

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. 02 of 2019(D)

1. Sri Sanjib Paul,
2. Sri Ranjan Paul,

Both are son of Late Gouranga Paul,
R/O Vill. & P.O. Alisinga,
P.S. Dhekiajuli,
Dist. Sonitpur, Assam.....Claimants.

-Versus-

1. Sri Sidhartha Bhagawati,
Son of Jiban Bhagawati,
R/O Vill & P.O. Pani gaon,
P.S. Pani gaon,
Dist. North Lakhimpur, Assam.
[(Owner-cum-driver of the vehicle No.AS-07F/8822(Swift Dzire)]
....Opposite party..

ADVOCATES APPEARED

For the claimant :- Sri A. Kr. Paul, Advocate.
For the O.P. No.1 :- Sri G. Sarkar, Advocate.

Date of Argument :-**20-05-2019.**
Date of Judgment :-**24-05-2019.**

J U D G M E N T

This is an application u/s 166 of MV Act, 1988 filed by the claimants Sri Sanjib Paul and Ranjan Paul praying for grant of compensation on account of death of their father Gouranga Paul , in a motor vehicle accident.

1. The brief fact of the case is that on 24-12-2017 at about 7-00 P.M. the father of the claimants while proceeding towards Bhotpara Centre by riding his bicycle and before reaching his destination in between Alisinga Centre and

Bhotpara Centre, one vehicle bearing No. AS-07F/8822 (Swift Dzire) coming from opposite direction in a rash and negligent manner collided with the bicycle of the claimant's father. As a result the father of the claimants was thrown away from his bicycle and sustained grievous injuries on his person including head injury resulting his death on the spot.

2. After the accident, one case was registered vide Dhekiajuli P.S. case No. 1183/17 u/s- 279/304(A) IPC. At the relevant time of accident, the alleged offending vehicle had no insurance coverage.

3. Against the claim petition O.P. No. 1 i.e. owner-cum-driver of the alleged offending vehicle bearing No. AS-07F/8822 (Swift Dzire) has submitted written statement wherein it is admitted that he is the owner of the vehicle but it is denied that he was driving the vehicle in a rash and negligent manner for which the accident took place. It is further stated that the amount of compensation claimed by the claimants is highly excessive and exorbitant and without any legal basis for which the claim petition is liable to be dismissed.

4. On the pleadings aforesaid, the following issues were framed –

I. Whether the accident took place on 24-12-2017 at about 7-00 P.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-07F/8822 (Swift Dzire VXI car) and whether the victim Gouranga Paul died due to the alleged accident ?

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

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

Issue No. 1

6. One of the claimants Sanjib Paul was examined in the case as CW-1 who has reiterated the same thing whatever stated by him in his claim petition. He was not cross-examined by O.P. No. 1 and his cross-examination was accordingly declined.

7. CW-1 has exhibited the following documents-

Ext. 1 accident information report (Form 54)

Ext. 2 to 6 are documents relating to criminal case.

8. CW-2 is Sukumal Paul, who deposed in his evidence that on the date of accident at about 7-00 P.M. he was talking with his friends by standing in front of Dhaba situated by the side of NH-15 at village Bhakuamari in between Alisinga and Bhotpara. At that time he had seen the claimant's father was proceeding towards Bhotpara Centre from Alisinga by riding his bicycle, suddenly one vehicle bearing NO. AS-07F/8822 coming from Orang side towards Dhekiajuli driving its driver in a rash and negligent manner hit the bicycle of the claimants father from back side. As a result, the father of the claimants fell down from the bicycle and sustained grievous injuries on his person. After the accident the driver fled away leaving the vehicle on the road. Having seen the accident he along with other people immediately rushed to the spot and he immediately called the claimant Ranjan Paul who reached the spot within 10 minutes. Police has also come and he accompanied Ranjan Paul to shift injured father of the claimants to Dhekiajuli CHC where he was declared brought dead. This witness was not also cross-examined by O.P. No. 1.

9. Ext. 1 is the accident information report from which it reveals that an accident occurred on 24-12-2017 at about 7-00 P.M. near Bhotpara Centre and Gouranga Paul died due to the alleged accident. The vehicle bearing No. AS-12F/8822(Swift Dzire) was shown to be the offending vehicle. Ext.3 is the ejahar lodged by the claimant Sanjib Paul alleging involvement of the vehicle bearing NO.AS-07F/8822 (Swift Dzire) causing death of his father Gouranga Paul 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. 1183/17 u/s-279/304(A) IPC. Ext. 4 is the charge sheet submitted against the driver of the vehicle bearing NO.AS-07F/8822 (Swift Dzire) Sidhartha Bhagawati u/s-279/304(A) IPC. Ext. 5 is the MVI report of the vehicle bearing No. AS-07F/8822 (Swift Dzire) showing the following damages-

Head light LH broken, fender front dented, front wield shield glass broken and front bumper broken.

Ext. 6 is the seizure list of seizing the vehicle bearing No.AS-07F/8822 (Swift Dzire) and its documents.

10. *To determine the negligence, I am being guided by the judgment reported*

in 2009 ACJ 287, National Insurance Company Limited Vs. PushpaRana 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.

11. **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"

12. *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."

13. In view of the evidence of CW-2 as well as the documents relating to criminal case, it can be said that the claimants are able to prove that their father Gouranga Paul sustained fatal injury due to rash and negligent driving by the driver of the offending vehicle bearing No.AS-07F/8822 (Swift Dzire). Hence, issue No. 1 is decided in favour of the claimant.

Issue No. 2

14. It is an admitted fact that the offending vehicle bearing No.AS-07F/8822(Swift Dzire) had no insurance coverage at the relevant time of the accident. So, O.P. No.1 i. e owner of the vehicle bearing No. AS-07F/8822(Swift Dzire) is liable to pay compensation to the claimant.

15. As per claim petition the deceased was a businessman and he was also doing cultivation prior to his death. But it is not specifically stated in the claim petition what type of business the deceased was engaged in prior to his death. Though CW-1 while deposing before the Court stated that his father was doing business of manufacturing pottery items and used to sale in the local markets and he was a cultivator who used to cultivate on others land for adhi corps and from that profession he used to earn Rs. 12,000/- but the claimants had not furnished any document to prove the occupation or income of their deceased father. However, notional income of Rs. 5,000/- be considered as monthly income of the deceased.

16. Regarding age of the deceased the claimants stated in the claim petition that their father was 54 years at the time of accident and P.M. report also said so. Apart from that the claimants also have submitted voter card of the deceased which reveals that the deceased was 53 years of age in the year 2013 when the voter card was issued to him. The accident occurred on 24-12-2017. It transpires that the deceased was 57 years of age when the accident took place.

17. In this case, both the claimants are major sons of the deceased. According to them they were dependent on the income of their father. Both the claimants have submitted their evidence on affidavit but they were not cross-examined by O.P. No. 1 regarding their income. Since for want of proof major children of the deceased cannot be treated as independent. Likewise for want of proof that the deceased father had support from any of his sons, they shall be treated as dependent and entitled for compensation. Though claimants are major

at the time of death of their father but there is nothing on record which may show that they were doing any job. The claimant No. 2 Ranjan Paul testified that he had just completed graduation when his father died due to the accident and due to death of his father he could not pursue his further studies. This shows that he was dependent on the income of his father.

18. As per the case of Sarla Verma -vs.- DTC,[AIR 2009(6) SC 121] the multiplier would be 9.

19. 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 –

20. *“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.”*

21. In the instant case, the deceased left behind his two sons. 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.

22. 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 estate, and Funeral expenses should be Rs. 15,000/-and Rs. 15,000/- respectively.

23. 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. 5,000/-X 12 = Rs.60,000/-

B) After deducting 1/3 rd of the annual income of the deceased , amount comes to	=Rs. 40,000/-
C) After multiplied with multiplier, amount comes to Rs.40,000/- X 9	=Rs. 3,60,000/-
D) Funeral expenses	=Rs. 15,000/-
E) Loss of estate	=Rs. 15,000/-

TOTAL = Rs.3,90,000/- (Rupees three lakhs ninety thousand) only.

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

ORDER

In the result, the claim petition is allowed, awarding **Rs. 3,90,000/- (Rupees three lakhs ninety thousand) only** with interest thereon @ 6% per annum from the date of filing of the case i.e. 21-01-2019 till realization. The O.P. No.1 owner of the vehicle bearing No. AS-07F/8822(Swift Dzire) Sidhartha Bhagawati is directed to make payment of the aforesaid amount within a period of 30 (thirty) days from the date of receipt of order by way of account payee cheque in the name of the claimants Sanjib Paul and Ranjan Paul on equal share basis through this Tribunal.

Given under my hand and seal on this 24th day of May, 2019.

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) Sri Sanjib Paul.
- (ii) Sri Sukumal Paul.

2. Witness of the Defence:

None.

3.Claimant's Exhibits:

Ext. 1 accident information report (Form 54)

Ext. 2 to 6 are documents relating to criminal case.

4.Exhibits of the defence

NIL.

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