

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, BISWANATH CHARIALI,
SONITPUR, ASSAM
MAC Case No. 20 (D)/2017

Smti Sunita Sabar

- Claimant

-vs-

1. Union of India, Represented by the Secretary, Ministry of Home, Delhi
2. 29 para, C/O 99 APO, Jalhama, Kuhima, Nagaland to be represented by the Commdant- Owner of the Vehicle bearing BA No. 10 C 088756 A
3. Sri Ram Kripal Yadav- Driver of the vehicle BA No. 10 C 088756 A

- Opposite Parties

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

Advocates Appeared:-

For the Claimant : Sri A. Borah, learned Advocate.

For the Opposite Parties: Sri P.P. Borah, learned Advocate.

Claim petition filed on : 20.05.2017.

Evidence recorded on : 13.02.2019, 01.03.2019, 09.05.2019, 03.09.2019.

Arguments heard on : 16.06.2020, 25.11.2020.

Judgment delivered on: 25.11.2020.

JUDGMENT

1. This is an application filed under section 166 of the Motor Vehicles Act, 1988, by the claimant seeking compensation on account of death of her husband, Late Ramesh Sabar in a motor vehicle accident on 13.05.2016.
2. The case of the claimant in brief is that on the ill-fated day at about 9.30 AM at Baghmari under Gingia Police Station near the office of Power Grid Corporation of India on the NH 15, when Ramesh Sabar and one Bishnu were on their way towards Bhuyan Tea Garden with a Thela, the Driver (Opposite party no. 3) of the vehicle bearing BA No. 10 C-088756-A by driving the vehicle in a rash and negligent manner, endangering human life, knocked Ramesh Sabar from his back as a result of which Ramesh Sabar was seriously injured. He was immediately taken to Biswanath Chariali Civil Hospital but

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due to his critical condition, the doctors referred him to Tezpur for better treatment but unfortunately he died on the way to Tezpur on the same day. The deceased was working as a daily wage earner/Tea garden labourer and he earned at least Rs. 10,000/- per month by which he maintained his family. It is stated that the vehicle bearing BA No. 10- C 088756 A, is an Army Vehicle owned by the Union of India and used by 29 Para, C/O-99 APO and hence the Opposite No. 1 and Opposite party No. 2 are jointly and severally liable to pay the compensation to the claimant. She stated that the deceased was 24 years old at that relevant time and he was survived by her and his two minor children. The Claimant prayed for grant of an award of Rs. 20,00,000/- (Rupees Twenty Lakhs) or an amount deemed adequate and proper with interest @ 9% p.a. from the date of filing of the claim petition till realization of the compensation.

3. The Opposite parties have submitted written statements. In their joint written statement, the Opposite parties no. 1 & 2 have called upon the Claimant to call or bring the report of the Gingia Police Station Case No. 41/2016 to substantiate the negligence on the part of the said vehicle to prove her case. They contended that the claimant's husband got injuries and died due to his own negligence as he did not notice the truck coming on its way in spite of blowing horn by the answering Opposite Party No. 3. It is stated that in their departmental investigation they found that the condition of the road on which the accident occurred was very poor for which the speed of the vehicle was deliberately kept slow at a speed of 30 to 35 Kmph.
4. The Opposite party No. 3 admitted the occurrence but at the same time denied any negligence on his part. He maintained that the claimant's husband got injuries and died due to his own negligence as he did not notice the truck coming in spite of blowing horn by the answering opposite party No. 3.
5. During the course of evidence, the claimant adduced evidence of three witnesses including herself who were cross-examined by the Opposite parties. No evidence was adduced on behalf of the Opposite parties. The case was argued on behalf of the claimant and the Opposite parties.
6. The following issues were framed for adjudication:

ISSUES

- (i) Whether the alleged accident occurred due to rash and negligent driving of the driver of the offending vehicle?
- (ii) Whether the claimant is entitled to get any compensation, if so, to what extent and from whom?
- (iii) To what other relief/reliefs, the claimant is entitled to in law and equity?

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DISCUSSION, DECISION AND REASONS THEREOF

Issue No. 1

7. In the written statement, the Opposite parties have not denied that the Opposite party no. 3 was driving the said vehicle at the relevant time of the accident or that the Opposite party no. 3 is the driver of the vehicle owned by the Opposite party no. 2.
8. PW1- the Claimant Sunita Sabar testified in support of her claim petition and stated that on 13.05.2016 at about 9.30 AM at Baghmari under Gingia Police Station near the office of Power Grid Corporation of India on the NH 15, when Ramesh Sabar and one Bishnu were on their way towards Bhuyan Tea Garden by taking a Thela, it was due to very rash and negligent driving of the Driver (Opposite party no. 3) of the vehicle bearing BA No. 10 C-088756-A endangering human life, knocked Ramesh Sabar from his back as a result of which Ramesh Sabar was seriously injured. He was immediately taken to Biswanath Chariali Civil Hospital but seeing his critical condition, the doctors referred him to Tezpur for better treatment but unfortunately he died on the way to Tezpur on the same day. Her father Sri Puran Sabar lodged an FIR with the Gingia PS, being registered as Gingia PS Case no. 41/2016 u/s 279/304-A IPC in this regard and upon investigation the police had filed charge sheet against the Opposite no. 3. The deceased was working as a daily wages earner/Tea garden labourer and he earned at least Rs. 10,000/- per month by which he maintained his family. It is stated that the vehicle bearing BA No. 10- C 088756 A, is an Army Vehicle owned by the Union of India and used by 29 Para, C/O-99 APO and hence the Opposite No. 1 and Opposite party No. 2 are jointly and severally liable to pay the compensation to the claimant. She stated that the deceased was 24 years old at that relevant time and he was survived by her and his two minor children along with her father-in-law and mother-in-law. The Claimant prayed for grant of an award of Rs. 20,00,000/- (Rupees Twenty Lakhs) or an amount deemed adequate and proper with interest @ 9% p.a. from the date of filing of the claim petition till realization of the compensation. She proved the following documents: Ext.1- Accident Information Report, Ext.2 to Ext. 2 ii- FIR, Ext. 3 to Ext. 3i- Charge sheet, Ext.4- Sketch map, Ext. 5- MVI Report, Ext. 6- Seizure List, Ext.7- Post mortem Report.
9. In her cross, the PW1 stated that she was not present at the place of occurrence and therefore had not seen as to how the accident took place. Her deceased husband earned by pulling 'thela' (Pull Cart). Nothing emanated from her cross that shows that the deceased was not a 'thela' puller.
10. PW2 Puran Sabar supported the PW1 in his evidence. He testified that he was the father of the deceased and he had lodged the FIR- Ext2 after the occurrence. In his cross-examination he stated that he did not witness the occurrence. He knows that the

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accident was caused by an Army vehicle.

11. PW3 Diplu Bhuyan stated that he witnessed the accident and according to him, it occurred due to rash and negligent driving of the driver of the vehicle- BA no. 10 C 088756 A. In his cross he stated that he was on his bike at that relevant time and was coming from the side of Lahorijan and the deceased was coming with a 'thela' from the side of Baghmari towards Lahorijan. He stated that the offending vehicle was coming from the side of Biswanath Chariali and going towards Lakhimpur. Nothing crept up in his cross to show that he was deposing falsely.
12. Thus from the cohesive evidence of PW1, other two witnesses 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 her, more particularly Ext.1, Ext.2 and Ext. 7 go to show that the death of Ramesh Sabar occurred as a result of the accident that took place on 13.05.2016 at about 9.30 a.m. due to rash and negligent driving of the driver of the offending vehicle- BA no. 10 C 088756 A. Ext. 3- Charge sheet shows that the same was submitted against the Opposite party no. 3 u/s 279/304-A IPC. Under such circumstances, it can be stated that the death of the deceased occurred due to the motor vehicle accident that took place as result of the rash and negligent driving of the driver of the offending vehicle. This point taken up for determination therefore is decided in the affirmative.

Issue no. 2:

13. PW1 has not placed any documentary evidence in support of her claim that her husband used to earn a sum of Rs. 10,000/- monthly as a 'thela' puller. The PW1 was not assailed in her cross anything with regard to her evidence that her husband was a 'thela' puller at the time of his death.
14. The Post mortem report- Ext. 7 shows that the deceased was 22 years old at the time of his death. Under such circumstances, considering his age of 22 years and the evidence that emanated, the notional income of the deceased can be taken as Rs. 3,000/- per month. As such, his annual income stands at Rs. 36,000/-.
15. The PW1 testified that the deceased left her and their two children along with her father-in law and her mother-in-law. In the case of Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121, the Hon'ble Supreme Court has held that, "Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the

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deceased."

16. In National Insurance Company Limited vs Pranay Sethi and others, (2017) 16 SCC 680, decided on 31.10.2017, it has been stated that "In case the deceased was 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. The established income means the income minus the tax component".
17. The deceased in the instant case was self employed of 22 years of age. Therefore an addition of 40% to his annual income makes it Rs 36,000 + Rs. 14,400/- = Rs. 50,400/.
18. For determination of the multiplicand, the deduction for personal and living expenses, Sarla Verma (Supra) guides as: "14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependant family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."
19. In the instant case, as the dependent members of the family of the deceased are five, the claimant and her two minor children and her two parents-in-law - the deduction towards personal and living expenses of the deceased therefore should be one-fourth (1/4th). One-fourth (1/4th) of Rs. 50,400/- is Rs. 12,600/-. Therefore, the claimant is entitled to receive the remaining three-fourth (3/4th) of Rs. 50,400/-, that is Rs. 37,800/- as compensation.
20. As per Sarla Verma (Supra), the multiplier that has to be applied to find out the loss of total dependency is 18 (for the age group of 21 to 25 years) as at the time of his death in the said accident, the age of the deceased was 22 years. As such, the loss of dependency is Rs. 37,800/- X 18= Rs. 6,80,400/-.
21. Pranay Sethi (Supra) prescribes reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. Accordingly, the claimant is entitled to a sum of Rs. 70,000/- in total under these conventional heads. Thus, the claimant is entitled to a total compensation of Rs. 6,80,400 + Rs. 70,000/- = Rs. 7,50,400/-.
22. Now, let us decide who, amongst the opposite parties shall have to pay the said compensation amount?
23. The instant petition has been filed u/s 166 of the M.V. Act, 1988. It appears from the

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written statements of the Opposite parties that the offending vehicle was not insured with any Insurance Company. The Opposite party no. 2 has not denied the ownership of the offending vehicle and has not denied that the Opposite party no. 3 had driven the vehicle at the time of the accident.

24. In Oriental Insurance Company Limited Vs. Meena Variyal and Ors., reported in (2007) 5 SCC 428, the Hon'ble Supreme Court has observed as follows:

"Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company."


25. As noticed above, we find that as the offending vehicle was not insured with any Insurance Company, the owner of the vehicle- Opposite party no. 2 becomes vicariously liable for payment of compensation. It is therefore held that the Opposite Party No.2, 29 para, C/O 99 APO, Jalhama, Kuhima, Nagaland, represented by the Commandant- the Owner of the Vehicle bearing BA No. 10 C 088756 A is liable to pay the compensation amount of Rs. 7,50,400/- (Rupees Seven Lakh, Fifty thousand, Four hundred). This issue is decided accordingly.

ORDER

26. In the result, the claim petition is allowed on contest and an amount of Rs. 7,50,400/- (Rupees Seven Lakh, Fifty thousand, Four hundred) is awarded as compensation to the claimant. The Opposite Party No.2, 29 para, C/O 99 APO, Jalhama, Kohima, Nagaland, represented by the Commandant- the Owner of the Vehicle bearing BA No. 10 C 088756 A 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 166 of the Motor Vehicles Act, 1988, till the date of payment 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.

27. 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 25th day of November, 2020,


Member, 25/11/2020

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

APPENDIX

Claimant Examined:

PW1- Smti Sunita Sabar

PW2- Sri Puran Sabar

PW3- Sri Diplu Bhuyan

Claimant Exhibied:

Exhibit-1: The Accident Information Report

Exhibit-2 to 2ii: Certified copy of FIR

Exhibit-3 to 3i: Certified copy of Charge sheet

Ext.4- Sketch map

Ext. 5- MVI Report

Ext. 6- Seizure List

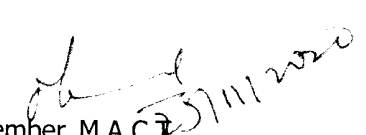
Ext.7- Post mortem Report.

Opposite parties examined:

None.

Opposite parties exhibited:

Nil.


Member, M.A.C.T.

Biswanath Chariali, Sonitpur, Assam.