CNR No. ASKM070017722020

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL NO. 1, GUWAHATI.

MAC CASE NO: 1763 of 2020

1. **Moni Das,**
   Represented by her son Suraj Kr. Das

:-Claimant.

VS.

1. **Mrs. Mina Hazarika**
2. **Maheswar Deka&**
3. **Legal Manager,**
   M/s Chola MS. Gen Insurance Company Limited.

:-Op. Parties.

PRESENT:- **Dipak Thakuria,**
Member, M.A.C.T. No. 1,
Kamrup (M) Guwahati.

APPEARANCES:-

Z. Iqbal, Adv., for the Claimants.

Jocky John, Adv., for the Op. Party No.3.

DATE OF EVIDENCE : 05-11-2022, 19-05-2023,
02-11-2023, 17-02-2025,
14-02-2025.

DATE OF ARGUMENT : 09-07-2026.

DATE OF JUDGEMENT : 28-07-2026.

J U D G E M E N T

1. This claim case has been filed by the claimant, Moni Das, through her son Suraj Kr. Dasunder section 166 of the M.V. Act, 1988, for compensation amounting to Rs. 10,00,000/ (Rupees ten lakhs) from the op. parties due to the injuries received by her in an accident that occurred on 22-10-2020 at Pub-Salmara under Raha Police Station in the district of Nagaon.

2. Facts of the case, in brief, are as follows: - that on 22-10-2020, the claimant Moni Das, being a pillion rider of the scooty bearing registration No. AS-01-BV-1283 ridden by her husband Swapan Kr. Daswas proceedingto her residence. At about 3.40 p.m. at Pub-Salmara, on National Highway No 37, a Hyundai Xcent Car bearing registration No. AS-02-Y-7709, which was coming from the same direction at high speed, knocked down the scooty driven by her husband Swapan Kr. Das. As a result, she sustained grievous injuries on her person. The accident resulted from the rash and negligent driving of the offending vehicle's driver.

3. The op. party No. 1, Mina Hazarika, the owner of the offending vehicle, contested the case by filing a written statement. In the written statement, she has submitted that there is no cause of action in the case, the case is bad for mis-joinder of parties, and the case is bad for suppression of material facts. She has denied the allegation that the driver of the offending vehicle caused the accident by driving it in a rash and negligent manner. She has submitted that her vehicle was not involved in any accident. The driver of her vehicle was misled by one Banamali Nath, a friend of her driver. One day, Banamali Nath requested her driver to drop him at Raha, and the driver in good faith agreed to lift Banamali Nath to Raha. After reaching Raha, Banamali Nath took her driver to the Raha Police Station, where a police officer demanded photocopies of the vehicle's documents and the driver's licence. Later, her driver came to know that very cunningly, her vehicle was involved in the present case for wrongful gain. The driver of the offending vehicle was innocent. Knowing all this, driver Maheswar Deka filed a written complaint at Kaki Police Station on 24-02-2021 against Banamali Nath, which was registered as Kaki P. S. Case No. 29/2021 under sections 420/406 IPC, and the case was under investigation. She has further submitted that her vehicle was duly insured with M/s Chola MS Gen Ins. Co. Ltd and the driver also held a valid driving licence. So, she has prayed to dismiss the case against her.

4. Op. party No. 2, Maheswar Deka, driver of the offending vehicle, also contested the case by filing a separate written statement. In the written statement, he has submitted that there is no cause of action in the case, the case is bad for mis-joinder of parties, and the case is bad for suppression of material facts. He has denied the allegation that he drove the offending vehicle in a rash and negligent manner and caused the accident. He has submitted that the vehicle was not involved in any accident. He has further submitted that his friend Banamali Nath misled him. One day, Banamali Nath requested him to drop him at Raha, and he, in good faith, agreed to lift Banamali Nath to Raha. After reaching Raha, Banamali Nath took him to Raha Police Station, where a police officer demanded photocopies of the vehicle's documents and his driving licence. Later, he came to know that, very cunningly, the vehicle was involved in the present case for wrongful gain. Knowing all this, he filed a written complaint at Kaki Police Station on 24-02-2021 against Banamali Nath, which was registered as Kaki P. S. Case No. 29/2021 under sections 420/406 IPC, and the case was under investigation. He has further submitted that the vehicle was duly insured with M/s Chola MS Gen Ins. Co. Ltd, and he held a valid driving licence. So, he has prayed to dismiss the case against him.

5. Op. Party No. 3,Cholamandalam MS General Insurance Co. Ltd., in its written statement, has submitted that from the perusal of the claim petition, it reflects that the accident occurred due to the collision of two vehicles, so the offending vehicle was not solely responsible for the accident. As the insurer and the owner of the Scooty bearing registration No. AS-01-BV-1283 had not been impleadedas parties, so the case is bad for non-joinder of necessary parties. There is no cause of action in the case.Ultimately, the answering insurance company prayed for dismissal of the case against the insurance company.

6. On perusal of the pleadings of the parties, the following issues have been framed.

i. Whether the alleged motor vehicular accident had taken place on 22-10-2020 at about 3.40 p.m. at Pub-Salmara under Raha Police Station in the district of Nagaon, Assam due to rash and negligent manner of driving on the part of the driver of the vehicle bearing registration No. AS-02-Y-7709 and in consequence of that Moni Das had sustained injuries?

ii. Whether the vehicle bearing registration No.AS-02-Y-7709 was duly insured with the op. party No. 3 i.e. Cholamandalam MS GIC Ltd under valid insurance policy at the relevant time of accident?

iii. Whether the claimants are entitled to get compensation, if so, to what extent sand by whom payable?

iv. To what other relief/reliefs the claimants are entitled to in law and equity?

7. In the case in hand, the claimant examined her as P. W. 1, and one Dr. Dharitri Patowary as P. W. 2. The answering insurance company cross-examined them.

8. The answering insurance company examined one Suman Dey as D. W. 1 and the claimant cross-examined him.

9. The op. party No. 1 and Op. party No. 2 have not adduced evidence in defence.

10. Heard the argument advanced by learned counsel appearing for the parties.

11. Perused the evidence on record and relevant documents available with the case record.

Discussion on the points for determination and decision arrived thereon with reasons.

12. Upon careful consideration of the pleadings of the parties, particularly the claim petition and the written statements filed by the owner and driver of the alleged offending vehicle, two contradictory versions of the occurrence are revealed.

13. According to the claimant, on the day of the incident, the offending vehicle bearing Registration No. AS-02-Y-7709 collided with the scooty being driven by Swapan Kr. Das, thereby causing the accident.

14. In contrast, the owner and driver of the offending vehicle contend that, on a different occasion, one Banamali Nath escorted the driver to Raha Police Station, where he was compelled to hand over photocopies of the vehicular documents, including his driving licence, to a police personnel. They further assert that the offending vehicle came to be implicated in the incident on the basis of such documents.

15. Learned counsel appearing for the claimant has submitted that the son of the deceased filed a written ejahar at Raha Police Station and the same was registered at Raha Police Station. The investigating Officer, after investigation, submitted a charge sheet against the driver of the offending vehicle. The driver and the owner of the offending vehicle do not challenge the ejahar filed by the son of the deceased and the charge sheet filed by the investigating officer. So, the owner and the driver of the offending vehicle developed a new story just to create confusion. Learned counsel for the claimant has further submitted that in that accident, the husband of the claimant sustained injuries and on the same day he died. Another claim petition has been filed claiming compensation for the death of the husband of the claimant, which is registered as MAC Case No. 1762/2020.

16. On the other hand, learned counsel for the insurance company submitted that the driver of the offending vehicle filed an ejahar against Banamali Nath and the same was also registered. The investigation of the case was on. The offending vehicle was under the insurance coverage with the op. party No. 3; under such a situation, there was no necessity for the driver of the offending vehicle to lodge an ejahar against Banamali Nath. The entire incident is doubtful.

17. The claimant Moni Das examined her as P. W. 1. On the day of the incident, she was the pillion rider of the scooty driven by her husband. Her evidence shows that on the fateful day, while she was returning home with her husband, suddenly the offending vehicle knocked down the scooty driven by her husband. A case was registered at Raha Police Station as Raha P. S. Case No. 280/2020 under sections 279/304-A IPC. After investigation, the investigating officer submitted a charge sheet against the driver of the offending vehicle to prosecute him under sections 279/304-A IPC. She has exhibited the Accident Information Report as Ext. 1.

18. In cross-examination, she confirmed that at the time of the accident, her husband was riding the scooty. Her husband was the owner of the scooty. She did not make the insurer of the scooty a party in this case. They were wearing helmets at the time of the accident. She did not exhibit the driving licence of her husband.

19. The insurance company examined one Suman Dey as D. W. 1. He has exhibited the written statements filed by the owner and driver of the offending vehicle as Ext. A and B respectively. He has deposed that the owner and the driver of the offending vehicle denied involvement of the offending vehicle in the accident. The driver of the offending vehicle was compelled to hand over the vehicular documents, including his driving licence, to Raha Police by one Banamali Nath. So, an ejahar was lodged against said Banamali Nath by the driver of the offending vehicle at Kaki Police Station which was registered under sections 420/406 IPC. The investigation manager of their company filed an RTI application to the SP

Nagaon and collected the copy of FIR filed by the driver of the offending vehicle at Kaki Police Station. He has exhibited the RTI application as Ext. C, IPO as Ext. D and RTO reply as Ext. E.

20. The insurance company collected a copy of the ejahar filed by Maheswar Deka, the driver of the offending vehicle, by filing RTI application. On perusal the copy of the ejahar filed by Maheswar Deka it appears that he filed the ejahar on 28-02-2021 with an allegation that on 17-11-2020 his friend BanamaliNath escorted him to Raha Police Station and compelled him to hand over the photocopies of the documents of the offending vehicle and his driving licence. He has further alleged that the documents of the offending vehicle used in the accident in which the claimant sustained injuries.

21. From the contents of the ejahar filed by Maheswar Deka, it appears that he filed the ejahar after receiving the notice from this Tribunal. After receiving the ejahar, Kaki Police Station registered a case as Kaki P. S. Case No. 29/2021 under sections 420/406 IPC.

22. As per section 104 of the Bharatiya Sakshya Adhiniyam, *"whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

23. In the present case, the owner and driver of the offending vehicle submitted in their written statements that one Banamali Nath forced the driver to hand over the vehicle's documents to the police and further claimed that the vehicle was not involved in the accident, alleging that they had been falsely implicated. However, under Section 104 of the *Bharatiya Sakshya Adhiniyam*, the burden of proof rests upon the owner and driver of the offending vehicle. After filing their written statements, they failed to appear before the Tribunal and did not produce any evidence in support of their defence. As a result, the facts they narrated remain unsubstantiated. The insurance company, which relied upon the version of the owner and driver, also made no effort to prove those facts. Therefore, the defence put forward by the owner, driver, and insurer cannot be accepted.

24. On the other hand, after the accident, a criminal case at Raha Police Station was registered against the driver of the offending vehicle and the investigating officer submitted charge sheet against the driver of the offending vehicle to prosecute him under sections 279/304-A IPC.

25. Registration of a criminal case against the driver of the offending vehicle and submission of a charge sheet against the driver of the offending vehicle shows that the driver of the offending vehicle operated the vehicle in a rash and negligent manner, and that act was the cause of injuries to the claimant.

26. After carefully scanning the evidence on record, it is concluded that the claimant received grievous injuries on her person due to the accident caused by the driver of the offending vehicle, which had been plied in a rash and negligent manner.

27. In view of the above discussions and observations, Issue No 1 is decided in the affirmative.

28. Claimant (P. W. 1) in her deposition stated that after the accident, she was immediately taken to B. P. Civil Hospital, Nagaon for treatment, where she stayed as an indoor patient from 22-10-2020 to 23-10-2020. And thereafter she was admitted to Paras HMRI Hospital for better treatment as an indoor patient from 04-11-2020 to 10-11-2020. She spent about Rs. 2,50,000/ in her treatment, but she is able to submit medical bills, vouchers etc. for only Rs. 1,84,324/. She has exhibited discharge certificate as Ext. 2 (1 & 2), medical reports as Ext. 3 (1 to 4), medical vouchers, bills etc. as Ext. 4 (1 to 12). She has further submitted that she received injuries i. supra inferior pubic rami fracture left, ii. Hip joint injury and iii. Bruises all over the body. Due to injuries received by her, she became disabled permanently. The doctor assessed her disability as 50%. She has exhibited the disability certificate as Ext. 5. She has also exhibited her identity card as Ext. 6.

29. In cross-examination, she has admitted that after 10-11-2020, she has not submitted any document relating to her treatment. She has denied the suggestion of the insurance company that Ext. 4 (10 and 11) are not her. She has denied the suggestion of the insurance company that Ext. 5 is a manufactured document.

30. Claimant examined Dr. Dharitri Patowary as P. W. 2. She appeared before the Tribunal as she was authorized by the Joint Director of Health Services, Nagaon. She has exhibited the summons issued to the Joint Director of Health Services, Nagaon as Ext. 7. Ext. 8 is the authorisation letter issued by the Joint Director of Health Services, Nagaon. She has also exhibited a certified copy of the issuing register as Ext. 9. She has also exhibited the disability certificate issued by the Joint Director of Health Services, Nagaon, in favour of Moni Das as Ext. 10. She has deposed that on 03-01-2022 a Medical Board was constituted, and the Board examined Moni Das and found 50% permanent disability following Supra pubic rami, post operative complication following RTA. Dr. Atul Ch. Patar, Joint Director of Health Services, Nagaon was the Chairman of the Medical Board. Dr. Diganta Bora, Dr. Sekhar Nath, Dr. Ranjan Kr. Goswami were the members of the Medical Board. On 11-01-2020, the disability certificate was issued to Moni Das.

31. In cross-examination, she stated that she was also a member of the Medical Board. She did not treat Moni Das. She had not exhibited the application form and supporting medical papers of Moni Das. The percentage of disability was assessed as per the guidelines of the Ministry of Social Justice and

Empowerment. She has not exhibited the guidelines. She has not exhibited the patient's test report to assess the disability. She has not exhibited the calculation sheet of 50% permanent disability. She has denied the suggestion of the insurance company that the disability was not prepared as per the guidelines of the Ministry of Social Justice and Empowerment. She has denied the suggestion of the insurance company that the disability was not more than 25%.

32. After perusal of the evidence on record, both documentary and oral, it appears that the claimant sustained injuries in a road traffic accident. She was immediately admitted to B. P. Civil Hospital, Nagaon and thereafter, for better treatment, she was admitted to Paras HMRI Hospital, Patna. Ext. 2 (2) discharge summary issued from Paras HMRI Hospital, it appears that the claimant was diagnosed with a supra/inferior pubic rami fracture, left. It means there was a break in one or both of the pubic rami, which are parts of the pelvic bone, on the left side.

33. The claimant appears before the Medical Board to assess her disability. A Medical Board was constituted under the Chairmanship of the Joint Director of Health Services, Nagaon, and the Medical Board assessed the disability and came to the conclusion that the claimant was suffering from 50% disability, which is permanent in nature. The claimant exhibited her disability certificate as Ext. 5, and P. W. 2 exhibited the disability certificate as Ext. 10. (Both the documents are the same). P. W. 2 is the Medical Officer who deposed before the Tribunal on behalf of the Joint Director of Health Services, Nagaon. She has categorically stated that the Medical Board assessed the claimant as per the guidelines of the Ministry of Social Justice and Empowerment, Government of India. The insurance company did not deny the claimant's disability. According to the insurance company, the disability of the claimant was 25%; but P. W. 2 denied the same. After perusal of Ext. 5 andExt. 10 and also after carefully scanning the evidence of the Medical Officer (P. W. 2), I find nothing to disbelieve the same. So, it is held that the claimant received 50% permanent disability.

34. Claimant (P. W. 1) in her evidence stated that after the said accident she lost her ability to work and her monthly income was Rs.10,000/ as a housewife. The insurance company simply asked her a question that she had no income of her own, which she denied.

35. In the absence of any documentary evidence, the deposition of the claimant regarding her income is accepted. So, it is presumed that the monthly income of the claimant was Rs.10,000/.

36. The claimant, in his evidence, stated that she spent Rs. 2.5 lakhs for her treatment. The claimant exhibited some medical bills, vouchers etc. amounting to Rs.1,84,567/. The insurance company has not challenged the medical bills, vouchers etc. After carefully perusing ofthe same, no abnormality has been detected in the exhibited medical bills and vouchers. So, the claimant is entitled to get the actual medical expenditure of Rs.1,84,567/.

37. The offending vehicle, on the day of the accident, was under the insurance coverage of the Op. Party No. 3, M/s Cholamandalam MS General Insurance Company Limited. So, the Op. Party No 3 is liable to indemnify the compensation to the claimant.

38. In the exhibited medical documents, the age of the claimant is recorded as 36 years. The insurance company does not challenge the claimant's age. So, on the day of the accident, the claimant was 36 years old.

39. The claimant in her cross-examination stated that after 10-11-2020, she has not submitted any document relating to her treatment. There is no evidence on record that the claimant will need treatment in the future. So, the claimant is not entitled to get any compensation under the head of future treatment.

40. The claimant exhibited two railway tickets to show her journey to Patna for treatment. The total amount of the two railway tickets is Rs.2,645/. The claimant is entitled to get the price of the railway tickets. Another amount of Rs.5,000/ is granted to the claimant to meet the expenditure of the journey from the railway station to the hospital and vice versa. So, the claimant is entitled to get an amount of Rs.7,645/ under the head of journey.

41. Now the claimant is entitled to get compensation as per the computation mentioned below:

Calculation of the compensation

Head	Compensation (in rupees)
Annual Income	Rs. 10,000 x 12= Rs. 1,20,000/
Annual income after future prospects @ 40%	Rs. 1,20,000+ Rs. 48,000 =Rs. 1,68,000/
Loss of future income (1,68,000x15x50% disability)	**Rs.12,60,000/**
Medical Expenditure	**Rs. 1,84,567/**
Attendant cost	**Rs. 50,000/**
Travelling expenditure	**Rs. 7,645/**
Pain and suffering	**Rs. 1,00,000/**
Loss of amenities	**Rs. 50,000/**
Expenses on diet	**Rs. 5,000/**
Total	**Rs. 16,57,212/**

42. In the claim petition, the claimant sought a sum of Rs.10,00,000/- (Rupees Ten Lakhs) as compensation for the injuries sustained by her in the accident. Upon proper computation, however, it is revealed that the claimant is entitled to compensation of Rs.16,57,212/- (Rupees sixteen lakhs fifty-seven thousand two hundred twelve) for the said injuries. The question that therefore arises is whether this Tribunal is competent to award compensation in excess of the amount claimed by the claimant.

43. The statutory obligation of the Tribunal under the Motor Vehicles Act is to assess and award "just compensation." The term "just" signifies that the compensation must be fair, reasonable, and equitable in the circumstances of the case. The Hon'ble Supreme Court of India, in ***Nagappa v. Gurdayal Singh*** **(2003) 2 SCC 274**, has unequivocally held that there is no restriction under the Motor Vehicles Act preventing the Tribunal from awarding compensation beyond the amount claimed in the petition. Consequently, the Tribunal is duty-bound to award such sum as constitutes "just compensation," even if it surpasses the figure originally claimed by the claimant.

44. In view of the above discussion, Issue Nos. 2, 3 and 4 are decided as indicated above and in favour of the claimant.

AWARD

45. Awarded **Rs.16,57,212/(Rupees sixteen lakhs fifty-seven thousand two hundred twelve)** only inclusive of no fault liability, with interest @ Rs.6% per annum from the date of filing of the claim petition, i.e. 27-11-2020, till payment to the claimant.

46. The OP. No. 3, M/s Cholamandalam MS General

Insurance Company Limited, is directed to pay compensation to the claimant Moni Das within one month from the date of the order.

47. Out of the awarded amount, keep **Rs.5,00,000/ (Rupees five lakhs) in a fixed deposit** in her name in a nationalized bank for five years in her district.

48. Given under my hand and seal of this Court today, the 28th of July 2026.

(D. Thakuria)

Member,
M. A. C. T. No. 1,
Kamrup (M), Guwahati.