

**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. 98 of 2019(D)

1. Rahima Khatun,
W/O Late Aktar Ali,
2. Emrajul Haque,
Son of Late Aktar Ali,
3. Tajnara Khatun,
D/O Late Aktar Ali,

All are resident of
Vill. No. 1 Bosasimolu,
P.O. Farsipam
P.S. Dhekiajuli,
Dist. Sonitpur, Assam.....claimants.

-Versus-

1. Anima Khatun,
D/O Late Lukman Anchari,
R/O Vill. Medhichuburi,
P.O. Rangapara,
P.S. Dhekiajuli
Dist. Sonitpur, Assam
[(Owner of the vehicle No. AS-12X/3140 (M/cycle)
2. Sri Rajdeep Paul,
S/O Pradeep Paul,
R/O Vill. Keherukhanda
P.O.Keherukhanda
P.S. Dhekiajuli,
Dist. Sonitpur, Assam
[(Driver of the vehicle No. AS-12X/3140 (M/cycle)
3. TATA AIG General Insurance Co. Ltd.
3rd Floor, Mayur Gardens, Opp.
HDFC Bank, G.S. Road,
Guwahati-781005.
[(Insurer of the vehicle No. AS-12X/3140 (M/cycle).....opposite parties.

ADVOCATES APPEARED

For the claimant :- Sanjay Das, Advocate.
For the O.P.No.1&2 :- A. Das, Advocate.
For the O.P. No. 3 :- Ex-parte.

Date of Argument :- **09-02-2021**
Date of Judgment :- **10-02-2021**

J U D G M E N T

This is an application u/s- 166 of M.V. Act, 1988 filed by the claimants Rahima Khatun and her son and daughter Emrajul Haque and Tajnara Khatun praying for grant of compensation on account of death of their husband/father Aktar Ali, who died in a motor vehicle accident.

1. The brief fact of the case is that on 07-10-2019 at about 1-30 P.M. Aktar Ali was coming from No.1 Bosasimolu village towards Chitalmari market on foot, at that time one motor cycle bearing No.AS-12X/3140 which was coming through same direction in a rash and negligent manner knocked down Aktar Ali from behind. As a result, he sustained grievous injuries on his head and other parts of his body. The injured was immediately taken to Dhekiajuli 30 bedded hospital. As his condition was critical the injured was admitted to Tezpur Mission Hospital, wherein the doctors declared him brought dead. 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. 714/2019 u/s- 279/304(A) IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with TATA AIG General Insurance Co. Ltd.

3. Against the claim petition O.P. No. 1 and 2 i.e. owner/ driver of the alleged offending vehicle bearing No. AS-12X/3140 (M/cycle) have submitted their written statement and it is admitted that the O.P.No.1 is the registered owner of the vehicle and O.P. No.2 was driving the vehicle at the relevant time of accident. But it is denied that the O.P. 2 was driving the vehicle in a rash and negligent manner for which the accident took place. It is further stated that the alleged offending vehicle was duly insured with TATA AIG General Insurance Co. Ltd. at the relevant time of accident. Hence, if any liability arises that will be borne by the insurer of the said vehicle and

prayed to exonerate O.P. No. 1 and 2 from their liability of paying any compensation to the claimant.

4. O.P. No. 3 TATA AIG General Insurance Co. Ltd. i.e. insurer of the offending vehicle bearing No. AS-12X/3140 (M/cycle) has submitted written statement wherein it is stated that the alleged accident occurred due to sole negligence on the part of the husband of the claimant. It is alleged that the driver of the motor cycle was not a authorised driver of the offending vehicle and he was not having a valid and effective driving license at the time of accident. As such, the claimants are not entitled for any amount of compensation as prayed for.

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

1. Whether the alleged accident took place on 07-10-2019 at about 1-30 P.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-12X/3140 (M/cycle) and whether the victim Aktar Ali 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 Rahima Khatun, who is the husband of the deceased Aktar Ali, was examined in this case as CW-1, who deposed in her evidence that she has filed this claim case on account of death of her husband Aktar Ali in a motor vehicle accident which occurred on 07-10--2019 at Chitalmari Road due to rash and negligent driving by the driver of the motor cycle bearing No.AS-12X/3140(M/cycle).

8. CW-1 has exhibited the following documents-

Ext. 1 Form 54 (accident information report).

Ext. 2 post mortem report.

Ext. 3 FIR.

Ext. 4 to 9 are death certificate/Elector Photo Identity Card/Birth certificates.

9. In her cross-examination CW-1 has replied that she has filed this claim case on account of death of her husband and he has claimed compensation from the Insurer of the alleged offending vehicle. She had not seen the accident. At that time of accident she was at home. The accident took place at Sitalmari under Dhekiajuli police station. Her husband was walking through the road at the time of accident.

10. CW-2 is Moinul Haque who deposed in his evidence that on 07-10-2019 at about 1-30 P.M. while he was standing near Chitalmari Road, at that time he had seen Aktar Ali was coming from village No.1 Basasimolu towards Chitalmari market on foot and at the moment one motor cycle bearing No. AS-12X/3140(M/cycle) which was coming from same direction in a rash and negligent manner knocked down Aktar Ali from behind. As a result, he sustained grievous injuries on his person. The injured was immediately admitted to Dhekiajuli 30 bedded hospital and subsequently he was taken to Tezpur Medical College & Hospital wherein he was declared brought dead.

11. In his cross-examination CW-2 has replied that on the date of accident he came to his elder brother Mojibur Rahman's house adjacent to the place of accident. He was standing in front of the house of his elder brother while the accident took place. After the accident he rushed to the place and he had seen the deceased sustained injury and the biker has fallen from the bike and he immediately informed 108 Ambulance.

12. Ext. 1 is the accident information report which reveals that an accident occurred on 07-10-2019 at about 1-30 P.M. at Basasimolu under Dhekiajuli P.S. and Aktar Ali died due to the alleged accident. The vehicle bearing No.AS-12X/3140(M/cycle) was shown to be the offending vehicle. Ext. 3 is the Ejahar lodged by one Inamul Hussain alleging involvement of the vehicle bearing No. AS-12X/3140(M/cycle) causing death of his father Aktar Ali 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.714/19 u/s- 279/304(A) IPC.

13. To determine the negligence of the driver of the offending vehicle I am being guided by the judgment of Hon'ble High Court in the case of Basant Kaur & others Vs Chattar Pal Singh & others reported in **2003 ACJ 369 MP (DB)**, wherein it has been held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing the accident. Further, it has been held in catena of cases that the proceedings

under the Motor Vehicle Act are not akin to the proceedings on civil suit and hence strict rules of evidence are not required to be followed in this regard.

14. *It has to be borne in mind that Motor Vehicles Act does not stipulate holding a trial for petition preferred under section 166 of the Act. Under Section 168 of the Act, a Claims Tribunal holds an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal as was held in State of Mysore v. S.S. Makapur, 1993 (2) SCR 943 by Hon'ble Apex Court.*

15. *In Bimla Devi and ors. v. Himachal Road Transport Corporation and Ors (2009) 13 SC 530, Hon'ble Supreme Court held that Claims Tribunals should not insist on strict proof of an accident caused by a particular vehicle in a particular manner and that taking holistic view of the matter, evidence should be examined on the touch stone of preponderance of probability and not beyond reasonable doubt.*

16. Therefore, in view of the aforesaid legal proposition and the documents available in the record, it can be said that the claimant's husband Aktar Ali sustained fatal injuries in the alleged accident due to rash and negligent driving by the driver of the vehicle bearing No.AS-12X/3140(M/cycle). 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-12X/3140(M/cycle) was insured with TATA AIG General Insurance Co. Ltd. vide policy No.3189807694/000000/00 valid upto 09-05-2024. The accident occurred on 07-10-2019. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e TATA AIG General Insurance Co. Ltd. is liable to pay compensation to the claimant.

18. According to the claimants, the deceased was a businessman and cultivator prior to his death. As no document is available in the record regarding occupation and income of the deceased, under such backdrop, income of the deceased be considered

under minimum rates of wages of the State of Assam. As per Govt. notification, the present minimum rates of wages of the State of unskilled worker is Rs. 7,950/-which be taken into consideration in this case.

19. Regarding age, the deceased was 58 years of age when the accident took place. In support of the fact the claimants have submitted Voter ID Card of the deceased which reveals that in the year 2013 the deceased was 52 years of age. The accident occurred in the year 2019. It transpires that the age of the deceased was around 58 years at the relevant time of accident which can be taken into consideration in this case.

20. In the recent case of National Insurance Co. Ltd. Vs Pranay Sethi and Ors. reported in SLP (Civil) No. 25590 of 2014 it was observed that while determining the income of the deceased in case of self employed or on a fixed salary an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.

21. In the case in hand, the age of the deceased was 58 years when the accident took place. So, 10% should be added along with his established income of Rs.7,950/-. Hence, monthly income of the deceased be considered as Rs.7,950/-+ Rs.795/- = Rs. 8,745.

22. As per the case of Sarla Verma -vs.- DTC,[AIR 2009(6) SC 121] the multiplier would be 09.

23. Dealing with the issue of deduction towards personal and living expenses of the deceased, I would like to resort the mandate taken in Syed Basir Ahmed and others vs. Jamil and another, reported in AIR 2009 SC 1219 where it has been held that –

24. *“On the question of deduction on account of personal expenses by the deceased, there is no set formula which could be applied in every cases to determine as to what should be the deduction on this account. The contention that deduction on that count cannot exceed 1/3^d on the ground that there is some statutory recognition in the 2nd schedule to the act for such deduction is untenable. The said deduction would depend upon facts and circumstances of each case. In the present case, no*

evidence was led on this point as well, in the absence of any evidence to the contrary the practice is to deduct towards personal and living expenses of the deceased, 1/3rd of the income in case he was married and half (50%) if he was bachelor."

25. In the instant case, the deceased left behind his wife and one son and one daughter. Therefore, 1/3rd of his income is to be deducted with a presumption that had the deceased been alive, he could have spent 1/3rd for his personal and living expenses.

26. As per SLP (Civil) No. 25590 of 2014(National Insurance Co. Ltd. Vs- Pranay Shethi & Ors.) the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of consortium, Loss of estate and Funeral expenses should be Rs. 40,000/-,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) Annual income of the deceased Rs. 8,745/- X 12	= Rs.1,04,940/-
B) After deducting 1/3 rd of the annual income of the deceased , amount comes to	=Rs. 69,960/-
C) After multiplied with multiplier, amount comes to Rs.69,960/- X 09	=Rs. 6,29,640,-
D) Funeral expenses	=Rs. 15,000/-
E) Loss of estate	=Rs. 15,000/-
F) Loss of consortium	=Rs. 40,000/-

TOTAL = Rs.6,99,640/- (Rupees six lakhs ninety nine thousand six hundred forty) only.

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

ORDER

In the result, the claim petition is allowed, awarding **Rs. 6,99,640/- (Rupees six lakhs ninety nine thousand six hundred forty) only** with interest thereon @

6 % per annum from the date of filing of the case i.e. on 30-12-2019 till full and final realization. The O.P. No. 3 i.e. TATA AIG General Insurance 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 Rahima Khatun through NEFT. Claimant 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 10th 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) Rahima Khatun.
- (ii) Moinul Haque.

2. Witness of the Defence:

None

3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2 post mortem report.

Ext. 3 FIR.

Ext. 4 to 9 are death certificate/Elector Photo Identity Card/Birth certificates.

4. Exhibits of the defence.

NIL

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