



TRNT010002272024

Before The Member
Motor Accidents Claim Tribunal No.2
North Tripura, Dharmanagar,

Case No.
Title Suit (MAC) 25 of 2024

Smt. Sumita Nath,
W/o. Sri Dabasish Debnath
D/o. Sri Sunil Kanti Nath
of Srikrishna Sarani, Thana Road,
PS- Dharmanagar,
Dist- North Tripura **Claimant.**

V E R S U S

1. Md. Ariful Hoque,
S/o.- Abdul Malik,
Vill- West Baghan Ward NO. 3,
P.S.- Kadamtala,
District- North Tripura.
[Driver of the vehicle bearing No. TR 05C 1562 (Mahindra Tripper)]

2. Md. Mainul Husen,
S/o. Lt. Usuf Ali,
Vill- Baghan Ward No. 7,
P.S.- Kadamtala,
District- North Tripura.
[Owner of the vehicle bearing No. TR 05C 1562 (Mahindra Tripper)]

3. The Branch Manager,
National Insurance Company Ltd.

TS(MAC)-25/2024

Dharmanagar Branch,
Thana Road, Dharmanagar, North Tripura.
[Insurer of the vehicle bearing No. TR 05C 1562 (Mahindra Tripper)]

.....Opposite parties.

P r e s e n t

Sri M. Chakraborty
Member
Motor Accidents Claim Tribunal No.2
NORTH TRIPURA:: DHARMANAGAR,

C o u n s e l

For the claimant : Ld. Advocate Mr. P. K. Roy.
For the OP No.1 & 2 : Ld. Advocate Mr. G. Das.
For the OP No.3 : Ld. Advocate Mr. P. Pal.

Date of institution : 09.04.2024
Argument heard on : 19.06.2026
Award delivered on : 17.07.2026

A W A R D

1. This is a case under section 166 of Motor Vehicles Act, 1988 (for short 'MV Act') filed by Smt. Sumita Nath for compensation of Rs.20,67,747/- on account of fatal bloody injuries sustained by her over her forehead, face, bones, joints and her jaw due to motor accident occurred on 30.09.2023 at about 14:30 hrs near Ganganagar H.S. School on Dharmanagar-Bagbassa main road

TS(MAC)-25/2024

under Dharmanagar Police Station due to rash and negligent driving of alleged vehicle bearing No. TR 05C 1562 (Mahindra Tripper).

2. The brief fact of the claimant's case is that- on 30.09.2023 at about 14:30 hours, she met with a road traffic accident on the Dharmanagar–Bagbassa main road near Ganganagar XII Class School, within the jurisdiction of Bagbassa Police Station, North Tripura, due to the rash and negligent driving of the offending vehicle. It is also alleged that due to the said accident, the claimant sustained grievous injuries on her forehead, face, bones and joints, and her jaw was severely damaged. She also sustained multiple blood-stained injuries on different parts of her body. It is further alleged that immediately after the accident, the injured claimant was taken to Dharmanagar District Hospital by a Fire Service vehicle in a critical condition. Considering the seriousness of her injuries, she was referred to a higher centre. Thereafter, she was taken to Jeevan Jyoti Institute of Medical Sciences, Meherpur, Silchar, Assam, where she was admitted as an indoor patient on 30.09.2023 at 07:58 p.m. and discharged on 03.10.2023 at 10:00 p.m. It is further alleged that subsequently, for better treatment, she was taken to CK Birla Hospital, the Calcutta Medical Research Institute, Kolkata, where she was admitted on 04.10.2023 and remained under treatment till 20.10.2023 and during her stay there, she underwent major surgical treatment of her jaw as advised by the attending doctors. After discharge, she continued follow-up treatment and periodic medical check-ups at Kolkata till November 2023 and thereafter continued treatment as per medical advice.

It is also alleged that the claimant had to incur approximately Rs.20,67,747/- towards medical expenses up to the filing of the claim petition and has claimed compensation for the injuries, treatment expenses, pain and suffering, and other consequential losses arising out of the accident. In connection with the said accident, Bagbassa P.S. Case No. 2023/BGB-0001 was

registered under Sections 279/338 of the IPC and Section 184 of the Motor Vehicles Act. Hence this case.

3. The case of the claimant is contested by OP No.1 and 2, by filing joint written statement denying the plea of the claimant and *inter-alia* pleaded that the accident occurred not due to his fault; rather, it occurred due to the fault of the injured herself. It is also pleaded that the said tripper had all the valid documents including the driving license of OP No.2, and therefore, they are not liable to pay any compensation.

4. The case of the claimant is contested by OP No.3, the insurer of the offending tripper, by filing written statement denying the plea of the claimant and *inter-alia* pleaded that the accident took place due to the fault of the injured herself as she rode her scooty in rash and negligent manner and as a result the accident occurred. It is also pleaded that the insurer of the said scooty has not been made party in this suit despite the accident was a head to head collision. It is also pleaded that unless valid driving license of the driver of the said tripper, insurance certificate and valid registration certificate are produce, the OP No.3 is not liable to pay any compensation.

5. On the basis of the pleadings and documents, following issues were framed:-

(i) Whether the case is maintainable?

(ii) Whether the claimant sustained injury due to rash and negligent driving of vehicle Mahindra Tripper TR 05C 1562 on 30.09.2023 at about 1430 hours on the main road of Dharmanagar to Bagbassa near Ganganagar XII School under Bagbassa PS?

(iii) Whether the claimant is entitled to get compensation?

(iv) What should be the amount of compensation ?

(v) Who is liable to pay compensation ?

FINDINGS

Now my discussion, decision and reason therefore:-

6. **Issue No.(ii):-** In this issue, I have to decide whether the claimant sustained injury due to rash and negligent driving of vehicle Mahindra Tripper TR 05C 1562 on 30.09.2023 at about 1430 hours on the main road of Dharmanagar to Bagbassa near Ganganagar XII School under Bagbassa PS .

In this context, Mr. P.K. Roy, Ld. Counsel for claimant submitted that accident occurred due to the fault of the offending tripper as the driver thereof drove the said tripper in rash and negligent manner. On the contrary, Ld. Counsel Mr. G. Das and Mr. P. Pal appearing for OP No.1, 2 and 3 submitted that the accident occurred due to the fault of the injured herself and not due to the fault of OP No.2.

7. In this context, I find, PW1 Smt. Sumita Nath, the claimant deposed that on 30.09.2023 at about 14:30 hours, she met with a road traffic accident on the Dharmanagar–Bagbassa main road near Ganganagar XII Class School, within the jurisdiction of Bagbassa Police Station, North Tripura, due to the rash and negligent driving of the offending vehicle.

In cross-examination conducted for OP No.1, PW1 deposed that she has not submitted her driving license in this case.

8. PW2 Sri Sunil Kr. Nath deposed that he saw that Mahindra Tripper dashed the scooty by rash and negligent driving and as a result claimant sustained injury.

In cross-examination conducted for OP No.1, PW2 deposed that he has not seen the accident.

PW3 Bijit Deb deposed similar to PW2. In cross-examination, PW3 deposed police did not cite him as a witness in the connected criminal case.

9. On the contrary, OPW1 Md. Ariful Hoque, the OP No.1, the driver of the offending vehicle deposed that no accident took place on 30.09.2023 at about 1430 hours as alleged by the claimant due to his rash and negligent driving and he is an expert and experienced driver and always drives vehicle in moderate and normal speed with full care and caution.

In cross-examination conducted for OP No.3, OPW1 deposed that accident took place due to the rash and negligent driving of injured Sumita Nath.

10. Considering the above mentioned evidence of PW1, PW2, PW3 and OPW1, I am of the view that the evidence of PWs are corroborative to each other and believable as to the fact that accident occurred due to the fault of offending vehicle and there is nothing to disbelieve them. In this case, the evidence of OPW1 is not corroborated by any other witnesses. Thus, the evidence of OPW1 is not believable being not corroborated by any witness and document. OPW1 merely deposed that accident did not take place due to his rash and negligent driving, but failed to depose for whose fault the accident took place as he was the driver. Thus, adverse inference goes against OP No.1 for rash and negligent driving.

11. That apart, the above mentioned evidence PWs are corroborated by police documents. From Ext.2, the FIR, I find, FIR was filed stating that accident occurred for the said Mahindra Tripper. From Ext.4, the seizure list, I find offending vehicle and its documents were seized in c/w criminal case. From

Ext.5, the MVI report, I find accident occurred not due to mechanical disorder of the offending vehicle. From Ext.6, the injury report, I find claimant sustained injury due to road traffic accident. From Ext.3, the charge sheet, I find, the claimant sustained injury and the police after investigation opined and filed charge-sheet, against OP No.1, Ariful Hoque, the driver of Mahindra tripper for rash and negligent driving under sections 279/338 of IPC and under Section 184 of M.V. Act for rash and negligent driving of the said vehicle. Investigating officer clearly opined that the accident took place due to rash and negligent driving of offending tripper.

12. Moreover, it is settled law that claimant is not required to prove its case strictly and on the basis of preponderance of probability it can be said that accident occurred due to fault of said tripper.

Thus, in my opinion, it can be said that son of the claimant namely Sumita Nath sustained injury by road traffic accident due to the fault of said Mahindra tripper.

Accordingly, issue No.(ii) is decided in affirmative and in favour of the claimant.

13. **Issue No. (iii):-** In this issue, I have to decide, whether the claimant is entitled to get compensation.

Mr. P.K. Roy, Ld. Counsel appearing for claimant submitted that claimant sustained severe injury due to the accident and became disable as evident from Disability certificate and further sustained huge monetary loss for treatment in various hospitals for treatment, and therefore, entitled to get compensation as prayed for. On the contrary, Ld. Counsel Mr. G. Das for OP No.1 and 2 submitted that the accident occurred due to the fault of claimant and therefore, claimant is not entitled to get any compensation. Ld. Counsel Mr. P.

Pal appearing for OP No.3 submitted that the accident occurred due to the fault of claimant, and therefore, not entitled to get any compensation.

From the discussion and decision of issue No.(ii) it is found that the claimant namely Sumita Nath sustained injury and suffered monetary loss due to the fault of alleged tripper and, therefore, the claimant is entitled to get compensation.

Accordingly issue No.(iii) is decided in affirmative and in favour of the claimant.

14. Issue No.(iv):- In this point, I have to decide what should be the amount of just compensation.

Mr. P. K. Roy, Ld. Counsel for the claimant submitted that due to the accident claimant sustained huge monetary loss for treatment and could not work and became disable and therefore entitled to get compensation as prayed for. On the contrary, Mr. G. Das and Mr. P. Pal, Ld. Counsels appearing for OP No. 1, 2 and 3 submitted that the claim of compensation by claimant is excessive. It is further contended that due to the accident the claimant has not suffered any monetary loss being government service holder. Thus, the claimant is not entitled to get any compensation as prayed for.

In this context, I find, PW-1 Smt. Sumita Nath, the claimant, deposed that after the accident fire service vehicle took her to Dharmanagar District Hospital and considering her physical condition she was AGMC / higher centre, and accordingly, she was taken to Jeevan Jyoti Institute of Medical Science at Silchar and got admitted there on 30.09.2023 and got treatment as an indoor patient, but due to deterioration of her condition, she was further referred to higher centre for better treatment. Accordingly, she was taken to CK Birla Hospital, The Calcutta Medial Research Institute and she received treatment there from 04.10.2023 to 20.10.2023. Major surgical operation was done on her jaw

and thereafter she has been under observation and periodical check up by concerned doctor at Kolkatta till 29.11.2023. After discharge from the hospital for long time, she was undergoing treatment and periodical check up as per advise of the doctor.

PW1 further deposed that due to the accident she lost her working capacity and became disable and Disability certificate stating 40% loco moto disability in relation to her left upper and lower limb was issued by District Rehabilitation Centre, North Tripura. PW1 also deposed that at the time of accident she was 49 years old and claimed compensation of Rs. 20,67,747/-. In cross-examination, PW1 deposed that during her injury period she received salary, but her earned leave were cut.

PW2 Sri Sunil Kumar Nath deposed similar to PW1 as to the treatment of PW1 in various hospital and her injury. In cross-examination of PW2, nothing material came out.

PW3 deposed nothing in this context.

OPW1 also deposed nothing in this context.

15. Considering the abovementioned evidence of PW1 and PW2 and from Ext. 6, the injury report of the claimant, I find, claimant sustained severe laceration, fracture injury on her body due to the accident. From Ext.7, the injury report, I find claimant was in the hospital for treatment from 30.09.2023 to 30.10.2023 i.e. for one month. From Ext.9, the disability certificate, Ext.10, the discharge record, and Ext.10 (series), the medical certificates, I find claimant sustained 40% loco-moto disability in her left upper and lower limb. Thus, it can be said that claimant was hospital for the treatment for one month. From Ext.9, the disability certificate, I find claimant was 41 years old and therefore, the claim and deposition of PW1, the claimant, that she was 41 years old at the time of accident is believable. In this case, the salary certificate of claimant is not

submitted. However, from the AIR/ DAR, I find the monthly income of claimant is Rs. 41,223/- per month. Thus, it can be said that monthly income of claimant was Rs. 41,000/-. As claimant was government servant, she deposed that her monthly income was not reduced but her capability of earning, earned leave, professional efficiency is decreased. As per disability certificate, her disability of left upper and lower limb is 40%. In my view, in a teaching profession, the professional loss of teaching due to 40% left upper and lower limb disability may be of Rs. 10%. Thus, the claimant is entitled to get 10% monthly loss of income due to disability. As petitioner was aged about 41, multiplier 14 shall apply in view of the Judgment of the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport corporation and another, 2009 (6) SCC 121.

I find 10% of monthly income of claimant of Rs. 41,000/- is Rs. 4,100/-. As claimant has a permanent job and aged between 40 to 50 years, an addition of 30 percent of income is to be made as future income. Thirty percent of Rs. 4,100/- is Rs. 1,230/-. Thus, total loss monthly income stands (Rs. 4100/- + Rs. 1230/-) Rs. 5,330/-. Thus, the loss of income of the claimant due to disability stands at (Rs.5330/- x 12 x 14=) **Rs. 8,95,440/-**.

16. From Ext. 11 (Series), I find, claimant sustained cost of Rs. 2300 + Rs. 45000 + Rs. 6000 + Rs. 3000 + Rs. 60094 + Rs. 899124 + Rs. 2053+ Rs. 15278 + Rs. 13728 + Rs. 23760 + Rs. 3960 + Rs. 3933 +Rs. 15118 + Rs. 1565 + Rs. 1490 + Rs. 2905 +Rs. 2500 + Rs. 264 + Rs. 85 + Rs. 3486 +Rs. 233 +Rs. 1512 +Rs. 2499 +Rs. 1743 +Rs. 133 +Rs. 12741 + Rs. 1126 +Rs. 660 +Rs. 718 +Rs. 1467 +Rs. 700 +Rs. 1266 +Rs. 580 +Rs. 2850 + Rs. 4979 +Rs. 2500 +Rs. 4800 = **Rs. 11,46,150/-** for the treatment of the claimant.

That apart, in this case, the claimant might not have preserve other documents and bills and, therefore, considering all these aspects including future treatment, miscellaneous expenses, fooding lodging, pain and sufferings cost, I

am of the view that an amount of **Rs. 20,000/-** may be given as miscellaneous compensation.

Thus, the total compensation stands (Rs. 8,95,000/- + Rs. 11,46,150/- + Rs. 20,000/-) = **20,61,150/-**.

17. As per the judgment of the Hon'ble Supreme Court in SUBULAXMI v. M.D., TAMIL NADU STATE TRANSPORT CORPORATION & ANOTHER, 2012(10) SCALE 617 = (2012) 10 SCC 177 and considering the prevailing rate of interest, I am of the view that the claimant is further entitled to interest @ of 8% per annum from the date of filing this case to till realization.

Accordingly issue No.(iv) is decided.

18. **Issue No.(v):-** In this point, I have to decide who is liable to pay compensation.

Mr. P.K. Roy, Ld. Counsel for claimant submitted that the offending tripper was insured, and the said tripper had all the valid documents, the insurance company is liable to pay compensation.

19. In this context, I find OP No.1 deposed that he has valid driving license. From Ext.3, the charge-sheet, I find OP No.1 Md. Ariful Hoque in the driver of the offending vehicle. From Ext.A, the driving license, I find, the driver of the offending tripper namely Md. Ariful Hoque, the OP No. 1, had valid driving license from 15.03.2012 to 08.03.2027, covering the date of accident on 30.09.2023. From Ext. B, the insurance certificate, I find, the offending tripper was insured with OP No. 3, National Insurance Company Ltd. from 06.03.2023 to 05.03.2024, covering the date of accident of 30.09.2023. From Ext. C, the Pollution certificate, I find, the offending vehicle had valid pollution certificate

from 15.02.2023 to 11.02.2024 covering the date of accident of 30.09.2023. From Ext.E, the national permit, I find the offending vehicle had valid valid permit from 18.07.2019 to 18.07.2024 covering the date of accident of 30.09.2023. In this case, the registration certificate of the offending vehicle is not submitted, and therefore, the OP No.2 the owner of the vehicle is liable to pay compensation.

20. Now it is to be decided, as the offending vehicle was insured with OP No.3, Insurance Company, whether insurance company can be directed to pay compensation to the claimants and recover the same from owner in absence of registration certificate.

In my opinion, the insurance company-the OP No.3 can be directed to pay compensation to the claimants at the first instance and recover the same from OP No.2, the owner by applying the principle of 'pay and recover' if the owner had no registration of the offending vehicle.

21. Specifically, I am of the view that in absence of Registration certificate, the insurance company can be directed to pay compensation and recover the same from owner.

22. In this context, the Hon'ble Madras High Court in M/S. New India Assurance Co. Ltd v. Saraswathi, in C.M.A. No.1432 of 2009, dated 11.08.2016 has upheld the order of payment of compensation to third party even though the vehicle was not registered on the date of accident and observed as follows :-

“10. In Narinder Singh's case cited first supra, a Division Bench of the Apex Court has held that the temporary registration of vehicle for one month expired on 11.01.2006 and the accident took place on 02.02.2006, when the vehicle was not under registration and hence the claim made by the insured was rejected for non-registration of vehicle. It is also revealed that in the said case, a complaint was filed before the District Consumer Forum which was

TS(MAC)-25/2024

allowed directing the Insurer to indemnify 75% of the claim. The appeal filed by the Insurer before State Consumer Forum against the said order was allowed and the appeal filed by the insured before the National Commission was dismissed holding that the vehicle driven without registration was prohibited under Sections 39 and punishable under Section 192 of the Act. Further it was held that the insured is not entitled to claim damages caused to his own vehicle since the vehicle was not registered at the time of accident and one month temporary registration was also expired on 11.01.2016. On coming to the instant case on hand, the claim is not made by the deceased being the owner of the vehicle. The registration of the motorcycle is not questioned and hence, this case is not made applicable to the instant case on hand.

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14. As rightly observed by the Tribunal that the deceased is a third party irrespective of the fact that the motorcycle is not insured or registered at the material time. This Court has considered the submission made on behalf of both sides and perused the award passed by the Tribunal. This Court finds that the Tribunal had granted compensation only to the extent of Rs.1,90,000/-

The above compensation granted by the Tribunal seems to be very low and hence it does not require the interference of this Court.”

23. In this respect, the Hon'ble Himachal Pradesh High Court in National Insurance Company Ltd. v. Kamal Kishore & Ors., FAO (MVA) No.564 of 2018, dated 05.07.2019 held,

“The points for adjudication raised by the insurer in the present appeal are :-

1. Liability of insurer towards third party risks in respect of vehicle, not registered in accordance with Chapter-IV of Motor Vehicles Act and whose temporary registration had also expired.

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To my humble understanding, the law laid down by Hon'ble Apex Court in Narinder Singh Vs. New India Assurance Company Limited and others, is in

TS(MAC)-25/2024

respect of claim made by the owner of the vehicle. In the present case the claim is by the legal heirs of the deceased-third party. It is also to be noticed that when the vehicle was insured towards third party liability, it was done so on the basis of engine number and chassis number. These numbers were duly mentioned in the insurance policy. The insurance is a contract between the insured and the insurer.

It was not insured on the basis of temporary registration number or the permanent registration number. No such condition was stipulated in the contract. Therefore, the insurance company cannot escape its liability, towards third party, merely on account of vehicle being not registered on the day of accident. The contract of insurance is based upon good faith applicable to both the parties. It can also be safely said that there was no connection between the cause of the accident and the registration/non-registration of the vehicle. It is not the case of appellant in the present appeal that driving licence was not valid. Therefore, merely because vehicle was not registered under the provisions of Chapter-IV of the Motor Vehicles Act, Insurance company cannot escape its liability towards third party. The Hon'ble Apex Court has held in Narinder Singh Vs. New India Assurance Company Limited and others, that non-registration of the vehicle is fundamental breach of the policy conditions, however, in order to protect the third party rights, condition can be construed to be fundamental only against insured and not third party risks. This is also spirit of law laid down in National Insurance Co.Ltd. Vs. Swaran Singh and others (2004) 3 Supreme Court Cases 297, relevant para of same stand extracted earlier.

However, since plying of vehicle without valid registration has been held to be fundamental breach of conditions in Narinder Singh's case, (supra), therefore, Insurance Company would be entitled for application of principle of Pay & Recover from insured as has been held in catena of judgments including recent ones in Shamanna and another Vs. Divisional Manager, Oriental Insurance Company Limited and others, (2018) 9 Supreme Court Cases 650.

.....

In view of the above observations, point No.1 is answered accordingly. The appellant is held liable to discharge the liability of payment of entire compensation amount to the third party/claimants in the first instance, whereafter, it is liable to be reimbursed for the same from the insured."

Therefore, I am of the view that, the OP No.3, the insurance company is liable to pay compensation and the insurance company can recover the same from the owner, if the owner had no registration certificate.

Accordingly, issue no. (v) is decided.

24. Issue No. (I): In this issue, I have to decide whether the case is maintainable.

I find in this case nothing to say that the present case is not maintainable. Therefore, I am of the view that the case is maintainable.

Accordingly issue No. (i) is decided.

Order/Award

The OP No. 3, the National Insurance Company Ltd., the insurance company of Mahindra Tripper No. TR 05C 1562 is directed to deposit the awarded compensation of **Rs. 20,61,150/-** (Rupees twenty lakhs sixty one thousand one hundred and fifty) only within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 09.04.2024 to till realization of the full.

Furnish a copy of the award to both sides.

The case stands disposed of on contest.

Make necessary entry in the TR and CIS.

Pronounced in the open court.

Typed to my dictation
And corrected by me.

(M Chakraborty)
Member
Motor Accidents Claim Tribunal
North Tripura, Dharmanagar, No.2

(M Chakraborty)
Member
Motor Accidents Claim Tribunal
North Tripura, Dharmanagar, No.2

TS(MAC)-25/2024

APPENDIX

Claimant's Witnesses:-

PW.1 – Smt. Sumita Nath

PW.2 - Sri Sunil Kanti Nath

PW.3 - Sri Bijit Deb

Claimant's Exhibits:-

Ext.1:- Certified copy of printed FIR in 2 sheets.

Ext.2:- Certified copy of FIR.

Ext.3:- Certified copy of charge sheet.

Ext.4:- Certified copy of seizure list.

Ext.5:- Certified copy of MVI report.

Ext.6:- Certified copy of injury report.

Ext. 7:- Certified copy of medical report.

Ext. 8: Certified copy of hand-sketch map.

Ext. 9: Disability certificate.

Ext. 10: Medical prescriptions.

Ext. 11: Medical bills.

Ext. 12: Certified copy of DAR.

Ext. 21: Photocopy of Disability certificate of claimant.

Ext. 22: Certified copy of AIR & DIR.

Ext. 23: X-ray plate.

Opposite parties' Witness:-

Ariful Hoque.

Opposite parties' Exhibit:

Ext.A: Photocopy of driving license.

Ext.B: Insurance certificate.

Ext.C: Pollution certificate.

Ext.D: Route permit.

Ext.E: National permit.

Typed to my dictation
And corrected by me.

(M Chakraborty)
Member
Motor Accidents Claim Tribunal
North Tripura, Dharmanagar, No.2

(M Chakraborty)
Member
Motor Accidents Claim Tribunal
North Tripura, Dharmanagar, No.2