

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.2,  
KAMRUP (M), GUWAHATI**

**Present : MD. ABDUL HAKIM, M.A. LL.B, AJS**  
Member, M.A.C.T. No.2,  
Kamrup (M), Guwahati



**CNR No. ASKM050006112019**  
**MAC Case No.491 of 2019**

**Md. Nasir Uddin Ahmed**

**Represented by his wife Smti. Anowara Khatun**

.....**Claimant**

**-Versus-**

1. Smti. Bandana Chowdhary
2. Sri Krishna Kanta Musahary
3. Chola mandalam MS General Insurance Company Ltd.

.....**Opposite Parties**

**NAME OF THE ADVOCATES WHO APPEARED IN THIS CASE**

- |                              |                                    |
|------------------------------|------------------------------------|
| 1. For the claimant          | : Mainul Hoque Barbhuyan           |
| 2. For the insurance company | : Tridib Kalita & Amarjyoti Kakati |

**DATES OF THE CASE**

- |                            |              |
|----------------------------|--------------|
| 1. Claim petition filed on | : 07-03-2019 |
| 2. Arguments heard on      | : 08-11-2024 |
| 3. Judgment delivered on   | : 07-12-2024 |

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

**1.** The claim petition is filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred as M.V. Act) by the claimant through his engaged counsel, praying for grant of compensation on account of injury sustained by him in a motor accident occurred on 26-08-2018 at about 11:00 AM under Howly Police Station with the involvement of vehicle bearing registration No.AS-15-C-8247.

**2.** The case of the claimant briefly, is that on 26-08-2018, at about 11:00 AM while Md. Nasir Uddin Ahmed was travelling from Barpeta Road to Kujarpith by the offending vehicle bearing registration No. AS-15-C-8247 (Ultra Star Bus), and reached at Kujarpith, Khalihar Dallong Chowk, on 31 No. N.H. Way, the driver stopped the vehicle at the Bus Stoppage of Khalihar Dallong Chowk and while the injured get down from the said vehicle, the offending vehicle moved with a very high speed and as a result the injured fell down on the pucca road from the said vehicle and the vehicle run over his right leg and become senseless and accordingly the local residents and near relatives got him admitted in Howly C.H.C. but the doctors referred him to F.A. Ahmed Medical College & Hospital, Barpeta, but due to serious/severe nature of injury, the injured was referred to Agile Hospital Pvt. Ltd., Jayanagar Chariali, Khanapara, Guwahati-781022 on the same day 26-08-2018 for treatment and discharged on 30-08-2018. The injured visited the doctors for regular check up. As the injured has not been recovered completely, the treatment is still continuing and found him permanent disablement upto 50%. The injured has already incurred more than Rs.3,00,000/- (Rupees Three Lakhs) for treatment purpose.

**3.** The claimant has further stated that the accident had taken place due to rash and negligent driving of the vehicle bearing registration No.AS-15-C-8247 and in connection with the accident a case being Howly P.S. Case No.417 of 2018 was registered under Sec.279/338 of IPC. The claimant was stated to be Head Teacher of 935 No. Bilartari L.P. School under Elementary Education Department, Govt. of Assam having his monthly income of Rs.41,685/-. Under the facts and circumstances, he has requested

the court to award him Rs.30,00,000/- as just compensation. Hence this case.

**4.** During trial, summonses were issued to the opposite parties. Accordingly, the opposite party No.3 has entered its appearance and filed written statement in order to contest the case. None have appeared on behalf of the O.P. Nos.1 & 2 and as such, the case proceeded ex parte against them.

**5.** The Opposite Parties No.3, Cholamandalam MS General Insurance Co. Ltd. in its written statement, stated that the case is false and not maintainable, hence, the claim petition is liable to be dismissed. The claim petition is liable to be dismissed in limine with costs against the insurance company. It has further pleaded that the claim petition is bad for mis-joinder and non-joinder of necessary parties. The case of the claimants is bad for acquiescence, waiver and estoppels. The claim petition is misconceived, frivolous and untenable under the law. There is no cause of action for the case. The contesting Opposite party No.3, besides denying the name, address, age, occupation and monthly income of the deceased, it also, denied the date time and place of occurrence of accident. The claimants are asked to strict proof of the statements made in the claim petition. Further Opposite party No.3 denied that the rash and negligent driving of the rider of the vehicle-in-question as alleged. It is also pleaded that the claim amount is too high and excessive and the claimants are not entitled to get this amount as claimed for. The OP NO.3 denied its liability till the compliance of section 64VB of the Insurance Act, 1938.

**6.** The answering OP contended about the present claim having been rendered bad in law for noncompliance of mandatory provisions under sections 134(C) and 158(6) of the M.V Act, 1988 by

the driver/in charge of the alleged offending vehicle, having not sent the insurance papers; date, time and place of accident; particulars of the victim; the name of the driver and particulars of his driving license to the insurer and by the officer-in-charge of the police station under whose jurisdiction the RTA had taken place, having not sent relevant copy of the report prepared following receipt of the information of the alleged accident to the Tribunal, insurer and owner within the stipulated period of 30 days. The answering O.P. reserves its right to avail defence available u/s 149(2) a (ii) for alleged violation of specific conditions of policy by the insured. In the premise, therefore, the answering OP prays for dismissal of the claim petition.

**7.** Upon hearing of the parties and on perusing the pleadings on record, the following issues were framed in the case;

### **ISSUES**

**I.** Whether the alleged motor vehicular accident had taken place on 26-08-2018 at about 11:00 A.M. at Kujarpith near Khalihar Dallong Chowk on NH31 under Howly P.S. in the district of Barpeta, Assam due to rash and negligent manner of driving on the part of the driver of the Ultra Star Bus bearing registration no. **AS-15-C-8247** and in consequence of that Md. Nasir Uddin Ahmed had sustained **injuries**?

**II.** Whether the vehicle bearing registration no. **AS-15-C-8247** was duly insured with the O.P. No.3 i.e. Chola mandalam MS General Insurance Company Ltd. under valid insurance policy at the relevant time of accident?

**III.** Whether the claimant is entitled to get compensation, if so, to what extent and by whom payable?

**IV.** To what other relief/reliefs the claimant is entitled to in law and equity?

**8.** In the trial, the claimant has submitted his evidence on affidavit as P.W.1. The claimant has also examined one more witness namely Dr. Shah Alam as P.W.2. The opposite party No.3 has examined none in its favour.

**9. P.W.1 Md. Nasir Uddin Ahmed @ Nasir Uddin,** has stated that on 26-08-2018 at around 11:00 AM when he was proceeding from Barpeta Road towards Kujarpith by the offending vehicle bearing registration no. AS-15-C-8247 (Ultra Bus) and reached at Kujarpith, Khalihar Dallang Chowk, on 31 National Highway, the driver stopped the vehicle at the bus stoppage of Khalihar Dallang Chowk and while he get down from the said vehicle, the said moment the offending vehicle moved with very high speed in a rush and negligent manner of the driver of the said offending vehicle as a result he fell down on the pacca road from the said vehicle and the said offending vehicle run over my right leg and accordingly he become senseless. Thereafter the local people and near relative admitted him at Howly CHC but the doctor of the said CHC referred him at Fakaruddin Ali Ahmed Medical College & Hospital but due to severe nature of injury again he was shifted to Agile Hospital Pvt. Ltd., Joyanagar Chariali, Khanapara, Guwahati- 781022 on the same day i.e. 26/08/2018 for treatment and he was discharged on 30/08/2018. Thereafter he used to visit the doctor for regular check up at Agile Hospital Pvt. Ltd. and also other hospital. Later on he went to Patna for better treatment at Arvind Hospital

Pvt. Ltd., Patna and he has not been recovered completely as such he is still under treatment and he become 50% permanent disablement.

**10.** According to him, the accident occurred due to the rash and negligent driving of the vehicle, noting that a case has been registered against the driver of the Ultra Bus as Howly P.S. Case No.417 of 2018 us 279/338 IPC and after investigation police has charge-sheeted the case against the driver of the said vehicle.

**11.** He has expressed that he is only earning member of his family consisting of himself, wife, two sons and one abnormal unmarried sister and earning Rs.54,616/- per month. He stated that due to his grievous injuries he became 50% permanent disable.

**12.** In support of his evidence, he has submitted some document and exhibited as Ext-1, Certified copy of FIR; Ext-2, Accident Information Report; Ext-3, Certified copy of Charge Sheet; Ext-4, Certified copy of Seizure List; Ext-5, Injury Report; Ext-6, Disability Certificate; Ext-7 to 72, Prescriptions & Advice Slips, Cash memos & vouchers; Ext-73, Salary Slip of the injured; Ext-74, Statement of income tax calculation.

**13. During cross-examination, P.W.1, Md. Nasir Uddin Ahmed @ Nasir Uddin,** has admitted that at the time of accident he was working as Head teacher and at present also he is serving as Head teacher. He does not have any driving license. He used to take five to six classes per day. He has to attend the school from 9am to 02:30pm. His school is situated less than half kilometre away from his residence. Presently he used to go to the school by E-rickshaw. He denied that he has falsely stated in his evidence on affidavit that he is having 50% permanent physical disability as he used to attend school from 9am to 2:30pm and take 5/6 classes per day. The

handyman of the offending bus had pushed him for which he fell down. He denied that the injury occurred due to his fault as he tried to get down from the running vehicle. He also denied that the driver of the bus was not at fault for the accident. He stated that at the time of accident and after the accident he was getting his salary. He denied that there was no loss of income due to the accident. The doctor has not appeared before this Tribunal to prove Ext.6. He also denied that the contents of Ext.6 are not true. He admitted that Ext.9 is included in the final bill Ext.29 (page 40 and 41). He has not submitted any prescription in connection with the bills submitted. He denied that the contents of the medical bills are not true as he has not submitted any prescriptions against the said bills. He denied that he is completely a fit person at present.

**14. P.W.2, Dr. Shah Alam** has adduced evidence relating to nature of injury sustained by P.W.1 and proved the disability of P.W.1. He has stated that he has appeared before this Tribunal on receipt of summons. He also admitted that he is a member of the District Medical Board, Barpeta. On 14-02-2023 the medical board had examined patient Nasir Uddin S/o Abdul Wahab of village Bilortary. He himself, Dr. Tirthanath Sarma (Joint Director) and Dr. Newton Das were present in the board at the time of examination of the said patient. After examination they have diagnosed that this is a case of right knee joint ankylosis with weakness and muscle wasting of the right lower limb. They have assessed 50% permanent disability in relation to his whole body. Ext.6 is the disability certificate. Ext.75 is the title page of the register of the District Disability Medical Board and Ext.76 is the attendance sheet of the members of the medical board held on 14-02-2023. Ext.76(1) is his

signature. Ext.76 (2) is the signature of Dr. Tirthanath Sarma and Ext.76(3) is the signature of Dr. Newton Das.

**15. During cross examination P.W.2** stated that in Ext.75 there is no certificate of the Chairman of the medical board with his seal and signature. In Ext.75 it is not mentioned in respect of the district and place of the medical board. In Ext.76 there is signature of the Chairman Dr. T. N. Sarma is available but his seal as Chairman of the medical board is not affixed below his signature. In Ext.76 there is no mention of the persons examined in the meeting dated 14-02-2023. In Ext.76 there is no result or minutes are mentioned. In Ext.6 it is not mentioned that it was issued on the basis of the board meeting dated 14-02-2023. In Ext.6 there is no specific mention of the guidelines on the basis of which the certificate is issued. P.W.2 stated that he does not know as to whether the injury of the patient was a scheduled injury or a non scheduled injury as per the Employees Compensation Act, 1923. He has not mentioned in their examination about range of motion of the patient. They have assessed the injured part as well as the whole body and ultimately the assessment is made in respect of whole body. P.W.2 denied that they have wrongly assessed the disability as 50% in relation to his whole body and the same was made without following any guidelines.

**16.** Heard argument of learned counsels for both the sides and perused the case record. The learned counsels for the claimant and insurance company have filed written arguments, respectively.

### **DECISION AND REASONS THEREOF**

**17. ISSUE NO.I :** with regard to the Issue No. I, i.e. Whether the alleged motor vehicular accident had taken place on 26-08-2018 at about 11:00 A.M. at Kujarpith near Khalihar Dallong

Chowk on NH31 under Howly P.S. in the district of Barpeta, Assam due to rash and negligent manner of driving on the part of the driver of the **Ultra Star Bus** bearing registration no. **AS-15-C-8247** and in consequence of that Md. Nasir Uddin Ahmed had sustain injuries, I have carefully examined the evidence on record and after hearing the arguments advanced by the learned counsel for the claimant as well as the opposite party No.3, I give my decision on the above issues as follows:

**18.** I have heard arguments addressed by the learned counsels for the parties and perused the record. I have gone through the testimony of the claimant and entire material available on record. I have also given my thoughtful consideration to the arguments addressed by learned counsels for the parties.

**19.** The claimant has filed the case under Sec.166 M. V. Act and the onus is upon the claimant to prove the rash and negligent act of the driver of the vehicle in question.

**20.** The claimant has examined himself as P.W.1 and he has well explained the mode and manner of accident. He has reaffirmed and reiterated the averments made in the petition. During his entire cross examination, nothing has come out so as to discredit his testimony.

**21.** The claimant in his evidence by way of affidavit has categorically stated that the accident in question was caused on account of the rash and negligent driving of the offending vehicle by the driver who is opposite party No.2 in this case. The testimony of P.W.1 is not shaken in the entire cross examination. Nothing has come out so as to discredit the testimony during the entire cross examination.

**22.** It is worth-mentioning here that facts and circumstances of every case are different from each other and every case has to be decided on its own merit. In an action instituted on the principle of fault liability, proof of rash and negligent driving of the offending vehicle is mandatory. However, the standard of proof is not as strict as applied in criminal cases and evidence is to be tested on the touchstone of preponderance of probabilities. Holistic view is to be taken while dealing with the Claim Petition based upon negligence. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. Reference may be made to the judgments titled as **New India Assurance Co. Ltd. Versus Sakshi Bhutani & Ors.; Bimla Devi & Ors. Versus Himachal Road Transport Corporation & Ors. (2009) 13 SC 530, Parmeshwari Vs. Amirchand & Ors. 2011 (1) SCR 1096; Mangla Ram vs. Oriental Insurance Company Ltd. & Ors. 2018, Law Suit (SC) 303 and Sunita & Ors vs. Rajasthan State Road Transport Corporation & Anr. reported in 2019 (1) TAC 710(SC).**

**23.** The Hon'ble Supreme Court in the case of **Archit Saini & Anr. Versus The Oriental Insurance company Limited & Ors.** reported in **[AIR, 2018, SC 1143]**, decided on 9<sup>th</sup> February, 2018 by a Three Judges Bench headed by the then Chief Justice of India held that ".....while considering a claim petition, the Tribunal is required to hold an enquiry and act not as criminal court so as to find whether the claimants have established the occurrence beyond shadow of any reasonable doubt. In the enquiry, if there is prima facie evidence of the occurrence there is no reason to disbelieve such evidence. The statements coupled with the facts of registration of FIR and trial of the accused in a criminal court is sufficient to arrive at a conclusion that the accident has taken place". Likewise, in

**KusumLata Versus Satbir, 2011 (2) RCR (C) 379 (SC)** the Hon'ble Supreme Court has held that "in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

**24.** The Hon'ble Supreme Court also took the similar view in **Anita Sharma and Others Versus The New India Assurance Company Ltd. and Another** reported in 2021 (1) SCC 171 : 2020 (4) TAC 337 and in the case of **Mathew Alexander Versus Mohammed Shafi and Anr. [Criminal Appeal No.1931 of 2023 arising out of SLP (Crl.) No.8211 of 2022]**.

**25.** In view of the above discussion, I am of the considered view that the claimant has sufficiently proved the involvement of the offending vehicle bearing registration No.AS-15-C-8247 (Ultra Star Bus) in the accident and has also proved that the alleged accident happened because of rash and negligent driving of the driver of the said vehicle bearing registration No.AS-15-C-8247 (Ultra Star Bus). The AIR, FIR, Charge-sheet, Seizure list, pertaining to the alleged accident has already been placed on record before the Tribunal. Since the owner or driver has not adduced any independent witness in their favour to disprove the occurrence of accident involving the Ultra Star Bus-in-question, presumption can be drawn that the owner of the vehicle bearing registration No.AS-15-C-8247 (Ultra Star Bus) has admitted the involvement of the vehicle bearing registration No.AS-15-C-8247 in the alleged accident. Although the Insurance

Company had raised the plea that the driver of the vehicle bearing registration No.AS-15-C-8247 had no rash and negligence while driving, the said plea has not been substantiated by the Insurance Company by leading any positive evidence thereof.

**26.** Accordingly, after going through the abovementioned discussion and evaluation, this Tribunal is of the view that the injury was caused to the claimant **Md. Nasir Uddin Ahmed** in a motor vehicle accident and the accident had taken place due to the rash and negligent driving by the driver of the vehicle bearing registration No.AS-15-C-8247 (Ultra Star Bus). This issue is decided, accordingly, in affirmative, in favour of the claimant.

**27. ISSUE NO.II :** with regard to the Issue No.II, i.e. Whether the vehicle bearing registration no. **AS-15-C-8247** was duly insured with the O.P. No.3 i.e. Cholamandalam MS General Insurance Company Ltd. under valid insurance policy at the relevant time of accident, I have gone through the record and found that the Ultra Bus was insured with O.P.No.3 Cholamandalam MS General Insurance Company Ltd. The accident information report shows that the vehicle was insured with Chola MS General Insurance Company Ltd. vide policy No.3373/00472070/000/02 and the said policy was valid up to 18-09-2019. There is no dispute on that point. Hence, I have held that at the time of accident, the offending Ultra Star Bus was duly insured with O.P. No.3, Cholamandalam MS General Insurance Company Ltd. This issue is decided accordingly.

**28. ISSUE NOS.III & IV:** with regard to the Issue Nos.III & IV, i.e. whether the claimant is entitled to get compensation, if so, to what extent and by whom payable, to what other relief/reliefs is the claimants are entitled to in law and equity, now, let us decide

what should be the just and proper compensation under the facts and circumstances of the case.

**29. MEDICAL EXPENDITURES:** The claimant submitted the bills and vouchers to prove his expenditures, incurred in the medical treatment. Ext.7 to 72 are those documents. On careful scrutiny of the medical bills and vouchers, it transpires that the injured/claimant incurred an expenditure of **Rs.3,81,275/-** only towards his medical expenses. As such, it is held that the amount mentioned above is the expenditures, incurred by the claimant for his treatment and the claimant is entitled to get this amount as medical expenses.

**30. LOSS OF INCOME DURING TREATMENT:** - Upon perusal of the evidence of the P.W. 1, claimant it is revealed that he has sustained grievous injuries in a road traffic accident that occurred on 26-08-2018 at around 11:00 AM at Kujarpith, Khalihar Dallang Chowk on NH31 under Howly Police Station. According to him, the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. **He has expressed that he was the Head Teacher of 935 No. Bilartari L.P. School and earning Rs.54,616/- per month.** After the accident he became 50% permanent disable.

**31.** Upon hearing both sides, I have gone through the material evidence on record and found that the claimant himself has admitted that he was working as a head teacher at the time of the accident and getting his salary at the time of accident and after the accident. But he could not produce any document that he has resigned or dismissed from his post or he is not still working in the same school. No person from the school authority has come up and proved that the claimant is not still working in the same school. In

view of the above discussion I am of the considered opinion that the claimant is not entitled to get any compensation award under this head.

**32. LOSS OF FUTURE INCOME DUE TO DISABILITY:**

The claimant has stated that due to the injury sustained by him, he has become permanently disable. The claimant has submitted the disability certificate vide Ext.6 to prove his disability. The disability certificate has duly been proved by P.W.2, Dr. Shah Alom, SM&HO, Barpeta Civil Hospital. The Ext.6, the disability certificate reveals that the percentage of disability is 50% due to right knee joint ankylosis with weakness and muscle wasting of the limb. I have gone through the Ext.6 along with complete medical records. P.W.1 stated in his affidavit that due to the injury sustained in the accident, he is unable to attend his duties and has lost his future prospect of entire life.

**33.** The claimant has deposed that he was working as head teacher and getting his salary even at the time of accident and after the accident. The claimant has failed to prove that he has resigned from his service or he was dismissed; hence it cannot be presumed that he is not still working in his school.

**34.** But, the P.W.2, Dr. Shah Alam has adduced evidence relating to nature of injury sustained by P.W.1 and proved the disability of P.W.1. He has stated that he has appeared before this Tribunal on receipt of summons. He also admitted that he is a member of the District Medical Board, Barpeta. On 14-02-2023 the medical board had examined patient Nasir Uddin S/o Abdul Wahab of village Bilortary. He himself, Dr. Tirthanath Sarma (Joint Director) and Dr. Newton Das were present in the board at the time of examination of the said patient. After examination they have diagnosed that this is a case of right knee joint ankylosis with

weakness and muscle wasting of the right lower limb. They have assessed 50% permanent disability in relation to his whole body. Ext.6 is the disability certificate. Ext.75 is the title page of the register of the District Disability Medical Board and Ext.76 is the attendance sheet of the members of the medical board held on 14-02-2023. Ext.76(1) is his signature. Ext.76(2) is the signature of Dr. Tirthanath Sarma and Ext.76(3) is the signature of Dr. Newton Das.

**35.** Upon considering the evidence adduced by the P.W. 2 and material evidence on record it may be concluded that the disability of the claimant can reduce his efficiency and activities due to Right knee joint ankylosis with weakness and muscle wasting of the limb.

**36.** I have also perused the medical documents. The Ext.6 Disability Certificate shows that the injured has been suffering from disability to the extent of 50% and the nature of disability is locomotor. Due to this Locomotor disability, the claimant will not be able to do his work properly. Now, due to disability, he will not be able to walk properly.

**37.** In the present case, with the percentage of the disability certified by the competent authority, it cannot be assumed that the claimant has suffered 50% of loss of his total income due to the disability. This is because the disability applies to a particular organ and not to the whole body. No doubt, the doctor has assessed the disability of the claimant at 50%. However, it is important to consider the occupation, income and the impact upon the occupation and earning due to the disability. In the present case, although it is believed that the claimant has suffered 50% disability, it cannot be assumed that he has suffered 50% loss of his total income, as other parts of his body are not particularly disabled to that extent.

Undoubtedly, the disability will affect his life but it cannot be assumed that the said disability will reduce his work capacity. As the claimant was a teacher and having shop it can be presumed that the functional disability of the claimant cannot be held to be 50%. However, since, the claimant has suffered locomotor disability, he may find it difficult to perform his day to day work. So, considering the available evidence and the disability, I think due to disability of limb impairment the claimant has lost the future earning as such, I am of the considered view the ends of justice the functional disability is assessed at **30%** with regard to the whole body.

**38.** Now upon perusal of the evidence on record it is found that the claimant, P.W.1 Md. Nasir Uddin Ahmed, was a head teacher and earning Rs.54,616/- per month. In support of his evidence he has submitted Pay slip and Statement of Income tax. But the claimant has failed to prove that he was not working in the school and not getting any income. Hence I am of the considered opinion that there is no loss of future income due to disability.

**39. PAIN AND SUFFERING:** The pain and suffering caused by the grievous injuries suffered by the victim in a motor vehicle accident is difficult to measure in money terms. It is necessary to pay compensation for the effort of pain and suffering. Compensation has to be made for the amount of the suffering of the victim and there may be some objective connection with the suffering. For this purpose, Claims Tribunals and Courts generally consider the nature of the injury; the part of the body where the injuries were sustained, the surgery, if any, performed by the victim, term of imprisonment and treatment in the Hospital".

**40.** P.W.1, Md. Nasir Uddin Ahmed, sustained communitated fracture lower (Rt) femur with Type 1 compound communitated

fracture proxima and fibula (Rt) side and became permanently disabled due to the accident. The medical documents reveal that during the treatment he was undergoing operation on several occasions. He continues to face difficulties in daily activities and has not fully recovered from his injuries. The Injury Report reveals the same. Hence, it would be just and reasonable to award a sum of **Rs.3,00,000/-** towards the head of **Pain, Shock and Sufferings and Mental Agony.**

**41. CONVEYANCE & SPECIAL DIET:** In this case the claimant has sustained communitied fracture lower (Rt) femur with Type 1 compound communitied fracture proxima and fibula (Rt) side and became permanently disabled. The injured suffered disability to the extent of 50% which is considered as 30%. The medical evidence reveals that the injured was undergoing operation during the treatment at hospital. He also took treatment under various hospitals and for the purpose of treatment he went to Patna. Hence, considering the nature of injuries sustained, gravity and seriousness of injuries sustained, duration of treatment and also considering the age of the injured at the time of accident, this court has awarded **Rs.50,000/- on the Head of conveyance/transportation, nourishing food and special diets.**

**42. ATTENDANT CHARGES:** The claimant was undergoing treatment at Howly CHC again he was shifted to Agile Hospital Pvt. Ltd., Joyanagar Chariali, Khanapara, Guwahati- 781022 on the same day i.e. 26/08/2018 for treatment and he was discharged on 30/08/2018. Thereafter he used to visit the doctor for regular check up at Agile Hospital Pvt. Ltd. and also other hospital. Later on he went to Patna for better treatment at Arvind Hospital Pvt. Ltd., Patna. In these circumstances, the claimant/injured must have

required the services of attendant. That apart, he would have been definitely helped by some person either outsider or from his family, to perform his daily activities as also while visiting the Hospital during the course of his medical treatment. It is pertinent to note that the claimant/injured would have also needed an attendant to look after him, even if the gratuitous services were rendered by the some or the other of his family members that a victim cannot be deprived of compensation towards gratuitous services rendered by some of the family members. The discharge certificate reveals that the injury sustained by the claimant was grievous. In these circumstances and in view of the material on record, the claimant/injured shall be entitled some amount towards the head of Attendants Charge. Hence, taking Rs.2,000/- per month, the claimant is awarded **Rs.24,000/- only (2,000 x 12 = 24,000)** towards '**Attendant Charges**' for one year.

**43. FUTURE MEDICAL TREATMENT:** Now, let me considered, whether the claimant is required to award any other compensation on the head of future treatment. It is true that nothing has been placed on record by the claimant as to how much amount shall be incurred on his future treatment. But keeping in view the nature of the injury suffered by the claimant, it is apparently clear that some expenses are bound to be borne his future treatment by him. It is no doubt that the claimant will be required to take treatment time to time even to maintain the present condition of his health. In fact, it is found from the evidence of claimant witness that the injured will have need treatment in future also therefore, considering the present price rise of medicines and doctors charge, I have awarded **Rs.20,000/- on the Head of Future Medical Treatment.**

**44. LOSS OF ENJOYMENT OF LIFE AND AMENITIES:**

The claimant/injured has claimed that he has suffered loss of enjoyment of life and other amenities on account of the accident. The claimant/injured was about 59 years at the time of accident and has suffered fracture injuries. The fracture injury and disability would hinder his daily activities as well as his enjoyment of life. He will never be able to walk normally again. Loss of ability to indulge in physical activity is also likely to adversely affect his overall health. In these circumstances and in view of the law laid down in **Raj Kumar Versus Ajay Kumar reported in (2011) 1 SCC 343**, the claimant/injured shall be entitled to a sum of **Rs.2,00,000/-** as compensation towards **Loss of Enjoyment of Life and Amenities**.

**45. Loss of expectation of life:** From the record, it is also found that the injury sustained by the injured fatal. From the evidence of claimant witness, it is found that the injured sustained serious type of injuries, and due to the injury sustained he has become disable person. Due to injury sustained by him, he cannot lead normal life. The claimant is expected to live more than 70 years. Due to injury sustained in the accident, he will suffer lots of difficulties. After careful perusal of the documents submitted in this case and after hearing both sides, it can be seen that, occurrence of accident and the resultant injuries sustained by the injured was too fatal. It is also established that at the time of accident, the injured was aged about 49 years. Further it can be seen that the doctor had examined the injured and found that there is 50% disability. The fact decided to be is that the injured being aged about only 59 years, has to endure his disability, for the rest of his life and he may have to face future difficulties on account of this injuries and may have to face discomforts in future. Hence, **Rs.1,00,000/-** is awarded towards **Loss of Expectation of Life**.

| <b><u>SL NO.</u></b> | <b><u>HEADS</u></b>                                      | <b><u>AMOUNT</u></b> |
|----------------------|----------------------------------------------------------|----------------------|
| <b>1.</b>            | Medical expenditure                                      | 3,81,275.00          |
| <b>2.</b>            | Loss of Income during the treatment                      | Nil                  |
| <b>3.</b>            | Loss future of income due to disability                  | Nil                  |
| <b>4.</b>            | Pain, shock and sufferings and mental agony              | 3,00,000.00          |
| <b>5.</b>            | Conveyance/transportation, nourishing food special diets | 50,000.00            |
| <b>6.</b>            | Attendants charge                                        | 24,000.00            |
| <b>7.</b>            | Future Medical Treatment                                 | 20,000.00            |
| <b>8.</b>            | Loss Enjoyment of Life and Amenities                     | 2,00,000.00          |
| <b>9.</b>            | Loss of expectation of life                              | 1,00,000.00          |
| <b>Total</b>         |                                                          | <b>10,75,275.00</b>  |

**46. In total the claimants are entitled to get Rs.10,75,275.00 as compensation.**

**47. Now the question is who is liable to pay the compensation to the claimants.**

It is already discussed that the accident occurred due to rash and negligent act on the part of the driver of the Ultra Star Bus. There is also no evidence on record that the owner of the Ultra Star Bus had violated the terms and condition of the insurance policy. Therefore, I have held that the O.P. No.3 is liable to pay the compensation to the claimant. This issue is decided accordingly in favour of the claimant.

### **A W A R D**

**48. In the result, the claim petition is allowed on contest and the claimant is entitled to get total compensation amount of**

**Rs.10,75,275.00** for injury sustained by him. The opposite party No.3, the insurer of the offending **Ultra Star Bus** is directed to pay the compensation amount to the claimant within 30 (thirty) days from today, along with interest at the rate of 09% per annum.

**49.** As regards to the percentage of interest, I am being guided by the case law of **Mohd. Sabeer @ Shabir Hussain Vs Regional Manager, UP State Road Transport Corporation in Civil Appeal Nos.9070-9071 of 2022 (arising out of SLP (C) Nos.481-482 of 2019)** as observed by the Hon'ble Supreme Court. Accordingly the opposite party No.1 is directed to release the awarded amount along with interest @ 09% per annum from the date of filing of the case till its realization.

**50.** Furnish free copy of judgment to the parties immediately.

**51.** Parties to bear the cost.

**52.** The instant case is disposed of.

**53.** Signed, sealed and delivered in the open Court on this the **7<sup>rd</sup> day of December, 2024**, in Guwahati.

**Dictated & Corrected by me:**

**MD. ABDUL HAKIM,**  
MEMBER,  
Motor Accident Claim Tribunal No.2,  
Kamrup (M) Guwahati

**MD. ABDUL HAKIM**  
MEMBER,  
Motor Accident Claim Tribunal No.2,  
Kamrup (M), Guwahati

**ANNEXURE****I. Claimant Examined**

- 1) P.W.1 : Md. Nasir Uddin Ahmed  
2) P.W.2 : Dr. Shah Alam

**II. Opp. Party No.1 Examined**

: Nil

**III. Claimant exhibited**

1. Ext-1 : Accident Information Report  
2. Ext-1 : Certified copy of FIR  
3. Ext-2 : Accident Information Report  
4. Ext-3 : Certified copy of Charge Sheet  
5. Ext-4 : Certified copy of Seizure List  
6. Ext-5 : Injury Report  
7. Ext-6 : Disability Certificate  
8. Ext-7 to 72 : Prescriptions, Cash memos & vouchers  
9. Ext-73 : Salary Slip of the injured  
10. Ext-74 : Statement of income tax calculation.  
11. Ext.75 : title page of the register of the District  
Disability Medical Board  
12. Ext.76 : attendance sheet of the members of the  
medical board held on 14-02-2023

**IV. Opp. party No.1 exhibited**

: Nil

**MD. ABDUL HAKIM,**  
MEMBER,  
Motor Accident Claim Tribunal No.2,  
Kamrup (M), Guwahati

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