

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. 105 of 2016(D)

1 Smti. Rina Devi @ Rinamoni Devi,
Wife of Late Chida Nanda Nath,
R/O Vill. Geruwa , Barigaon,
P.O. Bapubhati,
P.S. Tezpur,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Rajesh Kumar Bajaj & Sons,
R/O N/No. 10 Bajaj Bhawan,
A.T. Road, Tokobari,
P.S. Paltan Bazar,
Dist. Kamrup, Assam,
[(Owner of the vehicle No. AS-25BC/0241(TATA Truck)]
2. Sri Gambhir Ali,
S/O Hussain Ali,
R/O Vill. Bongaon,
P.O. Pub Borka,
P.S. Kamalpur,
Dist. Kamrup, Assam,
[(Driver of the vehicle No. AS-25BC/0241(TATA Truck)]
3. Branch Manager,
Oriental Insurance Co. Ltd.
CDO-II, Christianbasti, Guwahati-5
Dist. Kamrup, Assam.
[(Insurer of the vehicle No. AS-25BC/0241(TATA Truck)]
.....Opposite parties.

ADVOCATES APPEARED

For the claimant	:- P. Hazarika, Advocate.
For the O.P. No. 1& 2	:- struck off.
For the O.P. No. 3	:- A. Choudhury, Advocate,
Date of Argument	:- 09-02-2021.
Date of Judgment	:- 11-02-2021.

J U D G M E N T

This is an application u/s 166 of MV Act, 1988, filed by the claimant Smti. Rina Devi @ Rinamoni Devi praying for grant of compensation on account of death of her husband Chida Nanda Nath , in a motor vehicle accident.

1. The brief fact of the case is that on 19-06-2016 at about 6-30 P.M. while the claimant's husband was proceeding from Bihaguri towards his residence by a bi-cycle keeping the left side of the road, suddenly one vehicle bearing No.AS-25BC/0241(Tata Truck) which was proceeding from the same direction in a rash and negligent manner knocked down the claimant's husband along with the bi-cycle from behind near Pithakhowa. As a result the claimant's husband sustained grievous injuries on his head. Immediately he was taken to Tezpur Medical College & Hospital, Tezpur but on the same day he was admitted to GMCH, Guwahati wherein he was declared brought dead. Accordingly, the post mortem examination was conducted at GMCH, Guwahati.

2. After the accident one case was registered vide Tezpur P.S. case No. 1074/16 . At the relevant time of accident, the alleged offending vehicle was duly insured with Oriental Insurance Co. Ltd.

3. O.P. No. 3 Oriental Insurance Co. Ltd. i.e. insurer of the offending vehicle bearing No. AS-25BC/0241(Tata Truck) has submitted written statement wherein it is stated that the claim is imaginary without any basis and in view of the matter the claimant is not legally entitled to get any amount of compensation. It is stated that no such accident occurred on 19-06-2016 involving the vehicle bearing No.AS-25BC/0241 (Tata Truck). It is alleged that the accident occurred due to negligence on the part of the deceased himself. The

deceased was riding his bi-cycle in a negligent manner, as such the O.P. No. 3 is not liable to pay any compensation and prayed to dismiss the claim petition with cost.

4. As the claimant has failed to take steps in time against the O.P. No. 1 and 2 and hence, the case against the O.P. No. 1 and 2 were struck off.

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

I. Whether the accident took place on 19-06-2016 at about 4-30 P.M. due to rash and negligent driving by the driver of the offending vehicle bearing No. AS-25BC/0241(Tata Truck) and whether the victim Chida Nanda Nath died due to the alleged accident?

II. Whether the claimant is/are entitled for any compensation as prayed for and if so, from whom and to what extent?

6. I have heard the argument advanced by Learned Counsel of both sides. I have also perused the documents available in the record.

Issue No. 1

7. The claimant was examined in the case as CW-1 who deposed in her evidence that she has filed this claim case claiming compensation of Rs. 25,00,000/- (Rupees twenty five lakhs) only for the death of her husband Chida Nanda Nath arising out of Road Traffic Accident which occurred on 19-06-2016 due to rash and negligent driving by the driver of the offending vehicle bearing No. AS-25BC/0241(Tata Truck).

8. CW-1 has exhibited the following documents –

Ext. 1 Form 54 (accident information report).

Ext. 2 to 5 are the documents relating to criminal case.

Ext. 6 to 8 are Identity card/pension order/seizure list.

9. In her cross-examination CW-1 has replied that she had not seen the accident. Her husband Chida Nanda Nath was injured in a Motor Vehicle Accident

and expired on 19-06-2016. She had heard that one Truck knocked down her husband from backside.

10. CW-2 is Thaneswar Saikia, who deposed in his evidence that on 19-06-2016 he was proceeding from Bihaguri towards Tumuki by riding his motor cycle and at about 4-30 P.M. while he reached near Pithakhowa, one Truck bearing No.AS-25BC/0241(TATA Truck) after crossing him with high speed being driven by its driver in a rash and negligent manner knocked down one bi-cycle from behind which was also proceeding in the same direction and the said accident took place ahead of him just few meters. Having seen the accident, he immediately rushed to the spot and found that the injured person has sustained grievous injuries on his person and he found that the injured was known to him and he was Chida Nanda Nath. Later on, he came to know that Chida Nanda Nath died at Hospital in Guwahati.

11. In his cross-examination CW-2 has replied that he knew the deceased Chidananda Nath. They belong to same village. The deceased was serving as CRPF personnel but he did not know when he (CW-1) was retired. On the date of accident, he was proceeding towards Pithakhowa from Bihaguri by riding his motorcycle.

12. Ext. 1 is the accident information report which reveals that an accident occurred on 19-06-2016 at about 4-30 P.M. near Pithakhowa Centre and Chidananda Nath died due to the alleged accident. The vehicle bearing No. AS-25BC/0241(Tata Truck) was shown to be the offending vehicle. Ext. 2 is the FIR lodged by one Kina Ram Nath alleging involvement of the vehicle bearing No.AS-25BC/0241(Tata Truck) causing death of his elder brother Chidananda Nath due to rash and negligent driving by the driver of the said vehicle. On the basis of the ejahar, one case was registered vide Tezpur P.S. case No.1074/16 u/s-279/304(A) IPC. Ext. 4 is the charge sheet submitted against the driver of the offending vehicle bearing No. AS-25BC/0241(Tata Truck) Gambhir Ali u/s-279/304(A) IPC. Ext. 8 is the seizure list of seizing the vehicle bearing No.AS-25BC/0241(Tata Truck) and its documents.

13. *To determine the negligence, I am being 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 in 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 husband of the claimant Chida Nanda Nath sustained fatal injuries in the alleged accident due to rash and negligent driving by the driver of the vehicle bearing No.AS-25BC/0241(Tata Truck). Hence, issue No. 1 is decided in favour of the claimant.

Issue No. 2

17. It is an admitted fact that the offending vehicle bearing No. AS-25BC/0241(Tata Truck) was insured with Oriental Insurance Co. Ltd. vide policy No.321200/31/2016/12308 valid from 31-03-2016 to 30-03-2017. The accident occurred on 19-06-2016. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e Oriental Insurance Co. Ltd is liable to pay compensation to the claimant.

18. According to the claimant, her husband is a retired CRPF personnel and his monthly income was Rs. 28,000/- but in his cross-examination CW-1 has replied that her husband used to receive pension of Rs. 17,000/-per month. After death of her husband he is getting family pension of Rs. 13,000/- per month. Ext. 7 is the pension paper of the deceased Chidananda Nath. In support of the fact showing the pensionary benefit received by the deceased, the claimant has submitted Bank details which shows that the pension was given since September/2016 and the amount was Rs. 16,869/-per month which be taken into consideration in this case.

19. Regarding age of the deceased, as per claim petition the deceased was 56 years of age at the relevant time of accident. To ascertain the age of the deceased two documents are available in the record vide Ext. 6 and 7 from which it reveals that the Date of Birth of the deceased was on 01-03-1965 and the deceased took voluntarily retirement. The accident occurred on 19-06-2016. It transpires that the age of the deceased was around 51 years at the relevant time of accident which can be taken into consideration in this case.

20. As per the case of Sarla Verma -vs- DTC,[AIR 2009(6) SC 121] the multiplier would be 11.

21. 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 –

22. *“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 1/3rd 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.”*

23. In the instant case, the deceased left behind his wife. 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.

24. 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.

25. 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. 16,869/-X 12 = | Rs.2,02,428/- |
| B) After deducting 1/3 rd of the annual income of the deceased , amount comes to | =Rs. 1,34,952/- |
| C) After multiplied with multiplier, amount comes to
Rs. 1,34,952 X 11 | =Rs.14,84,472/- |
| D) Funeral expenses | =Rs. 15,000/- |
| E) Loss of estate | =Rs. 15,000/- |

F) Loss of consortium

=Rs. 40,000/-

TOTAL =Rs.15,54,472/- (Rupees fifteen lakhs fifty four thousand four hundred seventy two) only.

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

ORDER

In the result, the claim petition is allowed, awarding **Rs. 15,54,472/- (Rupees fifteen lakhs fifty four thousand four hundred seventy two) only** with interest thereon @ 6 % per annum from the date of filing evidence on affidavit of the case i.e. on 29-12-2018 till full and final realization.

O.P. No. 3 i.e. Oriental Insurance Co. Ltd. is directed to discharge the liability of the award within a period of 30(thirty) days from the date of receipt of the order.

The claimant Smti. Rina Devi @ Rinamoni Devi, wife of the deceased: A sum of **Rs. 15,54,472/- (Rupees fifteen lakhs fifty four thousand four hundred seventy two) only** along with proportionate interest thereon is awarded to the claimant Smti. Rina Devi @ Rinamoni Devi being wife of the deceased. Out of the said amount **Rs. 6,54,472/- (Rupees six lakhs fifty four thousand four hundred seventy two) only** along with proportionate interest thereon be immediately released to the claimant Smti Rina Devi @ Rinamoni Devi on her savings account and the balance amount of **Rs. 3,00,000/- (Rupees three lakhs) each** along with proportionate interest thereon be kept in the Form of FDRs for 2 years, 4 years and 6 years respectively.

The deposition of awarded amount with State Bank of India, Dhekiajuli Branch.

The O.P. No. 3 i.e. Oriental Insurance Co. Ltd. is directed to deposit **Rs. 15,54,472/- (Rupees fifteen lakhs fifty four thousand four hundred seventy two) only** in favour of the claimant in State Bank of India, Dhekiajuli Branch against savings account of the claimant Smti. Rina Devi @ Rinamoni Devi bearing A/C No. 11252036368 within a period of 30 (thirty) days from the date of receipt of the order.

Upon aforesaid amount being deposited the State Bank of India, Dhekiajuli Branch is directed to keep the awarded amount in the FDRs/Savings Account in the following manner-

(i) The interest of the fixed deposits be paid to the claimant Smti. Rina Devi @ Rinamoni Devi by Automatic credit of interest in her Savings bank account in State Bank of India, Dhekiajuli Branch.

(ii) No cheque book be issued to the claimant Smti. Rina Devi @ Rinamoni Devi without the permission of the court.

(iii) The original fixed deposit receipts shall be retained by the bank in the safe custody. However, the original pass book shall be given to the claimant Smti. Rina Devi @ Rinamoni Devi along with photocopy of the FDRs.

(iv) The original fixed deposit receipt shall be handed over to the Claimant Smti. Rina Devi @ Rinamoni Devi on the expiry of the period of the FDRs.

(v) No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of the court.

(vi) Half Yearly statements of account be filed by the Bank in this court.

The O.P. No. 3 i.e. Oriental Insurance Co. Ltd. is directed to submit the compliance report of having deposited the awarded amount with State Bank of India, Dhekiajuli Branch in this Tribunal within a period of 30(thirty) days from the date of receipt of the order.

The O.P. No. 3 shall intimate to the claimant Smti. Rina Devi @ Rinamoni Devi about it having deposited the cheque in favour of the claimant Smti. Rina Devi @ Rinamoni Devi, in terms of the award, at the address of the claimant mentioned at the title of the award, so as to facilitate her to withdraw the same.

Given under my hand and seal on this 11th day of February, 2021.

Dictated and corrected by me

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

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

ANNEXURE

1. Witness of the Claimant:

- (i) Smti. Rina Devi @ Rinamoni Devi
- (ii) Sri Thaneswar Saikia.

2. Witness of the Defence:

None

3. Claimant's Exhibits:

Ext. 1 Form 54 (accident information report).

Ext. 2 to 5 are the documents relating to criminal case.

Ext. 6 to 8 are Identity card/pension order/seizure list.

4. Exhibits of the defence.

NIL

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