

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MAC APP. No. 2 of 2022

The Divisional Manager National Insurance Co. Ltd.
Thangal Bazar, Imphal West, P.O. Imphal P.S. City P.S.,
Manipur – 795 001.

.... Appellant

- Versus -

1. Shri Phanjoubam Sanjoy Singh aged about 46 years s/o late Ibopishak of Akham Village P.O.&P.S. Langjing, Imphal West District, Manipur (Legal representative of late Phanjoubam Gandhi Singh).
2. Chongtham Thoinao Meitei aged about 30 years s/o late Rajmani Meitei of Lamboikhongnangkhang P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.
3. Chongtham Cheiraoba Meitei aged about 34 years s/o late Rajmani Meitei of Lamboikhongnangkhang P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.

.... Respondents

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner : Mr. A. Deni, Advocate

For the respondents: Mr. M. Nabakishwor, Advocate
Mr. Ng. Jotindra, Advocate

Date of hearing : 08.03.2024

Date of Judgment &
Order : **22.03.2024**

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. A. Deni, learned counsel appearing for the appellant, Mr. M. Nabakishwor, learned counsel appearing for the respondent No. 1 and Mr. Ng. Jotindra, learned counsel appearing for the respondents No. 2 & 3.

[2] The present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 with the following prayer:

- "(a) To admit this appeal.*
- (b) To all for records of the case from the Hon'ble Tribunal.*
- (c) To set aside the judgment and order dated 21.11.2020 and calculate the compensation afresh.*
- (d) To remand the case to the Tribunal for fresh hearing of the case or to give right to the appellant to recover the award amount from the owner of the vehicle for violation of Policy terms and condition and the M.V. Act, 1988.*
- (e) To hear the appeal and set aside and to quash the impugned judgment and order dated 21.11.2020 and to stay the operation of the impugned award pending the disposal of the appeal for the ends of justice."*

[3] The grounds for being filed the present appeal are as follows:

- (i) The Ld. Motor Accident Claims Tribunal, Manipur erred in law as well as in fact in passing the judgment and order dated 21.11.2020 that, driver of the involve vehicle was holding a fake license at the time of the accident. The driving license submitted along with the Claim Petition was 55000/MTH in the name of Ch. Cheiraoba Meitei, whereas in the investigation report from the concerned DTO Thoubal, Manipur, their record showed that the said driving license was registered in the name of one, Thiyam Pinky Devi, d/o Th. Shyam Singh of KongbaUchekon.
- (ii) The claimant in his petition has clearly taken the plea that, at the time of accident, the driver (respondent No. 2 in MAC Case No. 21 of 2014) was fully drunken state.

It is clear case of violation of M.V. Act, 1988 and the terms and conditions of the Insurance and that, the appellant should be absolved from any liability in the case.

- (iii) The policy was issued in the name of the Lessee Durgapur Steel Plant with the vehicle No. WB-28-U-7226 whereas the vehicle involved in the accident was bearing registration No. MN01S 1656 registered in the name of ChongthamThoinao Meitei. This is in violation of Section 157(2) which clearly say that, the transferee has to apply within 14 (fourteen) days from the date of transfer in prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance in his favour. This is clear violation of the M.V. Act, 1988 and terms and conditions of the Policy.
- (iv) The Ld. Tribunal has wrongly assessed Rs. 5,00,000/- (Rupees five lakh) only as future loss of earning without any basis. The Ld. Tribunal without giving any finding regarding the loss of earning of the claimant has wrongly assessed a sum of Rs. 5,00,000/- (Rupees five lakh) only.
- (v) The driver of the involved vehicle was holding a fake license at the time of the accident and if the insurance is liable, the Ld. Tribunal should have directed the owner of the Car to deposit surety and only then released the award amount to the claimant/respondent No. 1 as per various decision of the Supreme Court of India.
- (vi) The Ld. Tribunal has passed the impugned judgment and order dated 18.02.2021 passed in MAC Case No. 46 of 2019, most mechanically without application of mind and is liable to set aside and quashed.

[4] On 25.12.2013, the respondent No.1/Claimant along with one, Konsam Victor Singh was returning home on foot from Lamboikhongnangkhang towards Akham Village, one Martuti Alto LXI bearing registration No. MN01S 1656 driven by respondent No. 2 in the present appeal hit the claimant from the backside, due to which the claimant suffered sustained serious bodily injuries and was evacuated to RIMS Hospital for medical treatment. The claimant has to under 2 (two) operation for his treatment. Accordingly, a suo moto case was registered under FIR Case No. 262(12)2013 Lamphel PS U/S 279/338/427 IPC.

The present respondent No. 1/claimant filed MAC Case No. 21 of 2014 before the Motor Accident Claims Tribunal for payment of compensation for a sum of Rs. 15,00,000/- (Rupees fifteen lakh) only for the injuries he sustained in the said accident.

The appellant also filed written statement denying any liability pay any compensation since the driver of the car was fully drunk and was holding a fake license at the time of accident.

[5] The Ld. Tribunal framed the following issues:

- (i) Whether the pedestrian Shri Ph. Gandhi Singh was knocked down from behind by a speeding Maruti Car aforementioned, registered in the name of respondent No. 1 driven by the respondent No. 2 and insured with the respondent No. 3 on 25.12.2013 at about 08:30 pm on Uripok Kangchup Road while proceeding from Lamboikhngnagkhong to Akham Village (east to west) due to rash and negligent driving on the part of the respondent No. 2 who was also driving under the influence of liquor, if so, whether respondent No. 2 had a valid driving license?

- (ii) Whether the respondents are jointly and severally liable to pay compensation to the claimant for the injuries sustained in the said road accident?
- (iii) What would be just and appropriate compensation liable to be paid to the claimants by the respondents?
- (iv) Relief?

[6] The Ld. Tribunal passed the order dated 21.11.2020 in MAC Case No. 21 of 2014 which is impugned herein, directing the appellant/respondent No. 3 to pay a sum of Rs. 6,92,544/- (Rupees six lakh ninety two thousand five hundred and forty four) only for the injuries and the disablement suffered by the respondent No. 1/claimant. The relevant portions of the order are reproduced herein below:

"16. Having considered the rival contentions of both parties along with the evidence available on record, both oral and documentary, and the principles laid down in the above noted guidelines, the quantum of compensation payable to the claimant for the injuries sustained in the accident that occurred on 25/12/2013 at a place near Lamboikhongnangkong along the Uripok Kangchup Road, Imphal West is assessed as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Calculations</i>
1.	<i>Medical expenses (supported by cash memos and medical bills exhibited during the trial of the case)</i>	<i>Rs. 51,881/-</i>
2.	<i>Expenses towards regular medical check-up for a period of 4 months</i>	<i>Rs. 12,000/-</i>
3.	<i>Loss of earning during the period of treatment calculated at the rate of Rs. 3663/- per month vide notification no. 5/289/91-Lab, dated 18/02/2021 of the Labour Department, Government of Manipur</i>	<i>Rs. 3,663/-</i>
4.	<i>Future loss of earning</i>	<i>Rs. 5,00,000/-</i>
5.	<i>Damages for mental and physical shock</i>	<i>Rs. 1,00,000/-</i>
6.	<i>Deduction for the interim award of Rs. 25,000/- already made to the claimant</i>	<i>Rs. 25,000/-</i>
7.	<i>Total (Sl. No. 1+2+3+4+5-6)</i>	<i>Rs. 6,92,544/-</i>

(Rupees six lakh ninety two thousand five hundred and forty four) only

AWARD

Dated, the 21st November, 2020

In the result, the claimant is entitled to a sum of Rs. 6,92,544/- (Rupees six lakh ninety two thousand five hundred and forty four only) as compensation for the injuries sustained by him due to the accident that occurred on 25/12/2013. The respondent No. 3 being the insurer of the offending vehicle owned by the respondent No. 1 and driven by the respondent No. 2, shall indemnify the respondent No. 1 and 2.

Respondent No. 3 is therefore directed to deposit a sum of Rs. 6,92,544/- (Rupees six lakh ninety two thousand five hundred and forty four) inclusive of the interim award if an to this Tribunal within 60 (sixty) days from the date of passing this order. Moreover, the claimants are also entitled to interest @ 6% p.a. from the date of filing the claim case i.e. 25/03/2014 till the date of realization. However, in the wake of COVID-19 pandemic, the period from 1st April, 2020 to 31st December, 2020 shall not run into calculation of interest payable to the claimant."

[7] However, the claimant in the claim petition claims the following:

- (a) A sum of Rs. 63,000/- only as medical expenses.
 - (b) A sum of Rs. 30,000/- is expended for to and fro fooding, lodging etc.
 - (c) A sum of Rs. 12,000/- for practice/check up to RIMS Hospital after discharge of every 15th and 30th of a month for 4 months according to Doctors advice.
 - (d) A sum of Rs. 5,00,000/- for lost of my energetic opportunity of working and lost of my life.
 - (e) A sum of Rs. 2,00,000/- for pain suffering tension, nervous etc.
- Total amount of Rs. 8,05,000/- only.

[8] The appellant's submission in respect to holding fake license at the time of accident by the respondent No. 2, the appellant is not entitled to raise this point at this juncture as during the course of examination of witnesses particularly the I.O. of the case who was examined as P.W. No. 4 stated the following :

"Ext. A/4 is the FIR which is already exhibited is the certified copy of the FIR being No. 262 (12) 2013 of Lamphel P.S. Ext. A/4(1) and (2) are the signature of the then O.C. namely B. Rishikesh Sharma, Lamphel P.S. I know his signature as a subordinate staff. Ext. A/5 which is also already exhibited is the certified to be true copy of

the injury report form. Ext. A/5(1) is my signature. Ext. A/6 which is already exhibited and Ext. A/6(1) is my signature. During the interrogations of the case I found the original driving license of the accused Chongtham Cheiraoba Meetei and found the validity of the said driving license valid upto 22/05/2017 issued by the DTO, Ukhrul District, Manipur. Thereafter, I was transferred to Keithelmanbi Police Picket, Imphal West District."

The appellant failed to contradict the deposition made by the P.W. No. 4 during the cross examination as the cross examination was 'NIL'.

[9] Further, the point raised by the appellant that the driver (respondent No. 2) was fully drunken at the time of the occurrence as such, the respondent No. 2 violates M.V. Act, 1988. But, during the examination of the I.O. of case there is no whisper of the drunkenness of the respondent No. 2 and the appellant failed to raise this issue during the cross examination, the statement of the claimant cannot be taken as true with regard to the drunkenness of the respondent No. 2 as the claimant was in a state of shock and due to the injuries.

Further, the issue raised by the appellant that the insurance policy was issued in the name of lessee, Durgapur Steel Plant with the vehicle number WB-28-U-7226 whereas, the vehicle involved in the accident was bearing registration No. MN01S 1656. Again, this issue was not raised either by the appellant during the examination of the PWs and also as well as during the cross examination and the witnesses have given any statement regarding this issue. As such, the appellant cannot raise this issue now.

[10] Regarding wrong assessment of Rs. 5,00,000/- only as future loss of earning without any basis, I have gone through the statement of P.W. No. 2, Dr. Sanjib Waikhom, this witness did not mention about the future condition of the claimant and in his statement, he states that "Patient was not followed after this. It is difficult to comment about the disability and in the cross examination of this witness is 'NIL'."

In respect of P.W. No. 3, Dr. Wahengbam Tulsidas Singh –

"As per record Mr. Ph. Gandhi aged about 22 years S/o Ph. Basu Singh of Lamshang Akham sustained fracture of right parasymphysis region of mandible along with avulsion of incisors and canine (11, 21, 22, 31, 32, 33, 41, 42 and 43).

He was operated on 02-01-2014 with open reduction and internal fixation using miniplate and screws under local anaesthesia. Thereafter, he did not have any mandible related problems. He has not turned up for further follow up. He may require prosthetic replacement of loss teeth."

[11] In the circumstances, it is difficult to ascertain the condition of the claimant as such, considering these facts and circumstances, the amount awarded for future loss of earning is reduced to Rs. 3,00,000/-.

The Ld. Tribunal in the claim case directed as follows:

"Respondent No. 3 is therefore directed to deposit a sum of Rs. 6,92,544/- (Rupees six lakh ninety two thousand five hundred and forty four) inclusive of the interim award if an to this Tribunal within 60 (sixty) days from the date of passing this order. Moreover, the claimants are also entitled to interest @ 6% p.a. from the date of filing the claim case i.e. 25/03/2014 till the date of realization. However, in the wake of COVID-19 pandemic, the period from 1st April, 2020 to 31st December, 2020 shall not run into calculation of interest payable to the claimant."

The respondent No. 3 is directed to pay the calculated amount which is to be calculated with the reduced amount in respect of future loss of earning as mentioned above to the claimant within 3 (three) months from the date of this order and the calculated amount of the award is to be deposited to the account of the Ld. Presiding Officer, Motor Accident Claims Tribunal, Manipur.

[12] With the slight modification of the award, this case is partly allowed.

JUDGE

FR/NFR

Bipin