

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

**MAC Case No. 154 of 2011**

1) Musst Asia Begum  
Wife of Late Abdul Mafiz

2) Md Didar Hussain  
Son of Late Abdul Mafiz

3) Md Iqbal Hussain  
Son of Late Abdul Mafiz

4) Md Injamul Hussain  
Son of Late Abdul Mafiz

5) Md Ashik Hussain  
Son of Late Abdul Mafiz

( Claimant No. 2 to 5 minors, represented by claimant No.1)

All, R/o Ambari  
PO and PS: Tezpur  
District: Sonitpur, Assam.

... Claimants

-Versus-

1. Md Saidul Islam  
S/o Late Alimuudin  
Vill: Chatai Chapari  
Dist: Sonitpur  
Assam.

2. Md Abdul Munnaf  
S/O Late Hasan Ali  
C/o Saidul Islam  
Vill: Chatai Chapari  
Dist: Sonitpur  
Assam.

3. New India Assurance Co Ltd  
Tezpur Branch  
Dist: Sonitpur, Assam

. .Opp Party

|                           |   |                     |
|---------------------------|---|---------------------|
| Advocate for the claimant | : | Sri S.Khan          |
| Advocate for OP No. 1 & 2 | : | Sri P.K.Sharma      |
| Advocate for OP No.3      | : | Sri Ashim Choudhury |

PRESENT

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

Date of Argument : 2.05.2014  
Date of Judgment : 31.5.2014

### **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 Abdul Mafiz (hereinafter referred to as the "deceased") who was the husband of the claimant No.1 and father of the Claimant Nos. 2 to 5.

The case of the claimant, in brief, is that on 21.1.2010 Abdul Mafiz was on duty as labourer of the Truck No. AS-12-C-7297 and during night hours, in order to look after the said Truck, he slept inside the Truck. However, while he was sleeping inside the truck, the truck caught fire and Abdul Mafiz was charred to death in his sleep. It is the contention of the claimants that the death of Abdul Mafiz having being caused during the course of his employment and the mishap being covered within the term "use of the vehicle", the claimants are entitled to be awarded compensation by this Tribunal.

The Opposite party No.1 and Opposite Party No.2, owner and driver of the Truck denied the averments made in the claim petition and stated that liability if there be any ought to be saddled on the OP No.3 as the said truck was duly insured vide Policy No. 53070431090100203368 valid upto 10.12.2010.

The Opposite Party No. 3, New India Insurance Co. Ltd, insurer of the Truck filed its written statement and contested the case. OP No.3 denied the material averments of the claim petition and pleaded, inter-alia, that the amount of compensation claimed by the claimant 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 was 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 examined herself as Claimant Witness No.1 (CW-1). The OP No.3, Insurer has examined its Administrative Officer in support of its plea.

I have carefully perused the entire materials brought on record and heard the Ld Counsel for the petitioner and the contesting Respondent. Both the issues are taken up together for discussion and decision, for the sake of convenience and brevity.

Evidence of the claimant No.1 is that her husband died in sleep while he as labourer/handyman of the Truck No. AS-12-C-7297, on instructions of the OP No. 1 and 2, was sleeping inside the Truck on the night of 21.1.2010 while the truck was parked at Bhojkhowa Chapari. Some local people who went to perform Namaz saw the truck burning and also saw the body of her husband burning in the said truck. It has been stated that at the time of accident, the deceased was the sole earning member of the family and used to earn Rs.3,333/- per month. The claimant proved the Accident Information Report as Exbt 1, Post Mortem Report as Exbt 2, Newspaper clippings as Ext 3. In cross examination, the claimant denied the suggestion that the claimant's husband was not authorized to sleep in the cabin of the truck and the accident occurred because the deceased had burnt mosquito repellent coil in the cabin of the truck.

Ext 1 is the Accident Information Report wherein it has been recorded that Kaji Abdul Mazid died in the accident involving the Truck No. AS-12-C-7297 on 21.1.2010 at Bhojkhowa Chahari, Tezpur. Ext 2 is the post mortem report where the age of the deceased has been recorded as 32 years and the cause of death of Kazi Abdul Mazid has been recorded as "death due to shock and respiratory failure as a result of 100% burn". Ext 3 is the newspaper clipping dated 22.1.2010 wherein the news of the claimant No.1's husband been charred to death in a burning truck has been captured.

Thus, the oral evidence of the claimant, coupled with the documentary evidence mentioned above, establishes that claimant No.1's husband died while he was sleeping in the Truck No. AS-12-C-7297 at night. That the said Truck, was insured with the opposite party No. 3, New India Insurance Co Ltd is not in dispute.

OP No.3, adduced the evidence of Sri Bibhuti Bhusan Chanda, Administrative Officer of New India Insurance Co Ltd as DW 1. DW 1 in his evidence stated that on 21.10.2010, in the evening, the driver of the Truck No. AS 12 C 7297 after doing his duties parked the said truck in front of the compound of Md Hazinur Mohammed of Bhojkhowa. On the next morning that is, 22.1.2010 at about 5 AM, a fire broke out in the said truck as a result of which the husband of the claimant No.1 got totally burnt and the truck too got damaged. DW 1 exhibited the GDE No. 424 dated 22.1.2010 as Ext A.

It was further stated by DW 1 that the owner of the Truck, Md Saidul Islam had filed an own damage claim before the Insurance company and the same was rejected as at the relevant time of the accident, the Truck did not have a Fitness Certificate. DW 1 exhibited, as Ext B, the letter dated 24.9.2010 of the owner of the Truck intimating the Insurance Co that the Fitness Certificate had expired on 1.9.2009 and that he had not renewed the same. DW 1 has also exhibited the Insurance Co's letter dated 24.9.2010 rejecting the own damage claim of the owner as Ext D. Also placed on record by DW 1 is the Fitness Certificate of the

Truck being Ext C and the Insurance Policy No. 53070431090100203368 valid from 17.12.2009 to 16.12.2009 being Ext E.

Perusal of Ext C, Fitness Certificate shows that the same was issued in respect of Vehicle No. AS-12-C-7297 on 2.9.2008 and was valid till 1.9.2009. Perusal of Ext E Insurance Policy shows that the same was issued on 17.12.2009.

Thus from both the documents, Ext C and Ext E, it is apparent that the Insurance Co. issued the Insurance Policy on 17.12.2009, that is, on the date when the Truck No. AS-12-C-7297 did not have a subsisting Fitness Certificate. The OP No.3, having duly accepted the premium and having issued a Comprehensive/Package Policy thereby undertaking to indemnify the owner inspite of the fact and knowledge that on the date of issuance of the policy, the owner did not possess a valid fitness certificate, cannot now be allowed to repudiate any liability arising out of an accident because of the use of the said vehicle on the ground that the fitness certificate was no valid on the date of accident.

Ld Counsel for the OP No.3 further submitted that the accident having occurred because of the negligence of the claimant No.1's husband in burning mosquito repellent coil in the cabin of the truck, the claimants are not entitled to be awarded any compensation in the instant case. This Tribunal is not inclined to accept the said submission advanced by the Ld Counsel for the OP No.3, in as much as, there is nothing on record to prove the proposition put forward by the OP No.3. On the contrary, from Borghat GDE No. 424 dated 22.1.2010 it transpires that after the truck was parked for the night by the driver, the claimant's husband was left to sleep in the truck, obviously the purpose being to guard the same and while he was so sleeping, fire broke out and he was charred in his sleep. From the said narration, it is apparent that the accident would be covered within the phrase "use of the truck" and, as such, the OP No.3, admittedly being the insurer of the Truck, is held liable to indemnify the owner and satisfy the award.

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 (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. The age of the deceased as recorded in the Post Mortem Report (Ext- 2) is 32 years. Therefore the relevant multiplier will be 16.

It has been stated that at the time of accident, the deceased, who was the handyman/labourer of the truck was earning Rs.3333/- per month. In absence of any cogent proof with regard to the same, this Tribunal is inclined to accept Rs.3000/- to be the income of the deceased.

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 deceased being below 40 years of age, the claimant is entitled to get 50% increase towards future prospect. The annual income of the deceased is thus computed to be [Rs.3000/- + 50% of Rs.3000/- x 12 = Rs.54,000/-].

Since the deceased left behind five dependents, as per the ratio laid down in Sarla Verma (supra), 1/5<sup>th</sup> is to be deducted towards the personal expences of the deceased. Thus so deducting [Rs.54,000/- (-) Rs.10,800/], the annual income of the deceased is assessed as Rs. 43,200/- .

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 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 (43,200/- x 16)       | : | Rs. 6,91,200.00 |
| Loss of consortium for the claimant No.1 | : | Rs. 1,00,000.00 |
| Loss of love and affection               | : | Rs. 1,00,000.00 |
| Funeral expences                         | : | Rs. 25,000.00   |
| Total                                    | : | Rs. 9,16,200.00 |

In view of the discussion aforesaid, the Opposite Party No. 3, New India Assurance Company Ltd is to pay the award.

A W A R D

Rs.9,16,200/- (Nine lakh sixteen thousand and two hundred 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 claimant. The OP No. 3, New India Assurance Co Ltd, is directed to pay the award within one month from the date of the order.

Given under my hand & seal of this Court on this 31<sup>st</sup> day of May, 2014.

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