

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, BISWANATH CHARIALI,****SONITPUR, ASSAM****MAC Case No. 363/2011**

Sri Jayanta Talukdar

- Claimant

-vs-

1. Md. Mustafa Ali- Driver

2. Sri Dipak Baruah- Owner

3. The New India Assurance Company Ltd.- Insurer

- Opposite Parties

Present: Sri Dipankar Bora, MA, LL.M., AJS,  
Member, Motor Accident Claims Tribunal,  
Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the Claimant : Sri T. Baruah, learned Advocate.

For the Opposite Party no. 3: Sri A.P. Kurmi, learned Advocate.

Claim petition filed on : 22.12.2011.

Evidence recorded on : 04.07.2016, 16.02.2019, 13.06.2019.

Arguments heard on : 20.10.2020.

Judgment delivered on: 18.11.2020.

**JUDGMENT**

1. This is an application filed under section 163-A of the Motor Vehicles Act, 1988, by the claimant, who is the uncle of the deceased, Late Amarjyoti Talukdar seeking compensation on account of his death in a motor vehicle accident that took place on 09.01.2010.
2. The case of the claimant in brief is that on 09.01.2010 the deceased Amorjyoti Talukdar, aged 25 years was travelling from Biswanath Chariali to Sootea by the offending bus with Regd. No. AS 01 X 8387 and at about 09.15 p.m. the said vehicle hit a roller which was kept on the extreme left side on the NH 52 near Bishnu Temple, Sadharu under Biswanath Chariali Police Station and caused injuries to the deceased for which he died. The accident had occurred due to rash and negligent driving of the driver of the vehicle bearing No. AS 01 X 8387. Soon after the accident the deceased was brought to Biswanath Chariali Civil Hospital where Doctor confirmed his death. The vehicle was owned by Opp. Party No. 2 and driven by the Opp. Party No. 1 which was

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Member, Motor Accident Claims Tribunal  
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duly insured with Opp. Party No. 3 vide Policy No. 53070431090100203532 and it was valid up to 21.12.2010. It is stated that the O.P. No. 1, 2 and 3 are jointly and severally liable to pay the compensation to the claimant. Under the above circumstance the claimant claims Rs. 7,72,000/- as compensation for death of his nephew Amarjyoti Talukdar.

3. The Opposite Parties no. 2 & 3 have contested the case by filing written statements. The Opposite Party no. 1 remained absent inspite of service of summons on him for which the case proceeded against him ex-parte. The O.P. no. 2 in his written statement denied rash and negligent driving on the part of the O.P. no. 1 and contended that the vehicle was duly insured with the O.P. no. 3 at that relevant time of the accident. The O.P. no. 3 on the other hand denied involvement of the said bus in the motor accident as alleged and maintained that the bus was not insured with the O.P. no. 3 during the material point of time. It is contended that the claimant was not a dependant of the deceased and therefore he is not entitled to any compensation as prayed for.
4. During the course of evidence, the claimant adduced his evidence as PW1, along with another who were duly crossed by the Opposite party no. 3. The case was argued on behalf of the claimant and the Opposite party no. 3.
5. The following issues were framed for adjudication by my learned predecessor:

**ISSUES**

- i) Whether the claimant is entitled to get any compensation, if so, to what extent and from whom?
- ii) To what other relief/reliefs, the claimant is entitled to in law and equity?

**DISCUSSION, DECISION AND REASONS THEREOF**

**ISSUE NO. 1**

6. Section 163-A of the MV Act reads as under: "163A. Special provisions as to payment of compensation on structured formula basis.—  
 (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).  
 (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

*M. S.*  
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(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

7. It would appear from Sub-section (2) of Section 163A that in a claim petition under Section 163 A, the victim or claimants are not required to plead or establish that the death or permanent disablement in respect of which claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned, or of any other person. Therefore to maintain a claim petition under Section 163A of MV Act, the claimant is neither required to plead nor establish any fault or negligence on the part of the owner or any other person. The Section makes it clear that the legal heirs of a deceased are entitled to the compensation awarded under this provision of law.
8. PW1- the Claimant Jayanta Talukdar has supported and corroborated his claim petition in his evidence-in-chief through his affidavit. His additional evidence-on-affidavit too supports his claim petition. He testified that the deceased Amarjyoti Talukdar was travelling from Biswanath Chariali to Sootea by the offending bus with Regd. No. AS 01 X 8387 and at about 09.15 p.m., the said vehicle hit a roller which was kept on the extreme left side on the NH 52 near Bishnu Temple, Sadharu under Biswanath Chariali Police Station and caused injuries to the deceased for which he died. The accident had occurred due to rash and negligent driving of the driver of the vehicle bearing No. AS 01 X 8387. Soon after the accident the deceased was brought to Biswanath Chariali Civil Hospital where Doctor confirmed his death. The vehicle was owned by Opp. Party No. 2 and driven by the Opp. Party No. 1 which was duly insured with Opp. Party No. 3 vide Policy No. 53070431090100203532 which was valid up to 21.12.2010. It is stated that the O.P. No. 1, 2 and 3 are jointly and severally liable to pay the compensation to the claimant. Under the above circumstance the claimant claims Rs. 7,72,000/- as compensation for death of his nephew Amarjyoti Talukdar. He further stated that he is the only legal heir/successor of the deceased and the deceased's parents predeceased him.
9. PW1 proved the following documents in support of his case:
  - Ext. 1: Accident Information Report issued by Officer-in-Charge, Biswanath Chariali Police Station.
  - Ext.2: Certified copy of Post Mortem Report
  - Ext. 3: Certified copy of F.I.R.
  - Ext.4: Taxi Fare Receipt issued by the owner of the Taxi (Car) for carrying the dead body.
  - Ext. 5: Death Certificate of Sunti Talukdar- the father of the deceased.
  - Ext. 6: Death Certificate of Mamoni Talukdar- the mother of the deceased.
10. In his cross, PW1 stated that the parents of the deceased Amarjyoti had died when he

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was young. He was not married and had no siblings. Nothing emanated from his cross that he had testified falsely. PW2 Gunajit Talukdar too has corroborated the PW1. He was a co-passenger with the deceased in the vehicle on that ill fated day. According to him, the deceased worked in his tea garden and earned Rs. 8,000/- a month. Again nothing is found in his cross-examination to doubt the veracity of his evidence.

11. Thus from the evidence that emanated, we find that the claimant was uncle of the deceased and there is no one alive except him, who is legal heir of the deceased. Further from the cohesive evidence of PW1 and PW2 and the various documents proved by PW1, we do not find anything to doubt the veracity of their evidence. Evidence of PW1 and various exhibits proved by him, more particularly Ext.1, Ext.2, and Ext.3 go to show that the death of Late Amarjyoti Talukdar took place as a result of the accident that took place on 09.01.2010 caused by the offending vehicle- AS 01-X-8387. Under such circumstances, it can be stated that the claimant is entitled to compensation as prescribed u/s 163-A of the M.V. Act, 1988. And as the offending the vehicle is found to have been insured with the O.P. no. 3 at that relevant point of time of accident, the O.P. no. 3 is liable to pay compensation to the claimant.
12. The Hon'ble Supreme Court found the old schedule to be defective in UP State Road Transport Corporation v. Trilok Chandra : (1996) 4 SCC 362 and Sarla Verma (Ms.) v. Delhi Transport Corporation : (2009) 6 SCC 121. Ultimately, it has been observed in one of its later decisions in Puttamma v. K.L. Narayana Reddy : (2013) 15 SCC 45 as follows:
 

"54. In view of findings recorded above, we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."
13. In Hardeo Kaur v. Rajasthan State Transport Corpn.: (1992) 2 SCC 567 the apex Court further held that in the determination of the quantum of compensation, the court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale.
14. The Central Government vide Ministry of Road Transport and Highways Notification New Delhi, dated the 22nd May, 2018, O. 2022(E) has amended the Second Schedule to the M.V. Act, 1988 and provided that in case of Fatal Accidents, Compensation payable in case of Death shall be five lakh rupees.
15. However, in the present case, we find that the deceased died of the road traffic accident on 09.01.2010, i.e., prior to the existence of the said notification.
16. The Hon'ble Calcutta High Court (Appellate Side) in Urmila Halder vs New India Assurance Co. Ltd. & Ors on 9 August, 2018 FMA 446 of 2010 (earlier FMAT 278 of

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2009) observed:

"Importantly, though the said notification has come into force on and from May 22, 2018, it does not expressly or by necessary intendment make it inapplicable to claim applications/appeals which are pending before the judicial for a as on that date. Further still, sub-section (1) of Section 163-A of the Act makes no reference to the date of the accident as relevant for determining compensation that is payable. This, in our view, is of paramount importance. .... Whatever is there in the Second Schedule on the date the award is to be pronounced being the legislative mandate, has to be followed by the tribunal in determining compensation. *The law does not cast a duty on the tribunal to look into the contents of the Second Schedule which has ceased to exist by reason of substitution vide the said notification while dealing with claim applications that were filed when the old schedule was in force*".

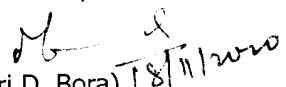
17. Thus, having considered the said proposition of law, the Opposite Party No.3, the New India Assurance Company Ltd, the insurer of the motor vehicle- AS -01- X-8387 is liable to pay the compensation amount of Rs. 5,00,000/- (Rupees Five Lakh) to the claimant. This issue is decided accordingly.

**ORDER**

18. In the result, the claim petition is allowed on contest and an amount of Rs. 5,00,000/- (Rupees Five Lakh) is awarded as compensation to the claimant. The Opposite Party No.3- the New India Assurance Company Ltd., the insurer of the offending vehicle- AS-01-X-8387 is directed to pay the compensation amount to the claimant, along with interest at the rate of 6 per cent per annum from the date of filing of the application under Section 163-A of the Motor Vehicles Act, 1988, till the date of payment made within a period of 3 months. In the event of failure to make the payment within the said stipulated period, the compensation amount shall bear interest @ 7% per annum from the date of filing the claim petition. However, it is made clear that as the Claimant took considerable time citing one reason or the other which delayed the proceeding of the case, the Claimant shall not be entitled to any interest as ordered for the periods from 28.04.2015 to 13.07.2015; 17.11.2015 to 04.07.2016; 09.08.2016 to 31.10.2018 and from 05.04.2019 to 13.06.2019.

19. In the facts and circumstances of the case, the parties are left to bear their own costs. Free copies of the judgment be given to both the sides forthwith.

Signed, sealed and delivered in the open Court on this the 18<sup>th</sup> day of November, 2020.

  
(Sri D. Bora), 18/11/2020  
Member,

Motor Accident Claims Tribunal,  
Biswanath Chariali, Sonitpur, Assam.

**APPENDIX**

Claimant Examined:

PW1- Sri Jayanta Taludar

PW2- Sri Gunajit Talukdar

Claimant Exhibied:

Ext. 1: Accident Information Report issued by Officer-in-Charge, Biswanath Chariali Police Station.

Ext.2: Certified copy of Post Mortem Report

Ext. 3: Certified copy of F.I.R.

Ext.4: Taxi Fare Receipt issued by the owner of the Taxi (Car) for carrying the dead body.

Ext. 5: Death Certificate of Sunti Talukdar- the father of the deceased

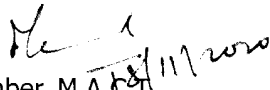
Ext. 6: Death Certificate of Mamoni Talukdar- the mother of the deceased

Opposite parties examined:

None

Opposite parties exhibited:

None

  
Member, M.A.C.T.,

Biswanath Chariali, Sonitpur, Assam.

Digitally signed by Biswanath Chariali  
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