

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. 27 of 2018(D)

1. Smti. Janti Das,
W/O Late Manoranjan Das,
R/O Vill. Majgaon, Dhanua Nagar
Morabhorolipar,
P.O.& P.S. Tezpur,
Dist. Sonitpur, Assam.....Claimant.

-Versus-

1. Sri Jayanta Bhuyan,
Son of Late Pramud Bhuyan,
Vill. Murhateteli Saikia Chuburi,
P.S Tezpur,
Dist. Sonitpur, Assam.
(Owner-cum- driver of the vehicle No.AS-12J/4543

2. The Cholamandalam M/S General Insurance Co. Ltd.
Represented by Branch Manager,
Astha Plaza 2nd floor, Bora Service,
S.B. Deora College, Ulubari, Guwahati,
Dist. Kamrum (M), Assam
(Insurer of the vehicle No AS-12J/4543).....Opposite parties.

ADVOCATES APPEARED

For the claimant :- Sri S.Kr. Sarmah, Advocate.
For the O.P. No.1 :- Sri N. P. Uppadhay, Advocate.
For the O.P. No. 2 :- Sri S.K. Singh, Advocate.

Date of Argument :- **14-05-2019.**
Date of Judgment :- **16-05-2019.**

J U D G M E N T

This is an application u/s 166 of MV Act, 1988 filed by the claimant Smti. Janti Das praying for grant of compensation on account of death of her husband Manoranjan Das , in a motor vehicle accident.

1. The brief fact of the case is that on 15-10-2016 at about 11-00 A.M. the husband of the claimant by riding his bicycle while reached near Dhanua Nagar Road, suddenly one motor cycle bearing No. AS-12J/4543 (Super Splender) coming in a rash and negligent manner knocked down the husband of the claimant. As a result, the husband of the claimant sustained grievous injuries on his person. He was immediately taken to Kanaklata Civil Hospital, Tezpur and thereafter he was referred to Tezpur Medical College Hospital, wherein he was treated as an indoor patient for twenty days. Though he was discharged from the hospital but he remained under treatment for a long time and ultimately the husband of the claimant died on 10-01-2018. The proximate cause of death was due to the accident.

2. After the accident, one case was registered vide Tezpur P.S. case No. 1920/16 u/s- 279/338 IPC .At the relevant time of accident, the alleged offending vehicle was duly insured with Cholamandalam M/S General Insurance Co. Ltd.

3. Against the claim petition O.P. No. 1 i.e. owner-cum-driver of the motor cycle bearing No. AS-12J/4543(M/cycle) has submitted written statement and O.P. No. 1 denies the fact of rash and negligent driving of the vehicle. The accident occurred due to negligent riding of the bicycle by the husband of the claimant. It is further stated that the claimant has filed this claim petition almost after a period of two years from the date of accident of her injured husband. The accident occurred on 15-10-2016 and the injured was admitted to Tezpur Medical College Hospital for twenty days and he was discharged after recovery. The injured person was expired after two years of the accident. Hence, his death cannot be linked to a direct and proximate cause of the accident. However, the alleged vehicle was duly insured with Cholamandalam M/S General Insurance Co. Ltd. at the relevant time of accident. 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. O.P. No. 2 Cholamandalam M/S General Insurance Co. Ltd. i.e. insurer of the alleged offending vehicle bearing No.AS-12L/4543 (m/cycle) has submitted written statement wherein it is denied that on 15-10-2016 the alleged offending vehicle bearing No. AS-12L/4543 (m/cycle) was involved in any accident directly or indirectly which occurred at Dhanua Nagar under Tezpur P.S. It is also stated that the compensation claimed by the claimant is without any legal basis and is highly excessive. The claimant has not come with clean hands and prayed to dismiss the claim petition with cost.

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

I. Whether the accident took place on 15-10-2016 at about 11-00 A.M. due to rash and negligent driving by the driver of the vehicle bearing No. AS-12L/4543(motor cycle) and whether the victim Monoranjan Das 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?

6. I have heard 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 on the date of accident i.e. on 15-10-2016 her husband Monoranjan Das while reached near Dhanua Nagar by riding his bicycle he met with an accident when one motor cycle bearing No. AS-12L/4543 (m/cycle) coming in a rash and negligent manner knocked down her husband. As a result, her husband sustained grievous injuries on his person including fracture of his leg. Her husband was treated at Kanaklata Civil Hospital, Tezpur and Tezpur Medical College Hospital. Though he was discharged from Tezpur Medical College Hospital but he was not fully recovered and ultimately he died on 10-01-2018. She spent more than Rs. 50,000/- for the treatment of her husband.

8. CW-1 has exhibited the following documents-

Ext. 1 claim petition.

Ext. 2 to 38 are medical documents/money receipt/cash memos etc.

Ext. 39 to 43 are documents relating to criminal case.

Ext. 43(i) to 47 are birth certificate and death certificates.

9. In her cross-examination CW-1 has replied that her husband Monoranjan Das met with an accident on 15-10-2016 at about 11-00 A.M. He was returning back from Mahabhairab daily market and approaching towards their house Dhanua Nagar. She was not in the place of accident. Her husband sustained injury with fracture of his both legs.

10. CW-2 is Ganesh Choudhury, who deposed in his evidence that on 15-10-2016 he was coming down from first floor of his shop which is situated near Dhanua Nagar and he saw Manoranjan Das by riding his bicycle reached near Dhanua Nagar Road, at that time one motor cycle bearing No. AS-12L/4543 (m/cycle) coming in a rash and negligent manner knocked down Monoranjan Das. As a result, the victim sustained grievous injuries on his person.

11. In his cross-examination CW-2 has replied that he has a showroom of J.K. Tyres at Dhanua Nagar. He reached the place of accident after two minutes. When he reached the place of accident many people surrounded the injured. His shop was rented in the land of claimant's cousin as such he knows her very well.

12. Ext. 36 is the accident information report from which it reveals that an accident occurred on 15-10-2016 at about 11-00 A.M at Dhanua Nagar Road and Monoranjan Das sustained injuries due to the alleged accident. The vehicle bearing No. AS-12L/4543 (m/cycle) was shown to be the offending vehicle. Ext.40 is the ejahar lodged by one Babuli Das alleging involvement of the vehicle bearing No. AS-12L/4543 (m/cycle) causing injury to his brother Monoranjan 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 Tezpur P.S. case No. 1920/16 u/s- 279/338 IPC. Ext. 41 is the seizure list of seizing the vehicle bearing No. AS-12L/4543 (m/cycle) and its documents. Ext. 42 is the charge sheet submitted against the driver of the vehicle bearing NO.AS-12L/4543 (m/cycle) Jayanta Bhuyan u/s- 279/338 IPC.

13. *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.

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 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"

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. In view of the evidence of CW-2 as well as the documents relating to criminal case, I am of the view that the claimant is able to prove that her husband sustained injury due to rash and negligent driving by the driver of the

offending vehicle bearing No. AS-12L/4543 (m/cycle).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-12L/4543 (m/cycle) was insured with Cholamandalam M/S General Insurance Co. Ltd. vide policy No.3361/00492291/000100 valid upto 13-10-2017. The accident occurred on 15-10-2016. It transpires that the accident occurred during the subsistence of the policy of the offending vehicle. So, O.P.No.2 i.e. Cholamandalam M/S General Insurance Co. Ltd is liable to pay compensation to the claimant.

18. Though the claimant has claimed compensation on account of death of her husband Monoranjan Das in a motor vehicle accident which took place on 15-10-2016 but her husband died on 10-01-2018 i.e. after two years of the accident. It also appears from the record that the husband of the claimant was treated at Tezpur Medical College Hospital as an indoor patient since the date of accident. Ext. 23 is the discharge certificate of Tezpur Medical College Hospital which shows that the husband of the claimant was admitted to Tezpur Medical College Hospital on the date of accident i.e. on 15-10-2016 and discharged on 04-11-2016. On examination doctor found type two compound fracture of both bone right leg. The claimant has also replied in her cross-examination that in Ext. 23 discharge certificate, it has been categorically stated that her husband was recovered and condition of her husband was improved as such he was discharged. After discharge from Tezpur Medical College Hospital her husband did not require any treatment as an indoor patient. In Ext. 30 dtd. 23-11-2016 medicine prescribed to her husband were vitamin and calcium . Her husband expired after two years of the accident. No post mortem was conducted on the dead body of her husband.

19. To prove the injury of the husband of the claimant one witness was examined.

20. CW-3 Dr. Manab Jyoti Talukdar, who deposed in his evidence that on 15-10-2016 the patient Monoranjan Das admitted to Tezpur Medical College Hospital. The patient was under treatment of type two compound fracture both bone of right leg following RTA on 15-10-2016. He was treated as an indoor patient. The patient was discharged on 04-11-2016.He was given conservative

treatment by doing above knee plaster as no operation was done. He was treated by Dr. Kiran Sonowal of Tezpur Medical College Hospital.

21. In his cross-examination CW-3 has replied that he could not say exactly what was the condition of the patient on the date of admission. On a bare perusal of the medical documents indicate fracture of right leg of the patient. Therefore, hospital does not have any record whether the patient was dead or alive. They have no documents to show that after discharge of the patient on 04-11-2016 he was again admitted or treated at Tezpur Medical College Hospital.

22. From the medical documents available on the record it reveals that the husband of the claimant has sustained grievous injuries i.e. fracture of both bone of his right leg due to the alleged accident which took place on 15-10-2016. He was treated at Tezpur Medical College Hospital as an indoor patient and after recovery discharged from the hospital. The claimant also admitted that after discharge from Tezpur Medical College Hospital her husband did not require any further treatment as an indoor patient. The husband of the claimant died after two years of the accident i.e. on 10-01-2018. But the claimant has not furnished any medical document showing that her husband was under treatment of a doctor during the period i.e. 2016 to 2018 for the injuries sustained by him in the alleged accident. It is an admitted fact that no post mortem examination was conducted on the dead body of the husband of the claimant as such we cannot come to the conclusion that proximate cause of death of the husband of the claimant was due to the alleged accident which took place on 15-10-2016. As the claimant has failed to furnish any document regarding cause of death of her husband, it is to be presumed that her husband died of natural death. Under such circumstances, the claimant is entitled to get the amount of expenditure incurred for the treatment of her husband.

23. As per claim petition the husband of the claimant was doing business prior to the accident and his monthly income was Rs. 10,000/- but it is not specifically stated in the claim petition what type of business the husband of the claimant was doing prior to the accident. The claimant has furnished one document i.e. Ext. 35 which was issued from Office of the Circle Officer, Tezpur. As per Ext. 35 Manoranjan Das son of Late Padmaram Das, villege Dhanua Nagar Bhairabpad, Tezpur, Dist. Sonitpur, total annual income from Labour is Rs. 1,00,000/- (one lakh) only. The certificate was issued on the basis of report of

concerned Lat Mandal. But the report of Lat Mandal is not available in the record as such it cannot be ascertained on what basis Lat Mandal has prepared his report regarding income of Monoranjan Das. The said Lat Mandal is not examined in this case to prove the annual income of Manoranjan Das. Under such circumstances, Ext. 35 is not considered in this case. However, notional income of Rs. 5,000/- be considered as monthly income of the husband of the claimant.

24. As per medical report available in the record due to the alleged accident both bone of right leg of husband of the claimant has been fractured. He was treated at Tezpur Medical College Hospital as an indoor patient for 20 days. The husband of the claimant is working as a daily wage earner, definitely he had loss of income as he was not in a position to do any work during hospitalization. As both bone of right leg of the husband of the claimant has been fractured, definitely he had to confine in bed for 2/3 months as such loss of income be assessed as Rs. 5000 X 3= 15,000/-. The claimant is also entitled to get the amount of expenditure incurred for the treatment of her husband. The claimant has submitted medical documents along with vouchers/cash memos etc. amounting to Rs.9,641/- . So, total pecuniary damage comes to Rs. 9,641/- + 15,000/-= Rs. 24,641/-.

25. In regard to non pecuniary damage, the victim has suffered definitely pain and agony at the age of 45 years due to the alleged accident. So, an amount of Rs.10,000/- is awarded for pain and agony and another amount of Rs. 10,000/- is also awarded for loss of amenities.

26. Therefore, total compensation comes to Rs. 24,641/-+ Rs.10,000/- +Rs.10,000/- = **Rs. 44,641/- (Rupees forty four thousand six hundred forty one) only.**

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

ORDER

In the result, the claim petition is allowed, awarding **Rs. 44,641/- (Rupees forty four thousand six hundred forty one) only** with interest thereon @ 6% per annum from the date of filing of the case i.e. 30-08-2018 till realization. The O.P. No. 2 i.e. Cholamandalam M/S General Insurance 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 by way of account payee cheque in the name of the claimant Smti. Janti Das.

Given under my hand and seal on this 16th 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) Smti. Janti Das.
- (ii) Sri Ganesh Choudhury.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 claim petition.

Ext. 2 to 38 are medical documents/money receipt/cash memos etc.

Ext. 39 to 43 are documents relating to criminal case.

Ext. 43(i) to 47 are birth certificate and death certificates.

4. Exhibits of the defence

NIL.

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