

**IN THE COURT OF THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR AT TEZPUR**

Present : Smti. M. Nandi,
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur

MAC CASE NO. 74 of 2019(D)

1. Smti. Lalita Devi,
W/O Late Ghana Nath,
R/O vill. Keherukhanda Pathar,
P.O. Keherukhanda,
P.S. Dhekiajuli,
Dist. Sonitpur, Assam,
2. Smti. Umeswari Devi,
Wife of Sri Amrit Das,
R/O vill. Sirajuli gaon,
P.O. &P.S. Dhekiajuli,
Dist. Sonitpur, Assam.....claimants.

-Versus-

1. Sri Munindra Kalita,
S/O Tankeswar Kalita,
R/O Vill. Tamuli Road, Dhekiajuli,
P.S. Dhekiajuli
Dist. Sonitpur, Assam
[(Owner of the vehicle No. AS-12AC/8322 (Ultra Bus)
2. Sri Khanjoy Daimari,
S/O Late Kaliram Daimari @ K.P. DAIMARI,
R/O Ward No. 6, Dhekiajuli,
P.S. Dhekiajuli,
Dist. Sonitpur, Assam
[(Driver of the vehicle No. AS-12AC/8322 (Ultra Bus)
3. Branch Manager,
Cholamandalam M/S General Insurance Co. Ltd.
Guwahati Branch,
Dist. Kamrup(M), Assam,
Guwahati-781005.
[(Insurer of the vehicle No. AS-12AC/8322 (Ultra Bus).....opposite parties.

ADVOCATES APPEARED

For the claimant	:- Najrul Islam, Advocate.
For the O.P.No.1&2	:- Ex-parte.
For the O.P. No. 3	:- K. Kr. Bordoloi, Advocate.
Date of Argument	:- 02-02-2021
Date of Judgment	:- 03-02-2021

J U D G M E N T

This is an application u/s- 166 of M.V. Act, 1988 filed by the claimants Smti. Lalita Devi and Smti. Umeswari Devi praying for grant of compensation on account of death of their brother Babul Borah, who died in a motor vehicle accident.

1. The brief fact of the case is that on 10-03-2019 at about 4-45 A.M. while the brother of the claimants Babul Borah was waiting for Bus near Benusa Hotel , Thakurbari, Dhekiajuli near NH-15, at that time one Ultra Bus bearing No. AS-12AC/8322 coming in a rash and negligent manner knocked down Babul Borah. As a result he sustained grievous injuries on his person and ultimately died on the spot. Post mortem examination of the deceased was conducted at Tezpur Medical College & Hospital, Tezpur.

2. After the accident, one case was registered vide Dhekiajuli P.S. case No. 167/2019 u/s- 279/304(A) IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with Cholamandalam M/S General Insurance Co. Ltd.

3. Against the claim petition O.P. No. 3 i.e. insurer of the offending vehicle bearing No. AS-12AC/8322(Ultra bus) has submitted written statement and it is denied that on 10-03-2019 at about 4-45 A.M. one Ultra Bus bearing No. AS-12AC/8322 was involved in the accident which occurred near Benusa Hotel, Dhekiajuli under Dhekiajuli P.S. It is alleged that the deceased was walking very negligently without observing the traffic rules of the road and while crossing the road the alleged accident occurred due to the negligence and fault of the deceased himself. As such O.P. NO. 3 is not liable to pay any compensation to the claimants and prayed to dismiss the claim petition with cost.

4. Though notices were served to O.P. NO. 1 and 2 but O.P. NO.1 and 2 did not appear during trial. Hence, the case was proceeded ex-parte against O.P. No. 1 and 2.

5. On the pleadings aforesaid, following issues were framed-

1. Whether the alleged accident took place on 10-03-2019 at about 4-45 A.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-12AC/8322(Ultra Bus) and whether the victim Babul Borah died due to the alleged accident?
 2. Whether the claimant is/are entitled to get any compensation, as prayed for, and if so, from whom and to what extent?
6. I have heard argument advanced by Learned Counsel of both sides. I have also perused the documents available in the record.

Issue No. 1

7. One of the claimants Lalita Devi was examined in this case as CW-1, who deposed in her evidence that she along with her elder sister i.e. claimant No. 1 has filed this claim case praying for grant of compensation on account of death of her brother Babul Borah in a motor vehicle accident which took place on 10-03-2019 at about 4-45 A.M. near Benusa Hotel, Thakurbari under Dhekiajuli P.S. due to rash and negligent driving by the driver of the Ultra Bus bearing No.AS-12AC/8322. Claimant No.2 died on 08-01-2020 after filing of the case.
8. CW-1 has exhibited the following documents-
- Ext. 1 Form 54 (accident information report).
- Ext. 2 to 2(iv) are documents relating to criminal case.
9. In her cross-examination CW-1 has replied that she had not seen the accident. She has filed this claim case on account of death of her younger brother Babul Borah who was a bachelor at the time of accident. The parents of the deceased died earlier.
10. CW-2 is Asim Talukdar who deposed in his evidence that on 10-03-2019 at about 4-45 A.M. he was standing with his Tomtom(E Rickshaw) near Benusa Hotel Thakurbari, Dhekiajuli, at that time he had seen an accident when an Ultra Bus bearing No. AS-12AC/8322 coming in a rash and negligent manner knocked down one person Babul Borah who died on the spot. Later on, he informed one Raju who is relative of the deceased to inform about the accident to the house of the deceased.

11. In his cross-examination CW-2 has replied that he had seen the accident. The accident took place on 10-03-2019 at about 4-45 A.M. at Thakurbari near Benusa Hotel. At the time of accident he was coming from Dhekiajuli police station towards Tezpur. The deceased was on the pucca portion of the road when the accident occurred. After hitting the deceased the vehicle left the place.

12. Ext. 1 is the accident information report which reveals that an accident occurred on 10-03-2019 at about 4-45 A.M. near Benusa Hotel under Dhekiajuli P.S. and Babul Borah died due to the alleged accident. The vehicle bearing No. AS-12AC/8322(Ultra bus) was shown to be the offending vehicle. Ext. 2 is the Ejahar lodged by the claimant No.1 Lalita Devi alleging involvement of the vehicle bearing No. AS-12AC/8322(Ultra bus) causing death of his brother Babul Borah due to rash and negligent driving by the driver of the said vehicle. On the basis of the ejahar, one case was registered vide Dhekiajuli P.S. case NO.167/19 u/s- 279/304(A) IPC. Ext.2(i) is the seizure list of seizing the vehicle bearing NO.AS-12AC/8322(Ultra bus) and its documents. Ext. 2(ii) is the MVI report of the vehicle bearing No. AS-12AC/8322(Ultra bus). Ext. 2(iii) is the charge sheet submitted against the driver of the vehicle bearing No. AS-12AC/8322(Ultra bus) Khanjoy Daimari u/s- 279/304(A) IPC.

13. *To determine the negligence, I am being also guided by the judgment reported in 2009 ACJ 287, National Insurance Company Limited Vs. Pushpa Rana wherein it was held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under [section 279/304 A IPC](#) or the certified copy of the FIR or in addition the recovery memo and the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent.*

14. **[In the case of Ranu Bala Paul & Ors. v. Bani Chakraborty & Ors.](#)** reported in 1999 ACJ 634, it was observed as under:

"In deciding a matter tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be

proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accidents Claims Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the tribunal there must be some material on the basis of which the tribunal can arrive or decide things necessary to be decided for awarding compensation. But the tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary inquiry and this is a legislation for the welfare of the society"

15. *In Bimla Devi and ors. Vs. Himachal Road Transport Corporation and Ors (2009) 13 SC 530, Supreme Court held that*

" In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that 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."

16. Therefore, in view of the evidence of CW-2 as well as documents relating to criminal case, it can be said that the claimant's brother Babul Borah sustained fatal injuries in the alleged accident due to rash and negligent driving by the driver of the vehicle bearing No.AS-12AC/8322(Ultra Bus). Hence, issue No. 1 is decided in favour of the claimants.

Issue No. 2

17. It is an admitted fact that the offending vehicle bearing No. AS-12AC/8322(Ultra Bus) was insured with Cholamandalam M/S General Insurance Co. Ltd. vide policy No.3373/00509205/000/01 valid upto 24-08-2019. The accident occurred on 10-03-2019. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e Cholamandalam General Insurance Co. Ltd. is liable to pay compensation to the claimant.

18. Now, the question comes whether the claimants being the sister of the deceased and not dependent on the income of the deceased are entitled to get compensation and to what extent?

19. Law recognizes two categories of damages on death of a person in a motor vehicle accident, i.e. (i) for the pecuniary loss suffered by dependant family members of the deceased and (ii) for loss caused to the estate of the deceased because of death. As per the case of Sarla Verma -vs.- DTC,(AIR 2009(6) SC 121), it was held that unless there is evidence contrary thereto, sisters cannot be considered as dependant. In the present case there is no evidence on record to show that the present claimants were dependant on the deceased. Therefore, the claimants not being dependant on the deceased, compensation should not be awarded for loss of dependency. But there is no dispute that the claimants being own sisters are the legal representative of the deceased. So, they are certainly entitled to compensation for loss of estate due to death of the deceased.

20. Hon'ble Delhi High Court in the case of Keith Rowe Vs Prasanth Sagar & Ors, reported in 2011 ACJ 1734, had formulated certain methods for calculating the compensation both, in case of claim on the basis of dependency as well as, on the basis of loss of estate with elastration which reads as follows-

"The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed. But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance

with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.”

21. Now another question arises whether the legal representatives of the deceased are entitled to get compensation u/s- 140 of M.V. Act, 1988.

22. The liability under section 140 of MV Act is to pay compensation on the basis of no fault liability. When death or permanent disablement of any person has resulted from an accident, arising out of the use of a motor vehicle, or motor vehicles, the owner of the vehicle shall or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement. According to section 140 of the M.V. Act , in respect of a death, the amount shall be fixed at Rs. 50,000/-and in respect of permanent disablement, the amount shall be fixed at Rs. 25,000/-.It is specifically stated that in a claim under section 140(1) of the M.V. Act, the claimant shall not be required to plead and establish that death or permanent disablement in respect of which such claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned.

23. Hon'ble Apex Court in the case of Indira Devi and others Vs- Bhagadha and anther reported in AIR 2010 S.C. 2919 held that compensation u/s- 140 of M.V. Act is regardless of any wrongful act, neglect or default of any person in respect of whose death, the claim is made.

24. Normally no fault liability is made at the threshold of the proceedings. This statutory liability is created ignoring the principle of law of tort and a substantive right incorporated under the Motor Vehicles Act. It is specifically stated that in a claim under section 140(1) of the M.V. Act, the claimants shall not be required to plead and establish that death or permanent disablement in respect of which such claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned.

25. In view of the aforesaid legal proposition, I am of the view that the claimants are entitled to get no fault amount u/s- 140 of M.V. Act plus loss of estate.

26. As per SLP (Civil) No. 25590 of 2014 (National Insurance Co. Ltd. vs. Pranay Sethi and Others) the Hon'ble Supreme Court has fixed compensation in case of death

reasonable figures on conventional heads namely- Loss of estate and Funeral expenses should be Rs. 15,000/-and Rs. 15,000/- respectively.

27. So, in view of the aforesaid discussion, in the instant case the computation of compensation is awarded as follows :-

A) Loss of estate	=Rs. 15,000/-
B) No fault liability	=Rs. 50,000/-
C) Funeral expenses	=Rs. 15,000/-
TOTAL	= Rs.80,000/- (Rupees

eighty thousand)only.

28. Hence, issue No. 2 is decided accordingly.

ORDER

In the result, the claim petition is allowed, awarding **Rs. 80,000/- (Rupees eighty thousand)only** with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 04-09-2019 till full and final realization. The O.P. No. 3 i.e. Cholamandalam M/S General Co. Ltd. is directed to make payment of the aforesaid amount within a period of 30(thirty) days from the date of receipt of order in the Savings Account of the claimant No. 1 Smti. Lalita Devi through NEFT as it appears that claimant No. 2 Umeswari Devi died during trial. Claimant No.1 is directed to furnish her Bank details of any Nationalized Bank to this Tribunal. On receipt of the same, office of Motor Accident Claims Tribunal, Tezpur will do the needful in sending the required documents to the Insurance Company for payment of compensation to the claimant.

Insurance Company is directed to furnish compliance report accordingly.

Given under my hand and seal on this 3rd day of February, 2021.

Dictated and corrected by me

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

(M. Nandi.)
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

ANNEXURE

1. Witness of the Claimant:

- (i) Lalita Devi.
- (ii) Asim Talukdar.

2. Witness of the Defence:

None

3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2 to 2(iv) are documents relating to criminal case.

4. Exhibits of the defence.

NIL

(M. Nandi.)
Member
MACT, Sonitpur, Tezpur.