

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

**MAC Case No. 163 of 2009**

1) Smt Puspa Sharma  
S/o Late Omprakash Sharma

2) Ms Sangita Sharma  
D/o Late Omprakash Sharma

Both, R/o Vill and PO : Serelia  
Mouza and P.S.: Behali  
District: Sonitpur, Assam.

... Claimants

-Versus-

1. The Managing Director  
G.N.R.C Ltd, Six Mile, Guwahati  
District: Kamrup, Assam.

2. Sri Diganta Deka  
S/o Late Rajen Deka  
Vill: Balilesha  
PO: Nalbari  
Dist: Nalbari  
Assam

3. The United India Insurance Co Ltd.  
Through the Divisional Manager, Tezpur Divison  
Tezpur.

...Respondents

Advocate for the claimant : Sri Ashim Choudhury  
Advocate for OP 1 & 2 : Sri Dilip Baruah  
Advocate for OP 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 : 5.04.2014  
Date of Judgment : 3.05.2014

## J U D G M E N T

The instant claim petition has been filed by the wife and daughter of Omprakash Sharma, who died in a road accident. The case of the claimants, in brief, is that on 18.1.2009 at about 5.40 AM when Omprakash Sharma was returning back from Borgang and proceeding towards Serelia, while on his morning walk, the Ambulance No. AS-01-AC-7983 coming from Serelia side and going towards Borgang knocked him and the ambulance fell in the paddy field. As a result of the said accident, Omprakash Sharma died on the spot. Accident has been attributed to the rash and negligence of the OP No.2.

The O.P. No. 1, Owner of Ambulance and the OP No.2, Driver of the Ambulance 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 United India Insurance Co Ltd with which the said vehicle was duly insured vide Policy No. 130200/31/08/01/00000410 valid upto 4.5.2009. The OP No.1 has placed on record copies of the Registration Certificate, Fitness Certificate, Road Permit, Insurance Policy and Driving License of the OP No.2. It has been stated by the OP No.2 in his written statement that the accident occurred when the claimant No.1's husband along with another person suddenly tried to cross the road because of which OP No.2 lost control and hit the victim.

The O.P Nos. 3, the Insurer of the Ambulance, 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 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 by the driver of the offending vehicle?
- 2 Whether the claimant is entitled to compensation as prayed for?
- 3 To what relief the parties are entitled ?

During enquiry, the claimant examined herself as CW-1 and filed documents and also examined one eye-witnesses in support of his 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.

All the issues are taken up together for the sake of convenience and brevity.

Claimant Witness No. 1 has averred in the petition and also stated in her evidence that on 18.1.2009 when her husband was returning from his morning walk along with Sri Kamal Kishore Niralaat at about 5.30 AM, the Ambulance No. AS-01-AC-7983, being driven in a rash and negligent manner, knocked her husband resulting in his instant death.

In support of her oral evidence, PW 1 has proved the Accident Information Report as Ex-1, the Post Mortem report as Exbt-2, Death Certificate as Ex-3, PAN Card as Ex-4, Income Tax Returns as Ext-5 series, School Certificates of three daughters as Ex-6, Birth Certificate of son as Ext-7.

In the accident information report the Ambulance No. AS-01-AC-7983 has been shown to be involved in an accident and

Omprakash Sharma has been shown to have died in the said accident.

In cross examination, Claimant Witness No.1 admitted that she had not seen the accident. CW 1 stated that in all, she had six children out of which two of her daughters, namely Kamala and Narmada had already been given in marriage.

Claimant Witness No. 2 deposed that on 18.1.2009 , he along with Omprakash Sharma were returning from their morning walk at about 5.40 AM when the Ambulance, being driven in a rash and negligent manner and coming in high speed knocked down Omprakash Sharma resulting in his instant death. The claimant witness No.2 has categorically stated that the accident occurred due to rash and negligent driving by the driver of the Ambulance.

In cross examination CW 2 admitted that it was a foggy morning. CW 2 however denied the suggestion that the accident occurred because of the negligence of the deceased. The suggestion that CW 2 was not there along with the deceased too was denied.

From the trend of cross examination, it is seen that the Opposite parties have tried to built up a case of contributory negligence on the part of the deceased and have doubted the presence of the CW 2 at the place of occurrence. The presence of CW 2 at the place of occurrence cannot be doubted and the same is in fact, confirmed by the OP No.2, who in his written statement has mentioned the deceased being there on the road along with another person. Thus in view of the categorical stand of the CW No.2 and in absence of any contra evidence, it cannot be held that there was any contributory negligence on the part of the deceased.

Thus, the oral evidence of the claimant, coupled with the documentary evidence mentioned above, establishes that claimant's husband/father died in the motor vehicle accident, due

to rash and negligent driving of the Ambulance No. AS-01-AC-7983. That the said Ambulance No. AS-01-AC-7983, the offending vehicle was insured with the opposite party No.3, United India 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 ratio laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation reported in (2009) 6 SCC 121.**

The claimants have stated that the age of the deceased at the time of the accident was 44 years. Ext -4 is the PAN card of the deceased wherein his date of birth has been recorded as 3.10.1963. Thus the age of the deceased on 18.1.2009, that is the date of accident was 45 years 5 months 15 days.

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 14.

In proof of the income of the deceased income tax returns since the year 1994-95 and till 2009-2010 has been exhibited. Ext 5 (15) is the Income Tax Return filed on 31.3.2009 showing the income of the deceased to be Rs.210410/. Ext 5 (14) is the Income Tax Return filed on 25.3.2008 wherein the income of the deceased has been recorded as Rs.188176/-. Ext 5 (13) is the Income Tax Return filed on 29.3.2007 wherein the income of the deceased has been recorded as Rs.125,500/- .

Ld Counsel for the claimant submitted that in view of the progressive rise in income, last of the IT Returns ought to be taken into consideration for computing the award. Though in all the IT returns since the year 1994-95, a progressive rise in income is seen in respect of the deceased, this Tribunal is inclined to accept the IT Returns vide Ext 15 (14) which was the

last of the returns filed by the deceased before his death. In Ext 15 (14) his income is assessed as Rs.188176/-.

As held by the Hon'ble Supreme Court in the case of Sarla Verma (Supra) from the said income, the amount of tax, if paid, by the deceased has to be deducted.

The Income Tax Slab for Individual Male (Below 65 Years Age) for the Financial Year 2007-2008 (Assessment Year 2008-2009) for the slab Rs.1,50,001/- to Rs.2,50,000/- was 20%.

As per Ext 15 (14), the annual income of the deceased was 1,88,176/-. Thus in order to ascertain the 'actual income', an amount of Rs.11,635/- being 20% of the taxable income Plus 3% of education cess , that is, Rs. 350/- (Total Rs. 11,985/-) is to be deducted from the annual income of the deceased. The annual income of the deceased thus is computed to be 1,88,176/- (-) Rs. 11,985/- = Rs. 1,76,191/-

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."*

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. 176191/- + 30% of Rs. 176191/- = Rs.2,29,048/-].

The deceased left behind the claimant and four children (all of whom have attained the age of majority as on date), namely,

- (i) Ms Sangita Sharma whose date of Birth vide Ext 6 series is, 1.1.90
- (ii) Ms Nirmala Sharma whose date of Birth vide Ext 6 series is, 6.11.91
- (iii) Ms Madhu Sharma whose date of Birth vide Ext 6 series is, 18.11.93 and
- (iv) Master Sushil Sharma whose date of Birth vide Ext 6 series is, 19.11.94.

As per ratio laid down in Sarla Verma (Supra), deduction from the salary of the deceased towards his personal expenses will be 1/5<sup>th</sup> that is, { 1/5<sup>th</sup> of Rs. 2,29,048/-}- . Thus, so deducting [Rs. 2,29,048/- (-) Rs.45,809/-], the figure would be Rs.1,83,239/- .

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 expenses 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 (1,83,239/- x 14)	:	Rs. 25,65,346.00
Loss of consortium for the claimant No.1	:	Rs. 1,00,000.00
Loss of love and affection for the children	:	Rs. 1,00,000.00
Funeral expenses	:	Rs. 25,000.00
Total	:	Rs. 27,90,346.00

Having held the Ambulance No. AS-01-AC-7983 to be responsible for the accident, the Opposite Party No. 3, United India Insurance Company Ltd is to pay the award.

A W A R D

Rs. 27,90,346/- (Twenty seven lakh ninety thousand, three hundred and forty six only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e.14.5.2009 till payment to the claimant No.1, Smt Puspa Sharma.

The OP No. 3, United India Insurance Company 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 3<sup>rd</sup> day of May, 2014.

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