

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
SONITPUR: TEZPUR

**MAC Case No. 130 of 2011**

1.Smt Suru moni Devi  
Wife of Late Tarun Ch Nath

2. Ms Dipanita Devi  
D/o Late Tarun Ch Nath

3. Master Raju Nath  
S/o Late Tarun Ch Nath  
Nos. 2 and 3, Represented by claimant No.1

All (1) to (3) are residents of  
Kunderabari, Kalitachuk  
PS: Tezpur  
District: Sonitpur, Assam.

... Claimants

-Versus-

1. Sri Krishna Kr. Singh  
S/o Lt Parash Nath Singh  
R/O- Lalungaon, Betkuchi, Lokhra  
Dist- Kamrup, Assam

2. Sri Dwijendra Nath  
S/o Sri Sarbinda Ch Nath  
Vill: Talguri, PO : Kayethapara  
District: Bongaigaon, Assam

3. Shiram General Insurance Co Ltd  
Riico Industrial Area, Sitapura  
Jaipur

. .Opposite Parties

Advocate for the claimant : Sri Prashanta Sharma  
Advocate for OP No. 1 & 2 : Sri Sanjit Kr Pandit  
Advocate for OP No. 3 : Sri S.K.Singh

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

Date of Argument : 3.05.2014  
Date of Judgment : 30.5.2014

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

The instant claim petition has been filed by the claimant u/s 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Tarun Ch Nath (hereinafter referred to as the "deceased") who was the husband of the Claimant No.1 and father of the claimant No.2 and claimant No.3.

The case of the claimants, in brief, is that on 25.10.2010 Tarun Ch Nath was hit by the Truck No. AS-01-Y-2277 on NH 52 near Kanaibora Chuburi and died because of the said accident. It has been stated that the accident occurred because of the rash and negligent driving of the OP No.2.

The Opposite party No.1 and Opposite party No.2, owner and driver of the Truck have filed their written statement denying that the vehicle was driven in a rash and negligent manner by the OP No.2 and stating that the OP No.2 had a valid driving license. It has been further stated that liability arising of the said accident, if there be any, ought to be borne by OP No.3, with which the said vehicle was duly insured vide Policy No. 10003/31/10/2000040 valid upto 19.11.2010. The OP No.2 has placed on record copies of the Policy and his Driving Licence.

The O.P Nos. 3, the Insurer of the Truck, 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 licence and the conditions of Insurance Policy were not violated by the insured.

On the basis of pleadings the following issues were framed 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 No. 1 examined herself and one other witness. Both the witnesses were extensively cross examined by the O.P. No.3. The contesting respondent has not examined any witness in support of its plea.

I have carefully perused the entire materials brought on record, heard both sides and my decisions on the issues are as follows :-

Both the issues are taken up together for discussion and decision, for the sake of convenience and brevity.

Evidence of the claimant No.1 and claimant No.2 is that, Tarun Ch Nath died due to the rash and negligence of the OP No.2 in the road accident on 25.10.2010. It has been stated that at the time of accident, the deceased, being a retired army person, was receiving monthly pension of Rs.13,690/-.

The claimant No. 1 exhibited the Accident Information Report as Exbt 1, Post Mortem Report as Ext 2, Copy of FIR as Ext 3 and 4, Charge sheet at Ext 5, Pension certificate as Ext 6.

Ext - 1 is the Accident Information Report wherein it has been recorded that the Truck No. AS-01Y-2277 was involved in an accident on 25.10.2010 in which Tarun Ch Nath died. Ext -3 is the FIR lodged after the accident, on the basis of which Tezpur PS Case No. 1011/10 was registered and subsequently Charge sheet (Ext 5 ) was submitted against the OP No.2.

Thus, the oral evidence of the claimant, coupled with the documentary evidence, establishes that Tarun Ch Nath died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle, Truck No. AS-01Y-2277.

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

As per the said judgment of the Hon'ble Supreme Court, the multiplier to be applied for computing the compensation would depend on the age of the deceased. Ext 6 is the Pension certificate issued by the office of the CDA (Pensions), Allahabad where the date of birth of the deceased is shown as 27/6/1975. Thus, age of the deceased on the date of accident was 34 years 10 months 28 days. Therefore, the relevant multiplier as per Sarla Verma (Supra) will be 16 (sixteen).

Ext- 6 certificate of pension reveals that the deceased retired as a Nayak of the Indian Army. From the evidence of the claimant No.1, it is apparent that the accident occurred a few days after her husband returned home after his retirement. The claimants have claimed the loss of dependency on the basis of the amount shown in the pension certificate, that is, Ext 6 (Rs.13,690/-) per month. This Tribunal is not inclined to accept the said amount for ascertaining the loss of dependency, since pension amount is not to be taken into consideration while computing the loss of dependency.

Since the deceased had returned from retirement, only a few days before his accident, the claimant could not lay before the Court any proof of his avocation after retirement at the age of 34 years. It is obvious that the deceased would have earned by either being re-employed or by self-employment. In absence of any cogent proof thereof, this Tribunal deems it appropriate to take Rs.3500/- to be the monthly income of the

deceased, which in the considered view of this Tribunal is the bare minimum which the deceased would have earned, as an ex-army man.

The Hon'ble Supreme Court in **Santosh Devi Vs. National Insurance Company Ltd.** [ (2012) 6 SCC 421] in paragraph 18 has held that :

*"... 18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."*

Again the Hon'ble Supreme Court in **Rajesh and Ors. Vs. Rajbir Singh and Ors. reported in MANU/SC/0480/2013** held in paragraph 11 to the effect that:

*" .... Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."*

Thus relying on the ratio of the aforesaid judgment of the Hon'ble Supreme Court, the claimant, in the instant case, is entitled to get 50% increase towards future prospect. The annual income of the deceased is thus computed to be [Rs.3500/- + 50% of Rs.3500/- x 12 = Rs.63,000/-].

Since the deceased left behind three dependents, one third is to be deducted towards the personal expences of the deceased. Thus so deducting [Rs. 63,000/- (-) Rs.21,000/-], the annual income of the

deceased is assessed as Rs. 42,000/- . Since the said amount is less than the taxable income, no amount need be deducted towards the same.

Besides loss of dependency, the claimants are entitled to some amount, on account of funeral expenses, loss of consortium 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 expences unless there is proof of higher expenditure on the said count. Thus, just and reasonable compensation to which the claimants are entitled, is assessed as under:-

Loss of dependency (42,000/- x 17)	:	Rs. 7,14,000.00
Loss of consortium for the claimant No.1	:	Rs. 1,00,000.00
Loss of love & affection for the minor children	:	Rs. 1,00,000.00
Funeral expences	:	Rs. 25,000.00
Total	:	Rs. 9,39,000.00

Having held the Truck No. AS-01Y-2277 to be responsible for the accident, the Opposite Party No. 3, Shiram General Insurance Co Ltd is to pay the award.

#### A W A R D

Rs. 9,39,000/- (Nine lakh thirty nine thousand only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e.31.3.2011 till payment to the claimants. Out of the total amount so awarded an amount of Rs. 1,00,000/- each is to invested in fixed deposit in any nationalized bank in the name of the minor children of the deceased namely, Ms Dipanita Devi and Master Raju Nath, till the age of their majority.

The OP No. 3, Shiram General Insurance Co Ltd, is directed to pay the entire awarded amount within one month from the date of this order.

Given under my hand & seal of this Court on this 30<sup>th</sup> day of May, 2014.

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