

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR, TEZPUR.

MAC Case No. 128 of 2011

Smti Jaya Das
W/o Late Ananda Ch Das
Vill: Patia Chuburi, PO Dekargaon
PS: Tezpur, District Sonitpur
Assam.

... Claimant

-VS -

1) Sri Hitesh Pathak
S/o Sri Mono Pathak
R/o of Rowta Station, PS-Rowta
Dist: Udalguri, Assam
(Owner of the TRUCK : AMA 1489)

2) Sri Sahadeb Chowhan
S/o Lt B Chowhan
R/o of Rowta Station, PS: Rowta
Dist: Udalguri, Assam
(Driver of the TRUCK : AMA 1489)

3) The National Insurance Co Ltd.
Mongoldoi Branch, Dist: Darrang, Assam
(Insurer of TRUCK : AM 1489)

...Opposite Parties

Date of Argument : 21.04.2014
Date of Judgment : 20.05.2014

ADVOCATES FOR THE PARTIES

For the Claimant : Sri P.P.Hazarika
For the OP No. 1 : Sri S.K.Goswami
For the OP No. 2 : None appeared
For the OP No. 3 : Sri P.K.Sharma

J U D G M E N T

This claim case has arisen out of a road traffic accident which occurred on 6.3.2011 at about 6.20 PM, involving the Truck bearing No: AMA 1489 which was insured with the National Insurance Co Ltd.

The claim has been instituted u/s 166 of the M.V Act for the death of the claimant's husband. The case of the claimant, in brief, is that, on 6.3.2011 the claimant along with her husband Ananda Ch Das (since deceased), two minor daughters and their maid, were proceeding from Mongoldoi towards Tezpur in Santro car.

At Barujhar, Dalgaon, her husband stopped the car on the left side of the NH 52 and stepped out of the car. Her husband was speaking to some people, while the others continued to be seated in the car. At that time, Truck No. AMA 1489 which was also proceeding from Mongoldai side towards Tezpur dashed her husband and some other persons, from behind. As a result of the same, her husband sustained grievous head injuries. Though he was rushed to the Mongoldoi Civil Hospital, he was declared dead by the doctors. It has been stated that the accident occurred because of the rash and negligence of the driver of the Truck.

It has been stated by the claimant that the deceased was gainfully employed as a Cashier in Indian Overseas Bank, Tezpur Branch and had left behind his mother, wife and two minor children.

The O.P. No. 1 filed its written statement denying the material averments and further stated that liability, if there be any, ought to be borne by National Insurance Co. Ltd as the Truck No. AMA 1489 was duly insured with the said Insurance company.

The O.P. No. 2 did not take part in the proceeding and, as such, the case against him proceeded ex-parte.

The O.P Nos. 3, the Insurer of Truck No. AMA 1489, in its written statement denied all material averments of the claim petition and pleaded, inter-alia, that the amount of compensation claimed by the claimants 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. The O.P. No.3 stated that the accident occurred due to the claimant No.1's husband who was driving the car, and, as such, the claimants are not entitled to be awarded compensation in the instant case.

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, Smti Jaya Das, wife of the deceased, examined herself as PW-1 and filed relevant documents. She also examined Smt Tulsi Devi who was travelling along with them in the Santro car on the date of occurrence, in support of her case. The contesting respondents, however, have 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 brevity and convenience.

Reiterating her contentions raised in the claim petition, PW 1 has averred in her evidence that her husband died on 6.3.2011, when the Truck No. AMA 1489, being driven in a rash and negligent manner, hit him from behind while he was speaking to people gathered on the road side at No.5 Barujhar, Dalgaon, NH 52. She stated that Dalgaon P.S Case No. 149/11 was registered in respect of the said accident. PW 1 could not be demolished in her cross examination. PW 1 has stated that the other dependents of the deceased are i) Smt Jogeswari Das, Mother of the deceased and ii) Miss Rayanika Das and iii) Miss Punam Das, both minor daughters of the deceased.

In support of her oral evidence, PW 1 has proved Form 54 as Ext1, Post Mortem Report as Ext 2, the certified copy of the FIR as Ex-3, Salary Certificate as Ext 4, Computerized Salary Statement as Ext 4 (1), Certificate issued by the Manager, Indian Overseas Bank as Ext 5, Death certificate of the deceased as Ext 6.

PW 2, Smt Tulsi Devi, deposed that she too was travelling in the Santro on 6.3.2011 along with the claimant, her two children and

Lt Ananda Ch Das. She fully supported the version of the accident as narrated by the PW 1 and stated that the accident occurred because of the rash and negligence of the driver of Truck No. AMA 1489. Nothing adverse could be elicited from PW 2 either, in her cross examination.

The evidence adduced would show that the accident occurred due to the fault of the driver of Truck No. AS-14-C-1194. On the other hand, there is no contra evidence to suggest otherwise. Form No. 54, Ext 1 shows the involvement of Truck No. AMA 1489 in an accident on 6.3.2011. From the said Ext 1 it is also seen that the claimant's husband expired in the said accident. In the said report it has been stated that Dalgaon PS Case No. 149/11 was registered in respect of the accident, the truck etc seized, injured persons were sent to Mongaldoi Civil Hospital and G.M.C Hospital, Guwahati, the driver of the Truck, Sri Sahadev Chauhan was arrested and forwarded to the Court of the Chief Judicial Magistrate, Mongaldai and the body of the deceased sent to Mongaldai Civil Hospital.

Thus from the oral evidence of the claimant, coupled with the documentary evidence, it is established that claimant's husband died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle Truck No. AMA 1489. That the said Truck, the offending vehicle was insured with the opposite party No.3, National Insurance Co Ltd is not in dispute.

In view of the discussion aforesaid, claimants are held to be entitled to compensation.

This Tribunal now proceeds to compute the compensation as per the ration laid down in the judgment of the Hon'ble Supreme Court in **Sarla Verma -vs- Delhi Transport Corporation, (2009) 6 SCC 121.**

On record, is a certificate dated 6.6.97 of Tezpur Naisha Vidyalaya wherein the date of birth of Ananda Ch Das has been recorded as 27.1.1964. Thus though in the Post Mortem Report (Ext 2), the age of the deceased has been recorded as 40 years, this Tribunal is not inclined to accept the same. The age of the deceased is

thus taken to be 47 years at the time of accident. As per the ratio laid down in Sarla Verma (Supra), the multiplier to be applied for computing the compensation will depend on the age of the deceased. In the instant case the multiplier will therefore be 13.

PW 1 has stated that her husband was employed as a Cashier in Indian Overseas Bank. In support of the income of the deceased, the claimant has exhibited Ext 4, the last drawn pay certificate issued by the Manager, Indian Overseas Bank, Besseria Branch wherein it has been recorded that Rs.31,248/- was the amount last drawn by the deceased for the month of February, 2011. Thus the annual income of the deceased was Rs.3,74,976/-. From the said amount income tax amount is to be deducted to arrive at the 'actual income'.

The Income Tax Slab for the year 2010-2011 was (i) Basic Exemption Rs.1,60,000/- (ii) Slab for Rs.300001/- to 500000/- = 14000/- + 20%. The amount of income tax including 3% education cess is calculated as Rs.29865/-.

The annual income of the deceased after deduction of income tax is taken to be Rs.3,74,976/- (-) Rs.29865/- = Rs. 345111/-

As per Sarla Verma (Supra) 30% is to be added to the actual income of the deceased towards his future prospects. The annual income of the deceased is computed to be [3,45,111/- + (30% of Rs. 3,45,111/-) = Rs.4,48,644/-].

Claimants in the instant case are the wife and three minor children of the deceased. It has come on record that the deceased was survived by his mother as well. Since the deceased left behind four dependents, relying once again on the ratio in Sarla Verma (Supra) case, one fourth is to be deducted for the personal expenses of the deceased. Annual dependency therefore is calculated as Rs. 3,36,483/-.

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. (Supra) 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/loss of guidance and affection to minor children and 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, just and reasonable compensation to which the claimant is entitled is assessed as under:-

Loss of dependency Rs. 3,36,483/- x 13	:	Rs. 43,74,279.00
Loss of consortium for the wife	:	Rs. 1,00,000.00
Loss of love and affection for minor children	:	Rs. 1,00,000.00
Funeral expences	:	<u>Rs. 25,000.00</u>
TOTAL	:	Rs.45,99,279.00

Having held the Truck bearing No: Truck No. AMA 1489 to be responsible for the accident, the Opposite Party No. 3, National Insurance Co Ltd is to pay the award.

A W A R D

Rs. 45,99,279/- (Rupees forty five lakh ninety nine thousand two hundred and seventy nine only) inclusive of no-fault is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 30.3.2011 till payment. The OP No. 3, National Insurance Co Ltd, is directed to pay the award within one month from the date of order. From the total awarded amount, an amount of Rs.5,00,000/- (Rupees Five Lakh Fifty thousand) **each** is directed to be deposited in any Nationlised Bank, in the name of the two minor children of the deceased, namely, (i) Miss Rayanika Das (ii) Miss Punam Das till they attain the age of majority. Out of the total amount, an amount of Rs. 3 lakh is to be released in the name of the mother of the deceased, namely, Smt Jogeswari Das.

Given under my hand & seal of this Court on this 20th day of May, 2014.

Member
Motor Accident Claims Tribunal/
Additional District Judge No.2
Sonitpur, Tezpur