

**IN THE COURT OF
MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR :: TEZPUR**

PRESENT: **Smti. M.R. Sharma**
 Member, Motor Accident Claims Tribunal
 Addl. District Judge

JUDGMENT IN MAC CASE NO. 212 OF 2008

Sri Naruttam Brahma
S/O Nandiram Brahma
Vill: Nagharia, Chengelimari
P.O: Rangapara, Dist: Sonitpur, Assam
..... **Claimant**

Versus

1. Sri Sagar Bauah
(Owner of the vehicle No. AMU-3531.....Bus)
2. Sri Jogeswar Baruah
(Owner of the vehicle No. AS-12A-2716.....LML Vezpa)
3. Sri Dinesh Lahkar
(Driver of the vehicle No. AMU-3531.....Bus)
5. The New India Assurance Co. Ltd
(Insurer of the vehicle No. AMU-3531.....Bus)

ADVOCATES WHO APPEARED

For the claimant	: Sri P. Sharma, Smti. B. Basumatary Advocates
For the O.P.5	: Sri A. Choudhury, Advocate
Date of argument	: 03.05.14 ,
Date of judgment	: 12.05.14

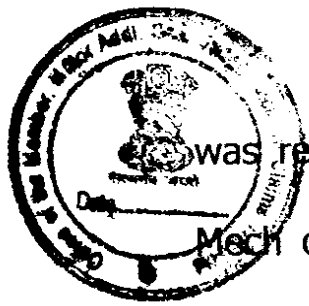
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for the death of his younger brother Prafulla Brahma who died in a Motor Vehicle Accident on 06.01.2008. During the pendency of trial the claimant died on 20.03.2011, so his brother Naruttam Brahma wants to insert his name as a legal representative in place of deceased claimant Khirod Brahma. Prayer is allowed and he is declared as a claimant of this case.

2. The facts of the above mentioned case, may, in brief, be stated as follows:

On 06.01.2008, at about 6 PM, the deceased Prafulla Brahma was returning home to Nagharia from Balipara side with one Sri Sapun Mech on LML scooter following the extreme left side of the road, near Bhubulagaon, the offending vehicle bearing registration No. AMU 3531 Bus which was coming from the opposite direction in a very high speed in a rash and negligent manner endangering human life tremendously knocked down the deceased scooter from the front side, as a result of which Prafulla Brahma died on the spot and the pillion rider Sapun Mech survived with severe multiple injuries. The body of the deceased was sent for post-Mortem examination to KCH, Tezpur. The deceased was the earning member of his family and his family totally dependent on him, and the death of the deceased, his family member faced huge financial loss and agony. The accident took place due to rash and negligent driving of the driver of the vehicle No. AMU-3531(Bus). The owner of the scooter AS-12A-2726 (LML Vezpa) had made a formal entry of this case and there is



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3. The O.P. No.1 and OP No 2 are the owners of the offending vehicle bearing Registration No. AMU-3531(Bus) and AS-12A-2716(Vezpa), which was driven by OP No 3 and OP No 4 and insured with the OP No 5 i.e. New India Assurance Co. Ltd and other insurance company of the vehicle was not known.

4. The owner O.P. No. 1 i.e the owner of the vehicle No. AMU-3531(Bus) filed a written statement denying the cause of action and maintainability of the case and the OP denies each and every allegation

made against him. The claim petition is bad for mis-joinder and non-joinder of the parties. The OP also stated that the accident took place due to rash and negligent of the driving of the vehicle AS 12A-2726 and the

vehicle of the OP is duly insured with the New India Assurance Company at the time of the accident. The offending vehicle of the OP was a passengers carrying Bus which was going to Balipara with passengers at that time and the driver of the offending vehicle No. AMU-3531(Bus) has a valid driving licence which was valid upto 27.05.10 and the amount claimed by the claimant is so high exaggerated, excessive and fanciful. So, the O.P. No. 1 has prayed for dismissal of the claim petition.

5. In the written statement filed by O.P. No. 5, i.e the New India Assurance Company Ltd has denied the cause of action and the maintainability of the case and also stated that the claim is barred by estoppels and acquiescence and the claim case is imaginary and without



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the vehicles. The OP also stated that the claimant has not filed relevant document in support of the claim including insurance certificate, medical certificate. The OP also stated that the claimant has not submitted any document regarding the place, date and time of the alleging accident, and the claimant to make strict proof to submit the document. The claimant has not produced age certificate and income certificate to prove the age as well as income of deceased person. The OP also stated that the claimant should produce the document to prove that death caused out of vehicular accident and involvement vehicular No. AMU 3351 (Bus) in the accident.

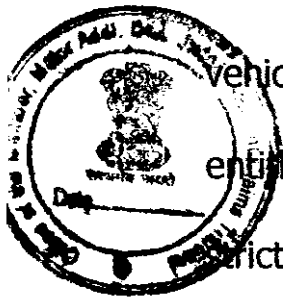
The OP also stated that no such accident occurred on 06.01.08 involving

vehicle No. AMU-3531(Bus). The OP also stated that the claimant is not entitled to get any compensation from the OP No 4 in absence of the

strictest proof of the following document:-

- a) Accident Information Report
- b) Post Mortem Report
- c) Registration Certificate, fitness certificate of the alleged offending vehicle.
- d) Valid and effective driving licence of driver.
- e) Effective policy of Insurance on the date of accident.
- f) Commission Certificate from the LIC.

6. Upon the pleadings of the parties, the following issues were framed.



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2. Whether the claimant are entitled to compensation, as prayed for ?

3. To what relief the parties are entitled?

7. The claimant has submitted his evidence-on-affidavit in support of his case and has also produced certain documents and he was cross-examined by the O.P 5 i.e. the New India Assurance Co.

8. The learned counsel for the OP No 1 has submitted their written argument. I have also gone through the evidence and other materials on record.

A discussion on materials on record is required to come to a conclusion on the claim in this case.

DISCUSSION DECISION & REASONS THEREOF

ISSUE NO. 1

9. This issue relates to the fact that as to whether the accident took place due to rash and negligent driving of the driver of the vehicle No AMU 3531(Bus) or the vehicle No. AS-12A-2726 (LML Vespa).

The evidence of the claimant has adduced that 06.01.2008, at

about 6 PM, the deceased Prafulla Brahma was returning home to Nagharia from Balipara side with one Sri Sapun Mech on LML scooter following the extreme left side of the road, near Bhubulagaon, the offending vehicle bearing registration No. AMU 3531 Bus which was coming from the opposite direction in a very high speed in a rash and negligent manner endangering human life tremendously, knocked down the deceased.

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In the cross-examination, he stated that he was not present at the time of the accident and had not seen the accident. He heard that the accident was head on collision with a bus. He denies that it is not a fact that the accident occurred due to the fault of his brother. He also stated that it was not a fact that since the scooter was not insured, so the full liability has been placed on the bus. The accident was a head on collision with a bus, so, that the accident had take place due to the fault of the driver of the bus, it has been proved by the claimant. So, this issue is decided in favour of the claimant.

ISSUE NO. 2

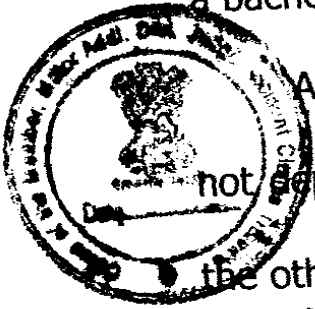
10. In view of the above discussion made in Issue No. 1, the claimant is entitled to get compensation. So, this issue is not discussed in details. Under the provisions of Motor Vehicle Act and Rules, when the claimant got injuries due to rash and negligent driving of the vehicle which was duly insured at the time of the accident and at that time the driver of the offending vehicle also had a valid driving licence, the claimant is entitled to get compensation. So, this issue is decided in favour of the claimant accordingly.

ISSUE NO.3

11. This issue is regarding to what relief the parties are entitled. In view of the above discussion made in Issue No. 1 and Issue No. 2, the claimant is entitled to get compensation. So, this issue is not discussed in details.

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The learned counsel for the OP. New India Assurance Co. Ltd. has submitted their written argument stating that the claimant had four brothers at the time of the death of the deceased. Originally, Khirod Brahma, the eldest brother filed the case, and he had expired during the pendency of the case. The name of the present claimant was impleaded on 06.12.13. Also, it is stated that, all the brothers were major at the time of the accident and were not dependent on their deceased brother, who was a bachelor.



Also, he has stated that he had in his evidence stated that he was not dependent and was being separately at the time of his death. So, as the other brothers have not put their signature, the present claimant is not entitled, other than 1/4 of the compensation u/s 140 of the M.V. Act.

From the claim petition, as well as the affidavit evidence, it is seen that the claimant has made Numal Brahma and Umesh Brahma as well as one Badhari Mech being the brothers and sister of the deceased as profoma defendants. The OP had not objected at the relevant time and merely suggested that none of the brothers were dependent on the deceased at the time of the accident. However, it has also not been

brought out by the OP, what was the income of the profoma defendants.

So, the contention of the OP i.e. the Insurance Co. is not acceptable.

The claimant was 34 years when he died as per the P.M. Report. At the time of the accident he was earning of Rs. 6,000/- per month. There is

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income has been given. So, the national income of Rs. 3,000/- is taken into consideration.

Annual dependency(3000x12)	36,000/-
<u>Multiplier</u>	<u>x13</u>
	Rs. 4,68,000/
<u>And after deduction of 1/2th</u>	<u>Rs. 2,34,000/</u>
	Rs. 2,34,000/

Hence, the total amount of compensation will be:

Annual expenditure	Rs 2,34,000/
Funeral expenses	Rs. 5,000
<u>Loss of love & affection</u>	<u>Rs. 10,000</u>
Total	Rs: 2,49,000/-



12. Accordingly, the Opp. Party New India Assurance Co. Ltd is directed to pay the above amount the compensation to the claimant. The total amount will be paid in equal share to claimant and profoma defendant
1. Numal Brahma 2. Umesh Brahma and 3. Badhari Mech accordingly.

However, the total amount of interest on Rs. 2,49,000/- will be paid to the claimant.

ORDER

13. The claim petition is allowed awarding an amount of **Rs. 2,49,000/- (Two Lakhs Forty Nine Thousand) only** to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid by the Insurance Company within two months from the date of the judgment.

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of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid by the Insurance Company within two months from the date of the judgment.

15. Send a copy of this judgment to the OP No. 5 i.e. the New India Assurance Co. Ltd at free of cost.

16. Given under my hand and seal of this Court on this **12th day of May 2014** at Tezpur.



M Sharma

**(Smti.M.R.Sharma)
Member, M.A.C.T (Addl. Dist. Judge)
Sonitpur, Tezpur**