

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR, TEZPUR.

MAC Case No. 11 of 2011

Md Rafique Ali
S/o Siddik Ali
Vill- Naharbari
P.O & P.S Mazbat
Dist: Sonitpur, Assam

...Claimant

-VS-

Sri Dipak Kr Mandal
S/o Sri Sujai Kr Mandal
Vill: No.1, PO, Saikia Chuburi
P.S: Orang
Dist: Udalguri, BTAD

Sri Bikas Das,
S/o Sri Subhash Das
Vill- Bandarmari, P.S. Tezpur,
Dist: Sonitpur, Assam.

United India Insurance Co Ltd.
Vide Policy No. 130781/31/09/02/00002147
Valid w.e.f 24.2.2010 to 23.2.2011

...Opp Parties

Date of Argument : 2.05.2014
Date of Judgment : 27.5.2014

PRESENT
Ms. A. AJITSARIA, AJS,
Member, Motor Accidents Claim Tribunal
/Addl District Judge No.2, Sonitpur, Tezpur

ADVOCATES FOR THE PARTIES

For the Claimant:	Sri Imtiaz Ansari
For the OP No. 1:	None appeared
For the OP No. 2:	None appeared
For the OP No. 3:	Sri S.K.Singh

J U D G M E N T

The instant claim petition has been filed by the petitioner claiming compensation for the accidental death of her minor daughter, Muskan Khatoon in a road traffic accident which occurred on 15.7.2010, involving the Truck No. AS-27C-0299, which was insured with the United Insurance Co Ltd.

Case of the claimant is that, on the said day at about 9.30 AM, his daughter along with his wife, namely Rashida Khatoon were walking in the left side of the road at Bangal Gaon and when they reached in front of the house of one Md Abdul Hussain, suddenly the Truck No. AS-27-C-0299 being driven in a rash and negligent manner, hit his daughter from the back resulting in her instantaneous death.

The O.P. No. 1 and O.P. No.2, did not participate in the proceeding and, as such, the matter proceeded ex-parte against the said Respondents.

The O.P Nos. 3, United India Insurance Company, 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. 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 licence and the conditions of Insurance Policy were not violated by the insured.

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

- 1 Whether the accident took place due to rash and negligent driving of the driver of the offending vehicle?
- 2 Whether the claimant is entitled to compensation as prayed for?

During enquiry, the claimant, examined himself as PW-1 and filed relevant documents. He also examined his wife and one Md Abdul Hussain, in support of his case. The contesting respondent, however, has not adduced any evidence.

I have carefully perused the entire materials brought on record, heard submissions made by the learned counsels for the parties. Both the issues are taken up together for the sake of convenience and brevity.

Reiterating the factual aspects of the claim, PW 1 has averred in his evidence that his daughter Muskaan Khatoon, died, on being knocked by the Truck No. AS-27-C-0299 on 15.7.2010. It has been stated that the accident occurred because of the rash and negligent driving of the OP No.2 and Missamari PS Case No. 59/10 was registered and subsequently charge sheet filed against the OP No.2 in the said case. PW 1 has stated that the deceased was a student of Class II of Thekerajuli LP School. Apart from the claimant, the deceased is survived by her mother, Musst Rashida Khatoon.

In support of his oral evidence, PW 1 has proved the accident information report being Exbt-1, FIR as Exbt 2 and 3, Charge Sheet as Exbt-4, Post Mortem report as Exbt-5, School Certificate as Ext-6.

PW 2 stated that on 15.7.2010 at about 9.30 AM while she was walking along with her daughter Muskan Khatoon on the side of the PWD Rd, the **Truck bearing No. AS-27-C-0299**, being driven in a rash and negligent manner, knocked her daughter resulting in her death. PW 3 fully supported PW 2 and stated that he witnessed the accident and filed the FIR in respect of the same.

Both, PW 2 and PW 3 were extensively cross examined by the Ld Counsel for the Insurance Co. to bring home the point that the mother of the deceased was not present along with her daughter when she met with an accident. Ld Counsel for the Insurance Co, also suggested that PW 3 had not witnessed the accident. In support of his suggestion, Ld Counsel, during the course of argument, referred to the FIR, Ext 2 lodged by the PW 3 and argued that since in the FIR so lodged, it was not mentioned that the deceased was with her daughter, the latter could not be believed. Ld Counsel further submitted that there was total negligence on the part of the guardians of the minor girl, in leaving her to tread alone on the National Highway and, as such, it cannot be said that the accident occurred solely because of the negligence of the OP No.2. It is well settled that FIR, need not be an encyclopedia wherein each and every details need to be recorded. Moreover, charge sheet (Ext 4) having been filed against the driver of the offending Truck, this Tribunal, is not inclined to accept the suggestions put forward by the Ld Counsel for the Insurance Company, more so in absence of any contra evidence to that effect.

Thus, the oral evidence of the claimant witnesses, coupled with the documentary evidence mentioned above, establishes that the claimant's daughter died in the motor vehicle accident, due to rash and negligent driving of the Truck bearing No. AS-27-C-0299. That the said offending vehicle was insured with the opposite party No.3, United India Insurance Co Ltd is not in dispute.

In view of the discussion hereinbefore, claimant is held to be entitled to compensation. Claimant has stated that his daughter, Muskaan, was 8 years of age. Same is the age recorded in the Post Mortem Report, Ext 5 and the Certificate issued by the School (Ext 6).

Claimant is entitled to pecuniary damages to be calculated on the basis of the Second Schedule to the Motor Vehicles Act, 1988. Where age of the victim is upto 15 years, Second Schedule of the Motor Vehicle's Act, 1988, provides for applying a multiplier of 15. Thus on the said basis, pecuniary compensation is calculated as:- Rs.15,000 x 15 = Rs.2,25,000/-.

In **R.K.Mallick vs Kiran Pal and Anr reported in 2009(8) Scale 451**, the Hon'ble Supreme Court observed that "*... It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children....*" . In the said case the Hon'ble Supreme Court awarded Rs.75,000/- towards future prospect of children and the Hon'ble Supreme Court further upheld the grant of Rs. 75,000/- towards non-pecuniary damages for pain and suffering by the Hon'ble Delhi High Court.

The Hon'ble Delhi High Court relying on R.K.Mallick (Supra), in **National Insurance Company Ltd vs Sh. Raj Prakash reported in MANU/DE/5470/2012** granted compensation of an amount of Rs. 3,75,000/- in respect of the minor, Baby Chanda.

Again, the Hon'ble Supreme Court in **Rajesh and Ors. Vs. Rajbir Singh and Ors. reported in MANU/SC/0480/2013** held that an amount of Rupees twenty five thousand should be granted for funeral expences unless there is proof of higher expenditure on the said count.

Thus following the aforesaid judgments of the Hon'ble Supreme Court, just and reasonable compensation to which the claimant is entitled is assessed as under:-

Pecuniary loss (15,000/- x 15)	:	Rs. 2,25,000.00
Loss of future prospect	:	75,000.00
Loss of love, affection and suffering	:	75,000.00
Funeral expenses	:	25,000.00
TOTAL	:	4,00,000.00

Having held the **Truck bearing No. AS-27-C-0299** to be responsible for the accident, the Opposite Party No. 3, United India Insurance Company Ltd, with which the said Truck is insured vide Policy No. 130781 /31 /09/02/00002147 valid w.e.f 24.2.2010 to 23.2.2011 is to pay the award.

A W A R D

Rs. 4,00,000.00/- (Four Lakh only) inclusive of no-fault is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 21.12.2010 till payment. The OP No. 3, United India Insurance Co Ltd, is directed to pay the award within one month from the date of order.

Given under my hand & seal of this Court on this 27th day of May, 2014.

Member
Motor Accident Claims Tribunal
Sonitpur, Tezpur