

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR

MAC Case No. 156 of 2011

Smt Sapna Mochahari
Wife of Biren Mochahari
resident of
Nankey Bakula, Chariduar
PS: Rangapara,
District: Sonitpur, Assam.

... Claimant

-Versus-

1. Sri Bapukan Mech
S/o Hiranya Mech
R/O- village – Majuli Amolga,
P.O. Chengelimara, P.S. – Rangapara,
Dist- Sonitpur, Assam
(Driver of the offending vehicle No. AS-12E-3720 [Tata Sumo])
2. Sri Utpal Sarmah
S/o Sri Prafulla sarmah
Vill: Bam-Parbatia, B.D. Raod, Tezpur
PO & P.S. : Tezpur,
District: Bongaigaon, Assam
(Owner of the offending vehicle No. AS-12E-3720 [Tata Sumo])
3. United India Insurance Co Ltd.
Guwahati Branch
(Insurer of the offending vehicle No. AS-12E-3720 [Tata Sumo])

. .Opposite Parties

Advocate for the claimant	:	Sri K. Gogoi
Advocate for OP No. 1	:	Sri N Sharma
Advocate for OP No. 2	:	Sri N Sharma
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	:	28-05-2014
Date of Judgment	:	30-05-2014

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 her daughter, namely Saraswati Mochahari (hereinafter referred to as the "deceased").

The case of the claimants, in brief, is that on 06.04.2011 at about 6:30 PM when her daughter was going towards her residence at Nankey Bakula from Forest Gate side on foot, suddenly the TATA Sumo No. AS-12E-3720, being driven in negligent manner, knocked the claimant's daughter. She was immediately rushed to the Chariduar Civil Hospital where she was declared to be 'brought death'. It has been stated that the accident occurred because of the rash and negligent driving of the OP No.1.

The Opposite party No.1 and Opposite party No.2, driver and owner of the Tata Sumo have filed their written statement denying that the vehicle was driven in a rash and negligent manner by the OP No.1 and stating that the OP No.1 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. 130102/31/10/01/00000515 valid upto 3-5-2011. The OP No.2 has also stated that the OP No. 1 had a valid Driving Licence bearing No. 17803/PK/Prof/2010 dated 15-9-2010.

The O.P No. 3, the Insurer of the Tata Sumo, 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, Saraswati Mochahari died due to the rash and negligence of the OP No.1 in the road accident on 6.4.2011. It has been stated that at the time of accident, the deceased, was doing a private job in a factory and earning Rs. 5,500/- per month.

The claimant No. 1 exhibited the Accident Information Report as Exbt. 1, Post Mortem Report as Exbt. 2, Death Certificate issued by Department of Health Services as Exbt. 3, School leaving certificate as Ext. 4, Certified copy of FIR and ejahar as Ext. 5, Copy of Charge Sheet as Ext. 6 and Seizure list as Ext 7.

Ext - 1 is the Accident Information Report wherein it has been recorded that the Tata Sumo No. AS-12E-3720 was involved in an accident on 6-4-2011 in which Saraswati Mochahari died. Ext -5 is the FIR lodged after the accident, on the basis of which Rangapara PS Case No.

82/11 was registered and subsequently Charge sheet (Ext 6) was submitted against the OP No.1.

Thus, the oral evidence of the claimant, coupled with the documentary evidence, establishes that Saraswati Mochahari died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle, Tata Sumo No. AS-12E-3720.

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 4 is the School certificate of Chengelimara MV School where, the date of birth of the deceased is shown as 22-1-1994. Thus, age of the deceased on the date of accident was 16 years 14 months 14 days. Therefore, the relevant multiplier as per Sarla Verma (Supra) will be 18 (eighteen).

It has been stated that at the time of accident, the deceased was working in a private factory and earning Rs.5,500/- per month. In absence of any cogent proof with regard to the same, this Tribunal is inclined to accept the notional income, that is, Rs.3000/- to be the income of the deceased. From the Ext. 4, it is seen that Saraswati Mochahari (since deceased), left school on 30-9-2010, when she was in standard VII. Since it is not uncommon for young girls in the rural areas to work as daily wage earners, to support their family, it can be safely concluded that the deceased was earning Rs. 3,000/-, if not more, till before her death.

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 30% increase towards future prospect. The annual income of the deceased is thus computed to be [Rs.3000/- + 30% of Rs.3000/- x 12 = Rs.46,800/-].

Since the deceased was unmarried, as per the ratio laid down in Sarla Verma (supra), 50% is to be deducted towards the personal expences of the deceased. Thus so deducting [Rs. 46,800/- (-) Rs.23,400/], the annual income of the deceased is assessed as Rs. 23,400/- .

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 (23,400/- x 18)	:	Rs. 4,21,200.00
Loss of love and affection	:	Rs. 1,00,000.00
Funeral expences	:	Rs. 25,000.00
Total	:	Rs. 5,46,200.00

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

A W A R D

Rs. 5,46,200/- (Five lakh forty six 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. 21.4.2011 till payment to the claimant. The OP No. 3, United India Insurance Company, 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 30th day of May, 2014.

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