four Hundred Forty Five & Fifty One Paisa only) out of total compensation amount of Rs. 1,72,891.02/- only to the injured complainant.**

**58.** In Jiju Kuruvilla and vs. Kunjamma Mohan and others Civil Appeal No. 4945-4946 it is found that Hon'ble Supreme Court has ordered on 2 July, 2013 as follows:- *"The claimants are entitled to get the said amount of compensation alongwith interest @ 12% from the date of filing of the petition till the date*

*of realisation, leaving rest of the conditions as mentioned in the award intact”.*

**59.** Hence in pursuance of the abovementioned cited case the claimant is bestowed with 12 % interest per annum from the date of filing of the claim petition till the realization of the total amount of compensation on the basis of aforesaid terms and conditions.

**60.** Accordingly, this instant MAC case is disposed of on contest without any cost.

**61.** Given under my hand and seal of this Tribunal on this the 29<sup>th</sup> day of May, 2019.

Dictated and corrected by me:

(A. Hakim),  
Addl. Member-2  
M.A.C. Tribunal, Tinsukia.

(A. Hakim),  
Addl. Member-2,  
M.A.C, Tribunal, Tinsukia.

Transcribed by :

P.D. Phukan(Steno)