

GAHC010030592022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./91/2022

RUPAK BORA AND ANR.
S/O PRAVHAT BORA
RESIDENT OF BORAPANI TEA ESTATE,
PO AND PS KACHUA DIST NAGAON, ASSAM, 782426

2: MRS. MOUCHUMI BORA

W/O SRI RUPAK BORA

RESIDENT OF BORAPANI TEA ESTATE

PO AND PS KACHUA DIST NAGAON
ASSAM
78242

VERSUS

THE DIVISIONAL MANAGER AND 2 ORS.
SHRIRAM GENERAL INSURANCE CO. LTD.
BR ARCADE 21, JANAPATH, ABC, GS ROAD, ULUBARI, PO ULUBARI, PS
PALTAN BAZAR, DIST KAMRUP M ASSAM,
781007
(INSURER OF THE MOTOR CYCLE BEARING REG. NO. AS-21/F-7275)

2:MD. AJJNUR ALI

S/O MD. GAFUR ALI

RESIDENT OF VILLAGE NELLIE
PO AND PS NELLIE
DIST MORIGAON
ASSAM
782413

(OWNER OF THE MOTOR CYCLE BEARING REG. NO. AS-21/F-7275)

3:MD. MANTU ALI

S/O ROSTUM ALI
RESIDENT OF VILLAGE MORI MUSLIM GAON
PO
PS AND DIST MORIGAON
ASSAM
782105
(DRIVER OF THE MOTOR CYCLE BEARING REG. NO. AS-21/F-7275

Advocate for the Petitioner : MR. N BORUAH

Advocate for the Respondent : MR. P HAZARIKA

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 20-02-2023

Heard Mr. N. Barua, learned counsel for the appellant. Also heard Mr. T. Hazarika, learned counsel for respondent No. 1 and Mr. P.Dutta, learned counsel for respondent Nos. 2 and 3, owner and Driver of the offending vehicle.

1. The present appeal is directed against the judgment and order dated 1.12.2021 passed by the learned Member, MACT No. 3, Kamrup, Guwahati in MAC Case No. 1602/2021, whereby the said claim petition was dismissed.

2. The aforesaid claim petition was filed by the appellants claiming compensation for the injury sustained by the appellant No. 2 Sri Rupak Bora in a Motor vehicular accident which occurred on 6.6.2018 at about 11 A.M at PWD Road, Barapani T.E. under Kachua P.S allegedly due to rash and negligent driving of the Driver of the offending vehicle bearing registration No. AS-21-F-7275.

3. The claim of the appellants is that when the appellant No.1 was standing

on the left side of the road at Barapani T.E., suddenly one motor cycle bearing registration No. AS-21-F-7275 coming from Rajagaon towards Kampur with high speed in a rash and negligent manner, hit him from his backside. As a result of which he sustained grievous injuries all over his body. He was immediately taken to Rajagaon Civil Dispensary for first aid, then he was taken to Dispur Hospital Private Limited, Guwahati for better treatment, wherein he has been treated as indoor patient w.e.f. 6.8.2018 to 7.6.2018.

4. The claimant No. 2/Appellant No.1 examined himself as witness and exhibited accident information report, ejahar, discharge certificate and different bills pertaining to the expenditure incurred at Dispur Hospital.

5. Though the Insurance Company contested the suit by filing written statement, however they did not lay any evidence though they cross-examined the witnesses of the claimant.

6. The owner and Driver did not contest the case. Accordingly, the case proceeded ex parte against them.

7. On the basis of pleadings and materials available on record, learned court below has dismissed the claim of the appellants on the following counts:

(i) The FIR was lodged after 14 days of the incident by the wife of the claimant.

(ii) Though in the FIR it has been written that the husband of the informant was undergoing treatment, in the evidence of injured as well as in the claim petition, it has been stated that he was undergoing treatment w.e.f. 6.6.2018 to 7.6.2018 and FIR was lodged on 20.6.2018.

(iii) Though discharge certificate is exhibited, the same does not contain any signature of the doctor.

(iv) Though the bills were exhibited as Ext 5(1) and Ext. 5(2) however nothing on record to show that the said amount has been paid. No seal and signature of the authorities found in these document.

(v) The claimant has failed to submit any document such as bail bond of the accused driver, seizure list of the offending vehicle, MVI report and charge sheet.

(vi) The accident information report reflects that the case is under investigation; however the claimant has failed to submit any copy of charge sheet or final form.

8. Heard the learned counsel for the parties. Perused the materials.

9. The discharge certificate Ext. 3 is perused, which reflects that Sri Rupak Bora at the time of admission in the hospital was having pain, swelling and restriction of movement of lower leg and it is a case of motor vehicular accident and the informant received primary treatment elsewhere.

Ext. 5(1) is a bill raised in the name of Rupak Bora which also reflects the date of his admission and includes bill for accommodation in the recovery room, hospital charges, operation theatre charges etc.

10. The discharge report and Ext.5(1) bill also reflects the same UHID number which is the I.D of the patient. Similar is the case in case of Ext. 5(2) and different money receipts have also been exhibited. Therefore this court is of the considered opinion that learned Tribunal below ought not to have straightly rejected the documents and disbelieved the case of the accident.

The aforesaid medical document also reflects that accident took place on 6.6.2018, initial treatment were received elsewhere and injury was due to a motor vehicular accident.

11. The claimants also pleaded that accident took place on 6.6.2018, initial treatment was given in the nearby hospital and he was rushed to Dispur Hospital which corroborates the discharge documents.

12. The FIR was lodged on 20.6.2018 and admittedly the person was discharged from the hospital on 17.6.2018. Therefore this court in the given facts ought not to have given much emphasis on the issue of filing FIR at the belated stage.

13. Coming to the other documents, such as non furnishing of bail bond of the accused driver and seizure list of offending vehicle, this court is of the view that standard of proof in a proceeding under a beneficial legislation like M. V. Act which follows summary procedure is preponderance of probability and therefore for proof of the factum of accident shall have no nexus with the bail bond of the driver and the seizure list inasmuch as in the present case the accident information report itself has not been doubted by learned Tribunal.

14. Coming to the filing of the charge sheet, it is by now well settled that the negligence in a motor vehicle claims case is not solely dependent upon a charge sheet filed in the connected criminal case inasmuch as the standard of proof in a criminal case and in a Motor Vehicle Act are totally different.

15. Therefore, in view of the aforesaid findings, this court is of the opinion that learned Tribunal ought not to have dismissed the claim petition on the aforesaid grounds.

16. At this stage, Mr. N. Barua, learned counsel for appellant submits that already charge sheet has been filed and he could obtain a copy of the charge sheet and the claimant be granted a chance to lead evidence.

17. Though this court is of the prima facie view that the medical documents

and the bills are genuine looking at the original copies, however such view cannot dispense with the proof of such document.

Therefore taking note of the aforesaid facts, this court is of the considered opinion that ends of justice would be met, if the present appeal is remanded back for a fresh trial setting aside the impugned judgment for the reasons as discussed herein above.

18. Accordingly, judgment and order dated 1.12.2021 passed by the learned Member, MACT No. 3, Kamrup, Guwahati in MAC Case No. 1602/2021 is set aside and quashed and the matter is remanded back to the learned Tribunal below which shall give an opportunity to the parties to adduce additional evidence if any and the learned Tribunal below shall decide the matter accordingly.

19. With the aforesaid terms the appeal is allowed. Parties shall bear their own cost.

JUDGE

Comparing Assistant