

**(2018) 02 GAU CK 0075**  
**In the Gauhati High Court**  
**Case No : 250 of 2013**

THE NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

NRIPEN CH. DEKA & ORS,

RESPONDENT

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**Date of Decision :** 08-02-2018

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 41 Rule 23](#) -  
[Motor Vehicles Act, 1988](#), [Section 173](#),  
[Section 173](#), [Section 166](#)

**Citation :** (2018) 02 GAU CK 0075

**Hon'ble Judges :** Kalyan Rai Surana

**Bench :** Single Bench

**Advocate :** B. ACHARYA, SK GOSWAMI, A ACHARYYA

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## Judgement

1. Heard Mr. A. Acharya, learned counsel for the appellant. None appears on call for the respondents although notice of this application has been

duly served on the respondents No.1 and 2. The name of the respondent No.3 was struck off by the order of this Court dated 15.07.2015.

2. By an order dated 05.09.2013 passed by this Court in Misc. Case No.2540/2013, a sum of Rs.11.00 Lakh was ordered to be deposited in

favour of the respondent No.1 before the Court of learned Additional District and Sessions Judge No.4, FTC -cum- Member, MACT, Kamrup,

Guwahati in MAC Case No.78/2008. The Lower Court's record reveals that the said sum has already been withdrawn by the respondent No.1

on 17.12.2013. Hence, the respondent No.1 has the knowledge of pendency of this appeal. Accordingly, the matter is ex-parte heard against the

respondents No.1 and respondent No.2.

3. By this appeal under Section 173 of the Motor Vehicles Act, 1988, the

appellant has challenged the impugned judgment and award dated 10.04.2013 passed by the learned Member, MACT, Kamrup, Guwahati in MAC Case No.78/2008 [MAC Case No.2931/2007(old)], whereby an award of Rs.14,97,644/- with interest @ 6% per annum was awarded in favour of the respondent No.4.

4. The case of the respondent No.1 in the claim petition, in brief, is that on 06.09.2007 at about 11-00 PM, while he was travelling from Sivasagar to Guwahati by his Bolero Jeep at NH-37 near Midhakhat under Teok Police Station, a truck bearing Registration No.AS-01-L-6267 coming from the same direction at a very high speed in rash and negligent manner knocked the right side of the Bolero, while trying to overtake the same.

As a result of the accident, the car driven by the respondent No.1 fell down in the side of the Highway and he sustained grievous injuries. The respondent No.1 filed the claim petition claiming an amount of Rs.15.00 Lakh as compensation.

5. The appellant as well as owner of the offending vehicle contested the claim by filing their written statement. While, the respondent No.2 (owner of the offending vehicle) admitted the date and place of the alleged accident, and submitted that the vehicle was duly insured on 02.11.2007 and that he had running the vehicle on the strength of effective permit and certificate of fitness. The appellant had taken the plea of non-joinder of necessary parties because the insurer of the Bolero Jeep was not made party and further stated that the accident constituted a cognizable offence under the IPC and without any FIR and registration of police case, the claim under GD Entry was not sustainable. Moreover, the accident information report in Form No.54, as required under Section 158(6) of the Motor Vehicles Act read with Rule 150 of the Central Motor Vehicles Rules, was not received by them. Further, stating that the police accident of the alleged accident was required to be produced and otherwise, the appellant denied the alleged accident.

6. The respondent No.1/claimant was put to strict proof of his claim in the claim petition. Upon pleadings of the parties, following issues were taken up for consideration:

1. Whether the claimant Sri Nripen Ch. Deka sustained grievous injuries as a result of accident occurred on 6.9.2007 at about 11

P.M. near Midhakhat under Teok P.S. on N.H. No.37, due to rash or negligent driving of the driver of the Truck bearing registration

No.AS-01-L-6267.

2. Whether the claimant is entitled to any compensation, if so, to what extent and from whom?

7) The respondent No.1/claimant examined two witnesses during the trial. The claimant was examined as PW.1 and one Sri Dhrubaraj Mahanta

was examined as PW.2, who was stated to be the eye witness of the incident.

8) In respect of issue No.1, the learned Tribunal upon discussing the evidence on record, accepting the entries made in the Accident Information

Report (Ext.1), held that the respondent No.1 had sustained injuries in the accident that had occurred due to rash and negligent driving by the

driver of the offending truck bearing Registration No. AS-01-L-6267. Accordingly, the issue No.1 was answered in favour of the respondent

No.1. In respect of issue No.2, the learned Tribunal had discarded the certificate copy of Teok police station vide GDE Entry No.112 dated

06.09.2007 (Ext.A) and Teok P.S. GDE No.114 dated 06.09.2007 on the ground that insurance company investigator (S.I.), who had issued the

Ext. A, was not examined in court. On the basis of disability certificate (Ext.13), the disability of the respondent No.1 was taken to be 75% and

the loss of earning capacity was treated to be 75%. The monthly income of the respondent No.1 was accepted to be at Rs.11,332/- per month (as

per Ext.9) and the age of the claimant was taken to be 48 years (as per Ext.14, i.e. High School Leaving Certificate). Thereafter, applying the

multiplier of 13, the compensation for disability was assessed at Rs. 13,25,644/-. The total award of Rs.14,97,644/- was computed as below:

1. Medical expenses -Rs. 1,02,000/-

2. Pain and suffering -Rs. 50,000/-

3. Towards disability -Rs.13,25,544/-

4. Miscellaneous expenses-Rs . 20,000/-

- Rs . 20,000/- Total = Rs.14,97,644/-

The aforesaid sum was awarded along with 6% interest from the date of filing of the claim petition till realization.

9) The learned counsel for the appellant has submitted that no ejahar/ FIR was

lodged for the accident in this case. It is submitted that the case was built up only on the basis of Accident Information Report (Ext.1). However, the contents of the said Accident Information Report are not in consonance with the contents of the certified copy of the GD Entry No.112 and 114. It is submitted that the claim petition was a result of collusion amongst (i) the claimant, (ii) appellant, and (iii) the respondent No.2 i.e. the owner of the truck, inasmuch as in the relevant GD Entries do not make any reference either to the offending truck or to the registration number of such truck. By referring to the evidence of PW.2, it is submitted that he did not notice the number plate and as per his evidence, he saw the accident, waited for some time and left the place. His statement was also not recorded by the police. The cross-examination of PW.2 is also referred, which reflects that as per his statement, he had come to depose in the court on the basis of summon received by post. There is no evidence to show that the truck driver had voluntarily surrendered himself before the police. Therefore, according to the learned counsel for the appellant, (i) there was no way that the police could have known the registration number of truck, (ii) as the PW-2 was projected to be purportedly a stranger, there was no way for the claimant i.e. Respondent No.1 to know the name and address of PW-2, as his presence at the time of the accident as an eye witness was not known to anyone other than the said PW-2.

It is further submitted that as per the entries made in the GD Entry, the offending truck insured by the appellant was coming from the opposite side and it was a hit and run case, whereas, as per the evidence of PW.1 and PW.2, both the said witnesses have stated in their evidence-in-chief that the accident was occurred while the truck was trying to overtake the Bolero Jeep and hit it in the front side. Therefore, it is submitted that the contents of the GD Entry are contradictory to the ocular evidence of PW.1 and PW.2. In view of above, it is submitted that in the absence of reference to the offending truck in the certified copy of the GD Entry (Ext.A), the entries made in the Accident Information Report (Ext.1) or the contradictory evidence of PW.1 and 2, could not have been accepted by the learned Tribunal.

10) Heavily relying on the statements made by the PW.1 in his cross-examination, it is submitted that the said witness had categorically admitted

that earlier he had filed a consumer case against the insurer of the vehicle and he had further admitted that there was no statement in the consumer case against the truck insured by the appellant. It is also submitted that as per the evidence of PW.1, the police had seized the truck. Hence, going by the contents of GD Entry (Ext.A), the truck could not be seized as it was fled away. Hence, it is not believable the truck could have been identified by the appellant. In the Accident Information Report (Ext.1) or the insurance particulars mentioned therein, when as per the evidence of PW.2 as well as the entries made in the GD Entry No.112 and 114, it was a case of hit and run accident occurred at 00.00 Hrs. in the mid-night, there was no chance of identification of the offending truck by its registration number, or to correctly not only identify PW-2, who has admitted that he had momentarily stopped at the accident site and left without helping the accident victim and without informing the police.

11) On the merit of the award, it is submitted no rash and negligent driving of the offending vehicle is alleged in the Police Report (Ext.2) dated 27.11.2007. Hence, it is submitted that there was no basis for the learned Tribunal to arrive at a finding that the offending truck, insured by the appellant, was driven in a rash and negligent manner. In this context, it is further submitted that the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 the finding of rash and negligent driving is a sine quo non for awarding compensation under the said provision.

12) On the quantum of the compensation, it is submitted that this was a case of amputation of one arm of the respondent No.1. It is submitted that in the case of physical disability, M.A.C. Tribunals are required to follow the percentage of disability as per the Schedules provided in the Workmen's Compensation Act, 1923, especially Schedule-I. It is submitted that in the present case, the respondent No.1 had suffered the amputation of arm. The said injury is a "scheduled injury" under the Workmen's Compensation Act, under which the percentage of disability of 60% is provided. Moreover, it is submitted that the disability certificate showing 75% disability is based on Ext.13, which as per the LCR, is a mere photocopy. Referring to the said Ext.13, it is submitted that the said exhibit was a mere photocopy, which was neither compared with its original nor the said exhibit was proved in original, as such, the learned Tribunal erred in law in placing reliance on a photocopy by allowing it to be

marked as Ext.13. Hence, it is submitted that the learned Tribunal erred in law in deciding the percentage of disability at 75%, by failing to consider

that no reliance could have been placed on a photocopy document, which is not admissible in law as evidence. Further, referring to the evidence of

loss of employment of the respondent No.1, the learned Tribunal had relied on the letter dated 03.10.2007 with heading ""Relieve from Service

issued by the employer (Ext.11). Referring to the same, it is submitted that the said certificate was only an interim arrangement and did not

constitute a permanent discharge from service, because, it was mentioned in the said letter that ""In view of this, Frontier Engineering has no other

alternative to relieve you from the service with grieved heart till an alternative suitable employment can be arranged in due course."" It is submitted

that the said discharge certificate was only temporary and/or stop gap arrangement. Therefore, no award can be passed under the head of loss

arising out of disability. It is also submitted that once compensation is quantified under various heads like medical expenses, pain and sufferings,

loss of disability etc., the compensation in respect of miscellaneous expenses could not have been awarded without disclosing the reason for such

award. It is, therefore, submitted that the impugned judgment and award is not sustainable and the same is liable to be set aside.

13) Considering the submissions made by the learned Counsel for the appellant, the following points of determination arise in this appeal:-

a. What would be the duty of the learned M.A.C. Tribunal in the event it is seized with a situation where conflicting entries are found

in G.D. Entry and Accident Information Report, as in this case?

b. Is the award sustainable on facts and in law?

14) Point of Determination No.(a):

i. As per the GD Entry (Ext.A), the offending truck insured by the appellant was coming from the opposite side and it was a hit and

run case. In the GD Entry (Ext.A), no reference is made in respect of the offending truck as well as regards the registration number of

the offending truck. However, as per the Accident Information Report (Ext.1), the truck bearing AS-01-L-6267 was the offending

vehicle and its insurance and driver details were provided. The rough English translation of Teok P.S. GDE No. 112 and 114 dated

06.09.2007 are quoted below:-

Extract copy of Teok P.S. GDE No. 112 dated 06.09.2007

No. 112

12.10 P.M./ Receipt of Information & Entry.

Now one person has informed over phone that a Bolero vehicle has met with an accident near Teok Petrol Pump and the driver of

the vehicle has sustained injuries. Accordingly, efforts are being made to take necessary steps.

Sd/- H. Pathak

SI of Police

O/C Teok Police Station.

Extract copy of Teok P.S. GDE No. 114 dated 06.09.2007

No. 114

2-30 A.M.

Arrival of the O/C and Staff.

Now, I O/C SI H Pathak, along with staff, have returned and remained on charge. Be it stated here that a Bolero vehicle with

Registration No. AS-01 AD 2205 was going from Jorhat to Sivasagar when, at about 12 midnight, a truck coming from the opposite

direction collided with it and fled the scene. The driver of the vehicle (Bolero) Shri Nripen Deka, son of Shri Ananda Deka, resident

of Akhini Path, Mathura Nagar P.S. Dispur sustained grievous injuries and as such he was sent to Teok FRU for treatment.

However, as his injuries were found to be serious, he was referred to Guwahati Medical College and Hospital. Accordingly, entry is

made in the GD.

Sd/- H. Pathak

SI of Police

O/C Teok Police Station.

ii. As per the evidence of PW-1 and PW-2, both have stated in their evidence-On- Affidavit that the accident had occurred while

the offending truck was trying to overtake the Bolero Jeep, by which the respondent No.1 was travelling, and in the process, the

Bolero vehicle was hit it in the front side. Thus, the Bolero car and the truck were running on same direction and not coming from

opposite direction as mentioned in GD Entry.

iii. There is no statement in the claim petition about the owner or driver of the Bolero vehicle and whether the respondent No.1 was

the driver or a passenger, or whether the said Bolero vehicle was a private or a passenger carrying vehicle. The registration details of

the Bolero vehicle was also not given.

iv. Despite various statements made in the written statement by the appellant, although the amended claim petition was filed on

30.08.2008, the details of driver of Bolero Vehicle, its registration number, insurance details and the status of respondent No.1 in the

said vehicle i.e. whether he was driver, owner or passenger in the vehicle was not disclosed.

v. The claim petition also does not state how the accident had occurred.

vi. The LCR shows that the claim petition was filed on 28.11.2007. All the three pages of the claim petition bears the LTI of the

Respondent No.1/ Claimant. As per order sheet, the appellant filed their written statement on 27.03.2008. Thereafter, on

28.04.2008, petition No. 742 was filed under Order VI Rule 17 CPC for amendment of the claim petition. On the said date the PO

was on leave. Hence, case was put up for hearing of petition on 12.05.2008. Ultimately, the amendment petition was heard and

allowed by order dated 21.06.2008 and the claim was enhanced from Rs.15.00 Lakh to Rs.20.00 Lakh. The amended claim petition

was filed on 30.08.2008 and by order dated 30.08.2008, the case was fixed for evidence of the claimant. Thus, it appears that no

opportunity was given to the appellant to filed their amended or additional written statement.

vii. The claim petition is so casually filed that in paragraph 9, in respect of column for ""Name and address of the medical Officer who

attended to the post mortem"", it is mentioned - ""GNRC, Jibanmala Delhi and other Pvt. Nursing Home"" is entered, although this was

a case of injury and not relating to death.

15) Thus, in the considered opinion of this Court, whenever a Motor Accident



Claims Tribunal is seized with a situation where conflicting accident reports and/or GD Entry are available on record, it would frame an issue to enable the evidence to be led on the point and moreover, in its solemn duty to find out the truth, the learned Tribunal would invariably call for the police records relating to the accident in question. The Point of Determination No. (a) stands answered accordingly.

16) As per LCR, the Disability Certificate (Ext.13) is a photocopy. Therefore, without allowing secondary evidence in accordance with law, the disability cannot be determined on the basis of a photocopy. Thus, the Point of determination No.(b) is answered in the negative by holding that the award is not sustainable on facts and in law. The award is also not found to be sustainable because of the discussions made while answering Point of Determination No.(a).

17) As per the projected case, the respondent No.1 has suffered amputation of his right upper limb. Hence, the respondent is required to have one more chance to prove his case. Hence, it is deemed fit to remand the case for fresh trial before the learned Additional District Judge No.4 (FTC) -

Cum- Member, MACT, Kamrup (M), Guwahati. The order of remand is within the meaning of Order XLI Rule 23-CPC.

18) On receipt of records on remand, the learned Tribunal shall grant reasonable opportunity to the parties to prove their respective case and the matter shall be decided in accordance with law.

19) It has been submitted that in view of the interim order passed by this Court, as referred to above, a sum of Rs.11,00,000/-, deposited by the appellant as an interim award, is stated to be withdrawn by the respondent No.1 and, as such, this Court of the view that the said money would be subject to outcome of the fresh trial on remand.

20) As stated herein before, the learned Tribunal shall give opportunity to the parties to adduce fresh evidence, if so advised, in support of their respective claim. The learned Tribunal shall also call for the relevant police records in original and may also examine the Officer- In- Charge of the Teok Police Station to find out the truth.

21) As a result of the discussions above, the appeal stands allowed by ordering remand as indicated above. The parties shall bear their own cost.

Registry may refund the statutory deposit to the appellant.

22) The appellant, who is represented by their learned counsel, is directed to appear before the learned Tribunal on 19.03.2018 and by producing

the certified copy of this order, shall seek further instruction from the said learned Tribunal.

23) Return back the LCR.