

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

**PRESENT:**                    **SMTI. M.R. SHARMA**  
Member, Motor Accident Claims Tribunal  
Addl. District Judge  
Sonitpur, Tezpur

**JUDGMENT IN MAC CASE NO. 240 OF 2008**



**Sri Rupchand Tanti**  
Resident of Bhotapara,  
P.S : Dhekiajuli  
Dist: Sonitpur, Assam                    ..... **Claimant**

**Versus**

1. Sri Dhameswar Bailong  
[Owner of the vehicle No. AS-01S-4288 (Oil Tanker)]
2. Sri Babul Sonwal  
[Driver of the vehicle No. AS-01S-4288 (Oil Tanker)]
2. The New India Assurance Co. Ltd.  
[Insurer of the vehicle No. AS-01S-4288 (Oil Tanker)]

..... Opposite Parties

**ADVOCATES WHO APPEARED**

For the claimant                    : Sumon Kr. Roy, Advocate

For the OP 3                         : Sri P. Sarmah, Advocate

Date of argument                 : 07-02-2014, 04-04-2014, 17-05-14

Date of judgment                 : **17.05.14**

**J U D G M E N T**

1. This claim petition has been filed u/s 166 of the Motor Vehicle Act, by the claimant Smti. Sukaro Tanti, mother of the deceased, claiming compensation for the death of her son Jitu Tanti, who died in a motor vehicle accident on 18.04.08. During the pendency of claim petition, the mother of the victim Sukaro Tanti expired, and the learned counsel for the

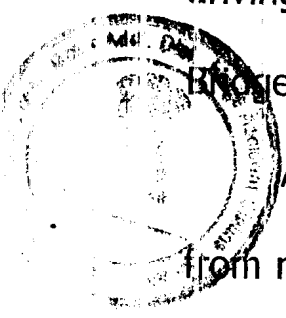
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*17/5/14*  
Member  
Motor Accident Claims Tribunal  
Addl. District Judge  
Sonitpur, Tezpur

claimant by filed a petition for amendment of a petition by pleading the name of Rupchand Tanti, the father of the deceased. Accordingly vide order dated 21.12.12 , the name of Rupchand Tanti was impleaded as the claimant.

2. The facts of the above mentioned case, may, in brief, is that on 18.04.2008, at about 7 pm, while the son of the claimant was proceeding from Dhekiajuli Town towards his home, on riding bi-cycle through the extreme left side of the road, the offending vehicle bearing registration No. AS-01S-4288(Oil Tanker) which was also proceeding in the same direction being driven by its driver Sri Babul Sonowal rashly and negligently without due care and caution endangering human lives by not complying with the driving rules of the MV Act, 1988 dashed the claimant's son near Bhotpara Bhoze from behind with high speed.

As a result of the accident claimant's son Jitu Tanti sustained apart from multiple injuries on his person, grievous head, heart injuries etc. and ultimately died within an half an hour at the spot from the time of accident.

The deceased had family members consisted of his old father, mother, two unmarried younger sisters were totally dependent on him. The claimant was solely dependent upon her deceased son, because the husband of the claimant was and old and sick man for which he did not perform his business. Hence, under the above facts and circumstances, the claimant preferred this claim petition claiming an amount of Rs. 40,50,000/- (Rs Forty Lakhs Fifty Thousand) only as compensation from the opposite parties.



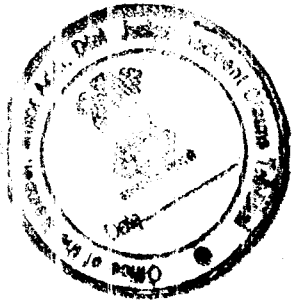


the claimant, injuries sustained by him and the expenditure incurred for his treatment; so, the OP No. 3 prayed for dismissal of the claim petition.

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

**ISSUES**

1. Whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle AS-01S-4288(Oil Tanker)?
2. Whether there was contributory negligence on the part of the deceased leading to the accident in question?
3. Whether claimant is/are entitled to any compensation as prayer for, and if yes, from whom and to what extent ?



7. The claimant sides have examined three witnesses in support of their case who have also produced certain documents.

8. I have heard the submissions of the learned counsel appearing for the parties and I have also scrutinized 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.

*17/5/14* **DISCUSSION DECISION & REASONS THEREOF**

*Member*  
Motor Accident Claims Tribunal  
Additional District Judge  
Bhatnagar, Jaipur

**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. AS-01S-4288 (Oil Tanker).

The claimant Smti. Sukaro Tanti is the mother of the deceased. In her evidence-on-affidavit as CW-1, she stated that on 18.04.2008, at about 7 pm, while the son of the claimant was proceeding from Dhekiajuli Town towards his home, on riding bi-cycle through the extreme left side of the road, the offending vehicle bearing registration No. AS-01S-4288(Oil Tanker) which was also proceeding in the opposite direction being driven by its driver Sri Babul Sonowal rashly and negligently without due care and caution endangering human lives by not complying with the driving rules of the MV Act, 1988 dashed the claimant's son near Bhotpara Bridge from behind with high speed.

That as a result of the accident claimant's son Jitu Tanti sustained apart from multiple injuries on his person, grievous head, heart etc. and ultimately died without an half an hour at spot from time of accident.

In support of his case, the claimant has exhibited certain documents.

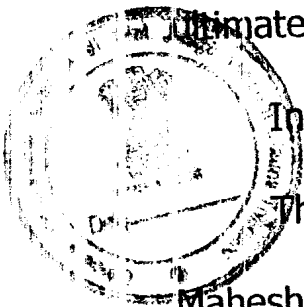
The claimant in her own evidence and an independent witness Sri Mahesh Sahrma adduced evidence in support of the claimant clearly stated

that a Oil Tanker proceeding from the side of the Bhotapara Bridge under Dhekiajuli P.S rashly and negligently without due care and caution knocked

down one pedestrian with high speed from behind who was also proceeding in the opposite direction through extreme left side of the road.

Hence the statement of the claimant and he independent witness is very much clear and support the claimant's case without any contradiction." But

the OP during the cross-examination put mere suggestions to the CW 1 and 2 that the accident took place while since deceased Jitu Tanti was crossing the road, but no evidence has been given by the OPs to that



12/15/14  
National Consumer Disputes Tribunal  
District Judge  
Dhekiajuli, Assam

effect, hence the OPs failed to prove their plea that the accident took place due to the own fault of the deceased. The OPs did not examine CW 2 Sri Kiran Pradhan and this witness has stated that he was the eye witness and he stated that he saw while the deceased was returning home at about 7 pm, at Bhotpara, the offending vehicle (Oil Tanker) knocked down the deceased from his back side and immediately he fell senseless and blood was coming out from his head, nose, legs and all over the body. He also stated that police from Dhekiajuli Police Station came immediately, but the deceased had already expired. This witness also deposed that he had seen that the driver of the offending vehicle had driven the vehicle very rashly and negligently manner and so the accident occurred. The OPs did not cross-examine this witness and so I find no ground to disbelieve this witness. Regarding CW 3 Mahesh Sharma who is also an eye witness deposed similarly as CW 1, but in the cross-examination he stated that he did not see the accident and had deposed falsely.

Exhibits that were brought on record by the claimant are Post mortem report, Death certificate, School certificate as well as Form No 54 being Ext. 5, Ext. 2, Ext. 3 and Ext. 1 respectively. These facts stated in the written statement by the OPs that the claimant has not entitled to pay any compensation is not substantiated by any defence evidence or any other materials which can be relied upon for disbelieving the case of the claimant. From the evidence of claimant and his supported witnesses, it is proved that the accident took place due to the fault of the driver of the vehicle. So, this issue is decided in favour of the claimant.

## ISSUE NO 2

10. This issue relates to whether there was contributory negligence on the part of the deceased leading to the accident. The OP No. 1 and OP No. 2 through their learned Advocate cross examined the claimant witnesses and made certain suggestions and failed to prove that the driver of the vehicle had no rash and negligent driving at the relevant time of the accident and made no rebuttable evidence to prove that the accident took place due to ignorance of the since deceased Jitu Tanti at the relevant time of the accident and the OP No 1 and OP No 2 by putting mere suggestions admitted that the death of the son of the claimant occurred on 18.04.08 due to the injuries sustained by him in the said accident on 18.04.08 due to the rash and negligent driving of the driver and the death of Jitu Tanti occurred due to the direct and proximate cause of the accident caused by the OP No 2 i.e the driver of the vehicle No. AS-01S-4288 (Oil Tanker). The OPs failed to prove their own case by keeping conformity with the pleading made in their respective written statement. It is settled principle of law that by mere putting suggestions one cannot probe of his own case. Hence The OPs failed to prove that the accident occurred due to the fault of the deceased. This issue is therefore decided in favour of the claimant and there was no contributory negligence on the part of the deceased in the

accident.

## ISSUE No 3

11. This issue relates to whether the claimant is entitled to pay any compensation. In view of the discussions made in issue no 1 and 2, the

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Member  
Accident Claims Tribunal  
District Court, Durgam  
Hyderabad, Tempur

claimant will get the compensation as the claimant has proved that she is entitled to get the same.

Now as to the compensation which the claimant is entitled the treatment which the claimant had to undergo as a result of the accident is required to be analyzed.

The claimant has in this case proved the fact that the claimant is entitled to compensation. The claimant to substantiate and to prove that the age of the deceased was 13 years at the time of his death and if he is alive his age would have been today 20 years and the claimant exhibited the Post Mortem Report as Ext. 2 and also in other documents relating to the treatment of the deceased Jitu Tanti, and the age of the deceased is 13 years Ext. 3 is the School Certificate showing the date of birth of the deceased to be 09.02.1995. This has not been contradicted or disproved by the any other evidence by opposite parties. The Post Mortem Report shows that the age of the deceased at the time of the accident is 14 years and if the date of school certificate is taken into account, the age also comes to be about 14 years. So, the age is not disputed. The claimant has stated that the deceased was earning by tuitions and maintaining his family, but there is no documentary evidence, so this fact cannot be taken into

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 Member  
 of Accident Claims Tribunal  
 Additional District Judge  
 Bangalore, Mysore

The fact to be taken into account is that the deceased was student of Class VIII at the time of the accident, if he was alive and had completed his graduation and engaged on service. The deceased family members were consisting of his old father, mother, unmarried younger sister, two unmarried younger sisters and unemployed who were totally dependent on



him. The claimant was solely dependent upon her deceased son, because the husband of the claimant was an old and sick man for which he did not perform his business. Furthermore, the mother of the deceased Smt. Sukaroo Tanti who has been died during pendency of the case, she suffered high tension and loss due to the death of her young son and at the same time the after her death equally his father present claimant Rupchand Tanti had also suffered mental loss and at the same time if the deceased would have been alive, he would have earned for his family. His family members have been completed in distress and have been faced financial hardship and uncertainty.

The claimant in the instant case claimed compensation of Rs 40,50,000/ only for the death of his son Jitu Tanti arising out of a road traffic accident occurred on 18.04.08 caused by the rash and negligent driving of the offending vehicle bearing registration No. AS-01S-4288 (Oil Tanker) by its driver Sri Babul Sonuwal.

12. The learned counsel for the claimant has cited in **2005(36) AIC 732 H.P. H.C in Hukumabati and Others Vs Punjab Roadways and Others**, where it has been held that "..... **job of the tribunal is to ascertain as to whether the accident has been caused out of the use of the motor vehicle. This fact has been admitted by the driver and the owner of the vehicle and thus, no elaborate injury was needed in this regard.....**"

In the instant case, the opposite parties have admitted the use of the motor vehicle i.e. the tanker in the accident and as regards the injuries and

subsequent death has also not been denied and disproved by the opposite parties.

13. The claimant has also exhibited Ext. 5 Money receipt of Ambulance fare of taking the deceased to the Kanak Lata Civil Hospital. Also this Court has to consider the future prospects of the deceased if he would have been alive at the time of granting of the compensation, the learned counsel. The learned counsel has cited in this context in **New India Insurance Co. Ltd. -Vs- G.L. T 282 Phelisha Bakai and Others** in a decision given by Justice I.A. Ansari & B.K. Sharma. The learned counsel has also cited **United Insurance Co. Ltd. Vs Shai Sibaqtulla I (1992) ACC 472**, where it has been held that an insure cannot take pleas beyond the scope of section 149 of the Act. It is not open to the Insurance Company to question of compensation. Considering all aspects, and considering all documents, evidence on record as well as for the discussions made above I am of the opinion that the following amount awarded to the claimant will meet the ends of justice. So, the notional income is taken into consideration and the monthly income is taken to be 3000/ per month, as the deceased was a small boy of 14 years of age and the multiplier is considered and taken to be 18 on an average.

Therefore, the just and reasonable compensation will be as follows:

Annual dependency (3000x12) 36,000/-

Multiplier x18

Rs. 6,48,000/

And after deduction of 1/4<sup>th</sup> Rs. 1,62,000/

Rs. 4,86,000/

*M. Laxman*  
19/5/14  
Member  
Accident Claims Tribunal  
Additional District Judge  
Mysore, Mysore

Hence, the total amount of compensation will be:

Annual expenditure	Rs	4,86,000
Pecuniary loss for rest of life	Rs.	5,00,000
Future Prospects	Rs.	5,00,000
Loss of Consortium	Rs.	1,00,000
Loss of Education study	Rs.	1,00,000
Inconvenience, mental stress, Financial hardship in day to day life	Rs:	3,00,000
<b>Total</b>	<b>Rs:</b>	<b>19,86,000/-</b>



14. Accordingly, the claimant is entitled to get the total amount of compensation of Rs. **19,86,000/-** only with an interest at the rate of 9% per annum and the amount will be paid by the Insurance Company within one month from the date of filing judgment.

15. Accordingly, the Opp. Party New India Assurance Co. Ltd is directed to pay the above amount the compensation to the claimant.

### ORDER

16. The claim petition is allowed awarding an amount of **Rs 19,86,000/-** 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 one month from the date of the judgment.

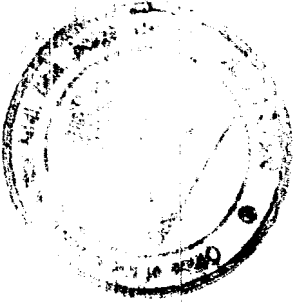
17. The O.P. No. 3 i.e the New India assurance Company. Ltd is hereby directed to pay the compensation amount of **Rs 19,86,000/-** only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the amount will be paid

*1/15/14*  
Member  
Additional Claims Tribunal  
Additional District Judge  
Bangalore, Tempus

by the Insurance Company within one month from the date of the judgment.

18. Send a copy of this judgment to the OP No. 3 i.e. the New India Assurance Company Ltd free of cost.

19. Given under my hand and seal of this Court on this **17<sup>th</sup> day of May, 2014** at Tezpur.



*M Sharma*  
17/5/14.

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

**Member**  
**Motor Accident Claims Tribunal**  
**Additional District Judge**  
**Sonitpur, Tezpur**