

**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. 38 of 2019(D)**

1. Sri Mani Chandra Das @ Manindra Das,  
Son of Late Pamocho Das,

2. Smti. Swaraswati Das,  
W/O Sri Mani Chandra Das,

Both are resident of  
Vill. Gorpara Pathar ( Chenimari),  
P.O. Panbari( Darrang),  
P.S. Dhekiajuli,  
Dist. Sonitpur, Assam.....claimants.

**-Versus-**

1. Md. Jalaluddin,  
Son of Late Nidu Sheikh,  
President of Milijuli Atma Sahayak Got,  
Vill. & P.O. Rakhasmari,  
P.S. Dhekiajuli,  
Dist. Sonitpur, Assam  
[(Owner of the vehicle No. AS-12E (0508( Tractor))]

2. Md. Nojrul Islam,  
Son of Md. Hussain Ali,  
R/O Vill. Bhojkhowa Chapori,  
P.O. Panchmile,  
P.S. Tezpur,  
Dist. Sonitpur, Assam  
[( Driver of the vehicle No. AS-12E (0508( Tractor))]

3. New India Assurance Co. Ltd.  
Micro Office, Main Road, Dhekiajuli,  
P.O. & P.S. Dhekiajuli,  
Dist. Sonitpur, Assam.  
[( Insurer of the vehicle No. . AS-12E (0508( Tractor))]  
.....opposite parties.

### **ADVOCATES APPEARED**

For the claimant :- B. B. Biswas, Advocate.  
For the O.P.No.1 :- R. Das, Advocate.  
For the O.P. No. 2 :- Ex-parte.  
For the O.P. No. 3 :- P. Sethi, Advocate.

Date of Argument :- **12-02-2021.**  
Date of Judgment :- **19-02-2021.**

### **JUDGMENT**

This is an application U/S- 163(A) of M.V. Act, 1988 filed by the claimants Sri Mani Chandra Das @ Manindra Das and his wife Smti. Swaraswati Das praying for grant of compensation on account of death of their minor son Rajesh Das , who died in a motor vehicle accident.

1. The brief fact of the case is that on 10-04-2018 at about 5-30 P.M. the son of the claimants was proceeding from his residence of Gorpara Pathar towards Chenimari Centre on foot and when he reached in front of Kali Mandir PWD Road, at that time one vehicle bearing No. AS-12E/0508(Tractor) coming in a rash and negligent manner knocked down the son of the claimants from behind. As a result he sustained grievous injuries on his person and ultimately died on the spot. Immediately after the accident he was taken to 30 bedded hospital, Dhekiajuli and thereafter he was referred to Tezpur Medical College & Hospital, Tezpur where post mortem examination of the deceased was conducted.
2. After the accident, one case was registered vide Dhekiajuli P.S. case No. 288/18 u/s-279/304(A) IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with New India Assurance Co. Ltd.
3. Against the claim petition O.P. NO. 1 i.e. owner of the offending vehicle bearing No. AS-12E/0508(Tractor) has submitted written statement and it is admitted that he is the registered owner of the tractor and O.P. NO. 2 was driving the vehicle at the relevant time of accident. But it is denied that the O.P. No. 2 drove the vehicle in a rash and negligent manner for which the accident took place. It is alleged that on 10-04-2018 at about 5-30 P.M. the O.P. No. 2 drove the tractor within the limited speed from village Gorpara Pathar towards Chenimari Centre following the extreme left side

of the road, at that time the son of the claimants was proceeding towards Chenimari Centre to his residence on foot and suddenly he crossed the road without following the traffic rules and the said vehicle knocked him down from his backside. Thus the accident occurred. It is further stated that at the relevant time of accident the vehicle was duly insured with New India Assurance Co. Ltd. Hence, if any liability arises that will be borne by the insurer of the said vehicle and prayed to exonerate O.P. No. 1 from the liability of paying any compensation to the claimant.

4. Though notice was served to O.P. No. 2 driver of the vehicle AS-12E/0508(Tractor) but none has appeared to contest the case. Hence, case was proceeded ex-parte against O.P. No. 2.

5. O.P. NO.3 New India Assurance Co. Ltd. i.e. insurer of the offending vehicle bearing No. AS-12E/0508(Tractor) has submitted written statement wherein it is not admitted that the motor vehicle bearing No. AS-12E/0508(Tractor) was owned by the O.P. No. 1 and it was driven by its driver i.e. O.P. NO. 2 and also the said vehicle was ever involved in the said alleged accident on the said date, time and place and in the manner as alleged in the claim petition. It is further stated that the claimants were not dependent upon their deceased son Rajesh Das as because at the time of the said alleged accident the deceased was a minor student and was not having any income of his own and he was dependent upon his father i.e. claimant NO. 1 who is having his own business and as such the claim of the claimants is liable to be dismissed.

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

1. Whether the alleged accident took place on 10-04-2018 at about 05-30 P.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-12E/0508(Tractor) and whether the victim Rajesh Das 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?

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

### **Issue No. 1**

8. Both the claimants No. 1 and 2 were examined in this case as CW-1 and CW-2, who deposed in their evidence that on 10-04-2018 at about 5-30 P.M. while their son Rajesh Das was proceeding from their residence towards Chenimari Centre and when he reached in front of Kali Mandir he met with an accident when a tractor bearing No. AS-12E/0508 coming in a rash and negligent manner knocked him down from his backside. As a result he died on the spot.

9. CW-1 has exhibited the following documents-

Ext. 1 Form 54 ( accident information report).

Ext. 2(1) to 3 are documents relating to criminal case.

Ext. 4 to 6 school certificate and voter ID Cards.

10. In his cross-examination CW-1 has replied that he was in his house at the time of accident and after hearing halla he went to the accidental spot. He resides at Ghorpora Pathar and the place of accident is around 1 K.M. away. The offending vehicle AS-12E/0508 is a tractor and it runs in a brick factory of one Haidar Hussain who is witness No. 3 in this case.

11. In her cross-examination CW-2 has replied in the same tune.

12. CW-3 is Haidar Hussain who deposed in his evidence that on 10-04-2018 at about 5-30 P.M. he was standing in front of Kali Mandir and he had seen that while the son of the claimants Rajesh Das when reached in front of Kali Mandir, at that time one tractor bearing No.AS-12E/0508 coming in a rash and negligent manner knocked him down from behind. As a result he sustained grievous injuries on his person and ultimately died on the spot.

13. In his cross-examination CW-3 has replied that he is a resident of Gadhajuli and his brick kiln factory is near the residence of the claimant and from his brick kiln factory to the place of accident it is approximately 300 mtrs. away. He has not filed any FIR in connection with the alleged accident on the date of accident. The tractor belongs to Milijuli ASG and this tractor runs in his brick kiln factory as and when required. The accident took place on 10-04-2018.

14. Ext. 1 is the accident information report which reveals that an accident occurred on 10-04-2018 at about 5-30 P.M. at Chenimari under Dhekiajuli P.S. and Rajesh Das died due to the alleged accident. The vehicle bearing No. AS-12E/0508 (Tractor) was shown to be the offending vehicle. Ext. 2(3) is the FIR lodged by one Sanjay Das alleging involvement of the vehicle bearing No. AS-12E/0508 (Tractor) causing death of his brother Rajesh Das 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.288/18 u/s- 279/304(A) IPC. Ext. 2(4) is the MVI report of the vehicle bearing No. AS-12E/0508 (Tractor). Ext. 2(5) is the seizure list of seizing the vehicle bearing No. AS-12E/0508 (Tractor) and its documents. Ext. 2(6) is the charge sheet submitted against the driver of the vehicle bearing No. AS-12E/0508 (Tractor) Nojrul Islam u/s-279/304(A) IPC.

15. *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.*

16. **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"*

17. *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."*

18. Therefore, in view of the evidence of CW-3 as well as documents relating to criminal case, it can be said that the claimant's son Rajesh Das sustained fatal injuries in the alleged accident due to rash and negligent driving by the driver of the vehicle bearing No.AS-12E/0508(Tractor). Hence, issue No. 1 is decided in favour of the claimants.

### **Issue No. 2**

19. It is an admitted fact that the offending vehicle bearing No. AS-12E/0508(Tractor) was insured with New India Assurance Co. Ltd. vide policy No.5311023117020000-1336 valid upto 07-08-2018. The accident occurred on 10-04-2018. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.3 i.e New India Assurance Co. Ltd. is liable to pay compensation to the claimant.

20. Regarding age, as per claim petition the deceased was 17 years of age at the time of accident and he was a student and private tutor and his monthly income was Rs. 7,000/-. In support of the fact, the claimants have submitted one document i.e. school certificate vide Ext. 4 which reveals that the Date of Birth of the deceased was

on 25-02-2003. The accident occurred on 10-04-2018. It transpires that the age of the deceased was around 15 years at the relevant time of accident which can be taken into consideration in this case.

21. In the case in hand, it is an admitted fact that the deceased was a minor boy, aged about 15 (fifteen) years at the time of accident.

22. The Hon'ble Supreme Court of India in a Judgment reported in Manju Devi and another Vs. Musafir Paswan and another (2005 ACJ, 99) was held that while assessing the compensation of a child, notional income can also be taken into consideration and a sum of Rs. 2,25,000/- was awarded on account of the death of 13 years old child. The observation of Hon'ble Supreme Court of India are as follows-

“ As set out in the Second Schedule to the Motor Vehicles Act ,1988 , for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000/- must be taken as the income . Thus the compensation comes to Rs. 2,25,000/-.”

23. The observations of Hon'ble Supreme Court of India is attracted in the present circumstances also and it can be said that the claimant is entitled to **Rs. 2,25,000/- (Rupees two lakhs twenty five thousand)** on account of death of Rajesh Das, 15 years old son of the claimants.

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

### **O R D E R**

In the result, the claim petition is allowed, awarding **Rs. 2,25,000/- ( Rupees two lakhs twenty five thousand)** with interest thereon @ 6% per annum from the date of filing of the case i.e. on 31-08-2019 till full and final realization. The O.P. No. 3 i.e. New India Assurance 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.2 Smti. Swaraswati Das 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 19<sup>th</sup> 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.



## A N N E X U R E

### 1. Witness of the Claimant:

- (i) Mani Chandra Das @ Manindra Das.
- (ii) Swaraswati Das
- (iii) Haidar Hussain.

### 2. Witness of the Defence:

None.

### 3. Claimant's Exhibits:

Ext. 1 Form 54 ( accident information report).

Ext. 2(1) to 3 are documents relating to criminal case.

Ext. 4 to 6 school certificate and voter ID Cards.

### 4. Exhibits of the defence

Nil.

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