

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL AT
SONITPUR: TEZPUR**

<u>MAC Case No.</u>	:- <u>231 of 2011</u>
Present	: Mridul Kumar Kalita, AJS Member, MACT, Sonitpur/ District Judge, Sonitpur Tezpur
Claimants	1. Smti Rupjyoti Devi, Wife of late Sanat Kr. Nath, Vill & PO – Besseria, P.S.- Tezpur Dist. Sonitpur, Assam
Opposite Parties	<p style="text-align: center;">-Versus-</p> 1. Sri Sourabh Kalita, S/O Late Bhola Kalita, Vill – Deurigaon, PO- Ketekibari, PS- Tezpur, Dist. Sonitpur (Assam) (Owner of the vehicle No. AS- 12-E-1666- Tata Sumo) <p>2. Sri Raju Moni Nath, S/O Moheswar Nath Vill & PO – Pithakhowa, PS- Tezpur, Dist. Sonitpur (Assam) (Driver of the vehicle No. AS- 12-E-1666- Tata Sumo)</p> <p>3. The Reliance General Insurance Co. Ltd. Guwahati Branch, Guwahati, Dist. Kamrup, Assam (Insurer of the vehicle No. AS-12-E-1666- Tata Sumo</p>
Counsel for the Claimant	: Sri P. Hazarika, Advocate
Counsel for OP Nos. 1 and 2	: Sri Ranup Pandit, advocate
Counsel for OP No. 3	: Sri S.K. Singh, Advocate
Date of hearing	: 10/03/2015 & 30/03/2015
Date of Judgment	: 27/05/2015.

J U D G M E N T

1. This instant claim petition has been filed by the claimant, Smti Rupjyoti Devi, u/s 166 of the Motor Vehicles Act, 1988 seeking compensation for the death of her husband Lt Sanat Kr. Nath, in a road traffic accident on 05-06-2011, involving a Tata Sumo, bearing Registration No AS-12-E-1666.

2. The case of the Claimant, in brief, is that, on 05-06-2011 at about 3 p.m. while claimant's husband Sanat Kr. Nath was proceeding from Balipukhuri Tiniali towards his residence at Besseria on foot on the extreme left side of the road, the offending vehicle bearing registration No. AS-12-E-1666 (Tata Sumo) which was also proceeding in the same direction, being driven by its driver rashly and negligently, without due care and caution dashed the claimant's husband Sanat Kr. Nath near Besseria Centre from behind with high speed. As a result, the claimant's husband sustained multiple grievous head injuries on his person and immediately, he was taken to Kanaklata Civil Hospital, Tezpur. Later on the same day, considering his critical condition he was shifted to Dispur Hospitals Pvt. Ltd., Guwahati and was treated up to 07-06-2011 and ultimately he succumbed to his injuries on 07-06-2011. The post-mortem examination was conducted at GMCH, Guwahati where it was revealed that the death of her husband Sanat Kr. Nath was due to the grievous head injury sustained in the road traffic accident on 05-06-2011. The claimant has stated in her petition that her deceased husband was a permanent employee of Govt. Of Assam (PWD(R) Deptt, Tezpur) and till the date of accident he had been working as a chowkidar and had been drawing Rs. 15,754/- per month as salary and his family members consisting his wife Smti Rupjyoti Devi and two college going sons were fully dependant on the income of the deceased and due to the premature death of the sole earning member of the family, they facing acute financial hardship and uncertainty. She has also stated in her claim petition that due to rash and negligent driving of the offending vehicle by its driver, which was duly registered in the name of its owner Sri Saurabh Kalita and was also duly insured with the Reliance General Insurance Company Ltd. the claimant has prayed for a compensation of Rs. 18,00,000/- (Rupees Eighteen Lakhs only).

3. Opposite Party Nos. 1 and 2 have filed a common written statement, wherein they denied that the vehicle was driven in a rash and negligent manner. It is stated that the said vehicle was driven with due care and caution at a normal speed with a valid

driving license (DL No. 26502/S/T valid upto 27-09-2013). It is also stated that the compensations claimed by the claimant is too high, excessive and she is not entitled to get the same . The Opposite party No. 1 and 2 have stated that at the relevant time of the alleged accident, the vehicle No. AS-12-E-1666 (Tata Sumo) was duly registered in the name of its owner Sri Saurabh Kalita and also insured with the Reliance General Insurance Company Ltd. Vide Policy No. 1505702340000488, valid from 18-11-2010 to 17-11-2011, and therefore, they are not liable to pay any compensation to the claimant.

4. The O.P No. 3, the Insurer of the vehicle No. AS-12-E-1666 (Tata Sumo), in its written statement denied all material averments of the claim petition and pleaded, inter-alia, that the amount of compensation claimed by the petitioner is highly exaggerated and speculative. It has been stated that the insurer is not liable to pay any compensation until and unless it is proved that the driver of the offending vehicle had valid driving license and the conditions of Insurance Policy were not violated by the insured.

5. On the basis of pleadings of the parties, my learned predecessor-in-office framed the following issues for adjudication:-

ISSUES

- 1) Whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle No. AS-12-E-1666 (Tata Sumo)?
- 2) Whether the claimant is entitled to any compensation and, if yes, what will be the quantum of compensation and by which of the Ops, the amount shall be paid?

6. During enquiry, the claimants examined two witnesses namely, the claimant Smti Rupjyoti Devi herself as Claimant's witness No.1 (CW-1) and Sri Atul Chandra Nath as Claimant witness No. 2 (CW-2). The Claimant's witness No. has also exhibited following documents:

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|--------|-----------------------------------|
| Ext. 1 | : Form No. 54 |
| Ext. 2 | : Post mortem report. |
| Ext. 3 | : Death report of Sanat Kr. Nath. |

- Ext. 4 : Salary certificate of Sanat Kr. Nath.
 Ext. 5 : Identity Card of Sanat Kr. Nath.

Opposite parties also examined one witness namely, Sri Dipak Pandey, Junior Assistant of Office of the Commissioner of Transport-cum Secretary, State Transport Authority, Assam as DW 1 and he has exhibited the Ext. A, the authority letter to depose on behalf of secretary, State Transport Authority and Ext. B, the original register relating to issuance of permit to vehicle No. AS 12 E 1666 and the relevant page of the register as Ext. B (1).

7. I have carefully perused the entire materials brought on record and heard learned counsel for both the sides. Both the issues are taken up together for discussion and decision, for the sake of brevity and convenience.

8. In her evidence on affidavit, the claimant witness No.1, who is the claimant herself has reiterated the facts stated in her claim petition that on 05-06-2011 at about 3 p.m. while claimant's husband Sanat Kr. Nath was proceeding from Balipukhuri Tiniali towards his residence at Besseria on foot through the extreme left side of the road, the offending vehicle bearing registration No. AS-12-E-1666 (Tata Sumo) which was also proceeding in the same direction being driven by its driver rashly and negligently without due care and caution and dashed the claimant's husband Sanat Kr. Nath near Besseria Centre from behind with high speed. As a result, the claimant's husband sustained multiple injuries on his person and sustained grievous head injuries and immediately, he was taken to Kanaklata Civil Hospital, Tezpur. Later on, on the same day, considering his critical condition he was shifted to Dispur Hospitals Pvt. Ltd., Guwahati where he was treated upto 07-06-2011. Ultimately he succumbed to his injuries on 07-06-2011 due to the accident caused by the offending vehicle. The claimant has stated in that her deceased husband was a permanent employee of Govt. Of Assam (PWD(R) Deptt, Tezpur) and till the date of accident he had been working as a chowkidar and had been drawing minimum Rs. 15,754/- only per month as salary and his family members consisting his wife Smti Rupjyoti Devi and two college going sons fully dependant on the income of the deceased and due to the premature death of the sole earning member of the family, they facing acute financial hardship and uncertainty. She exhibited following documents:-

- (a) Form 54
- (b) Post-mortem report of the deceased
- (c) Medical certification of death issued by Dispur Hospitals Pvt Ltd.
- (d) Salary certificate
- (e) From 16

9. During cross-examination, she has stated that she has not submitted any Service Book of her husband in the instant proceeding. She has also stated that she has not furnished any other document in support of claim of age of her deceased husband in this case. She has submitted one Identity Card issued by the office of the Addl. Chief Engineer, Tezpur Zone, PWD (roads), but it does not bear the seal and signature of the issuing authority. The date of birth of her husband is recorded as 07-10-1955 in the Identity Card. She has admitted that she did not see the accident. She has also stated that Sri Atul Ch. Nath (CW 2) saw the accident. She has admitted that she has not furnished the medical documents relating to the medical treatment taken at Guwahati. She denied the suggestion that the accident occurred due to the fault of her husband.

10. The claimant witness No. 2 Sri Atul Ch. Nath has deposed that on 05-06-2011 at about 3 p.m. when he was going to his house by bicycle, The Tata Sumo Vehicle No. AS 12 E 1666 being driven in a rash and negligent manner from the side of Mission chariali towards Dhekiajuli, crossed him and hit Sri Sanat Kumar Nath, who was walking on the left side of the road from back said. He has also stated that he accompanied the injured to the civil Hospital. During cross-examination, CW 2 has stated that police recorded his statement in connection with the accident. The offending vehicle stopped at the place of accident for a moment and then abruptly left the place. A number of people assembled, after the accident. He reached the place of accident, after one minute. He has stated that the offending vehicle was at a very high speed on the highway. He has also stated that people assembled at the place of accident, after about five minutes of the accident. Before the neighbouring people reached the place of accident, the vehicle had left the place of accident. He denied that the accident did not occur due to rash and negligent driving of the Tata Sumo vehicle.

11. On perusal of Ext – 1 which is the Accident Information Report, it appears that the Tata Sumo Vehicle No. AS 12 E 1666 was involved in an accident on 5/6/2011 in which Sri Sanat Kumar Nath died. Ext 1 reveals that Tezpur PS Case No. 605/2011 u/s 279/304(A) IPC was registered Pursuant to the said accident. It is further recorded in Ext 1 that at the

relevant time, the said vehicle was driven by the OP No.2, the driver of the Vehicle. In Ext-1 it has been recorded that the said Truck was insured with Reliance General Insurance Company Ltd. Vide Policy No. 1505702340000488, valid from 18-11-2010 to 17-11-2011.

12. As it appears from the evidence on record, as discussed above, that the deceased Sanat Kumar Nath was a pedestrian and going on the extreme left side of the road when he was hit by the offending vehicle from back said. It also appears that the offending vehicle was moving at a high speed. The evidence on record establishes that the date of deceased Sanat Kumar Nath occurred in motor vehicle accident due to rash and negligent driving of the offending Tata Sumo Vehicle No. AS 12 E 1666.

13. In view of the discussion made hereinbefore, claimant is held to be entitled to compensation. This Tribunal therefore proceeds to compute the compensation in the following paragraphs.

14. The quantum of compensation to which the claimants are entitled shall have to be computed as per the ratio laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **(2009) 6 SCC 121**.

15. As per the said Judgment of Hon'ble Supreme Court of India, the multiplier to be applied for computing the compensation depends on the age of the deceased. The claimants have not submitted any certificate to prove age. However, Ext. 2 which is the Post-mortem report has shown the age of the deceased as 55 years. The Ext No 5 which is the identity card of the deceased shows his date of birth as 7/10/1955. This estimation of the age, in the Post-Mortem report, or the identity card has not been refuted by anyone, hence, the age of the deceased is taken to be 55 years for the purpose of deciding the quantum of compensation. As per ratio laid down in Sarla Verma the multiplier in the instant case, i.e. for the age group in between 50 to 55 years will be "11".

16. Regarding the income of the deceased, the claimant has exhibited a salary certificate issued by Additional Chief Engineer, PWD(Roads), Tezpur Zone wherein the monthly salary of the deceased is shown as Rs. 15754/-. As it is evident from the record that the deceased was working as a Chowkidar in the office of Additional Chief Engineer,

PWD(Roads), Tezpur Zone, the certificate given by the controlling officer is relied upon and the monthly income of the deceased is assessed to be Rs. 15754/-.

17. In view of the ratio in Sarla Verma (Supra), since the age of the deceased was more than 50 years, no amount is required to be added towards future prospect. The annual income of the deceased is thus computed to be Rs.1,89,048/- [Rs.15754/- x 12].

18. Since the deceased left behind his wife, and two sons aged 22 years and 18 years respectively. As both the sons are major, only wife of the deceased is regarded as his dependent and hence one third is to be deducted towards the personal expenses of the deceased. Thus, so deducting [Rs. 1,89,048/- (-) Rs.63016/-], the annual income of the deceased is assessed as Rs. 1,26,032/- . Since this amount is less than the taxable income, no amount needs to be deducted towards the same.

19. Besides loss of dependency, the claimant is entitled to some amount, on account of funeral expenses and loss of love and affection. The Hon'ble Supreme Court in **Rajesh and Ors. Vs. Rajbir Singh and Ors. reported in MANU/SC/0480/2013** has held in paragraph 24 and 25 that an amount of Rupees One Lakh ought to be granted for loss of consortium, love and affection and an amount of Rupees twenty five thousand should be granted for funeral expenses unless there is proof of higher expenditure on the said count. Thus, just and reasonable compensation to which the claimant is entitled is assessed as under:-

Loss of dependency (1,26,032/- x 11)	:	Rs. 13,86,352.00
Loss of consortium to claimant	:	Rs. 1,00,000.00
Funeral expenses	:	Rs. 25,000.00
Total	:	Rs. 15,11,352.00

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20. In view of what has been discussed above, an amount of Rs.15,11,352.00 (Rupees fifteen lakhs eleven thousand three hundred fifty-two only) with interest @ 7.5% per annum from the date of filing of the claim i.e. 7th July 2011 till payment is awarded to the claimant. The OP No. 3 is directed to pay the awarded amount within one month of the date of this order.

21. Given under my hand and seal of this court, on this day, the 27th day of May, 2015.

(M.K. Kalita)
Member, MACT,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M.K. Kalita)
Member, MACT,
Sonitpur, Tezpur.

Dictation taken and transcribed by me.

(R. Hazarika)
Steno.