

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR

MAC Case No. 168 of 2011

1. Miss Moushumi Das
D/o of Late Thuleswar Das

2. Miss Rashmi Rekha Das
D/o of Late Thuleswar Das

3. Sri Dibantar Das
S/o of Late Thuleswar Das

All (1) to (3) are permanent residents of
Vill: Irasuti
PO:Thelamara
PS: Thelamara
District: Sonitpur, Assam.
Presently residing at:
New Kolibari, PO and PS Tezpur
Dist: Sonitpur, Assam.

... Claimants

-Versus-

1) Smt Sadhana Dutta
W/o Sri Guru Gobinda Dutta
R/O – 1st Bylane, Pubarun Path
Hengrabari, Guwahati-6
Dist: Kamrup, Assam -781006
(Owner of Super Bus No. AS 01U 3866)

2) Sri Cheniram Saikia
S/O Late Lohit Saikia
R/O Village: Bamungaon
PO Amguri
Dist: Sivsagar, Assam
(Driver of Super Bus No. AS 01U 3866)

3) National Insurance Co Ltd
Guwahati Branch
(Insurer of Super Bus No. AS 01U 3866).

4) Oriental Insurance Co Ltd, Tezpur Branch
(Insurer of Alto Car No. AS 12G 0871)

. .Opposite Parties

Advocate for the claimant : Sri Durlav Ch Nath
Advocate for OP No. 1 : None appeared
Advocate for OP No. 2 : None appeared
Advocate for OP 3 : Sri. Munin Ch Borah

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

Date of Argument : 7.05.2014
Date of Judgment : 29.5.2014

J U D G M E N T

The instant claim petition has been filed by the claimants u/s 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Thuleswar Das (hereinafter referred to as the "deceased") who was the father of the claimant Nos.1,2,3. It is pertinent to place on record that initially wife of the deceased and mother of the present claimants, namely, Nilima Das too was one of the claimants in the instant case, however the said Nilima Das expired on 5.7.2012(during the pendency of the claim petition). Death Certificate of Nilima Das issued by the Department of Health Services, Government of Assam bearing No. 0658210 has been placed on record by the claimants.

The case of the claimants, in brief, is that on 23.1.2011, Thuleswar Das (since deceased) was proceeding towards Tezpur from Bokakhat on NH 37 by driving his Maruti Alto Car bearing No. AS 12 G 9871, along with his son Sri Dibantar Das. At about 2.00 PM when they reached Panbari near Bokakhat police station, the offending Super Bus No. AS-U-3866 coming from the opposite direction, being driven in a rash and negligent manner, hit the maruti car driven by Thuleswar Das because of which Thuleswar Das died on the spot and Sri Dibantar Das suffered from greivous injuries. It has been stated that the accident occurred because of the rash and negligent driving by the OP No.2.

The claimants have stated that the deceased was gainfully employed as Senior Auditor in the office of the Assistant Account Officer, BSO, Missamari.

The O.P. No. 1 and the OP No.2, Owner and Driver of Bus No. AS-U-3866 not having entered appearance inspite of service of notice, the instant case proceeded exparte against them.

The Opposite party No. 3, National Insurance Co Ltd, the Insurer of the Bus, 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.

The Opposite party No.4, Oriental Insurance Co Ltd, insurer of the Maruti Alto car which the deceased was driving at the relevant time, in its written statement stated that the Alto Car No. AS-12-087 was duly insured vide Policy No. 321202/31/2011/1932 for third party damage. The OP No.4 stated that since the claimants have categorically stated that the accident occurred because of the negligence of the OP No.2, the OP No.1, 2 and 3 ought to be made liable to satisfy the award, if any.

On the basis of pleadings my Ld predecessor-in-office framed the following issues for adjudication :-

- (i) Whether victim, (Late) Thuleswar Das, died as a result of the injuries sustained by him in the alleged road accident dated 23.01.2011, involving the vehicle/s No. AS-01/K-3866 and AS-12 G-0871 (Alto Car) and whether the said accident took place due to rash and negligent driving by the driver of the offending vehicle ?
- (ii) Whether the claimant is entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable ?

During enquiry, the claimant Nos. 1 and 3 examined themselves. Both the witnesses were extensively cross examined by the O.P. No.3 and 4. The OP No 3 and 4 have not examined any witness in support of their plea.

I have carefully perused the entire materials brought on record, heard both sides. 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.3 is that, Thuleswar Das died due to the rash and negligence of the OP No.2 in the road accident on 5.7.2012. It has been stated that at the time of accident, the deceased was employed as a Senior Auditor in a Central Government office and used to earn Rs.48,574/- per month.

The claimant No. 1 exhibited the certified copy of the Accident Information Report as Exbt 1, FIR , Charge sheet, Seizure list, MVI Report of GR Case No. 140/11 (Bokakhat PS Case No. 18/11), Sketch Map as Ext 2 series, Post Mortem Report as Exbt 3, Pay Slip as Ext 4, employment certificate as Ext 5. The claimants also placed on record the Income Tax return in respect of the deceased for the year 2010-2011.

On receipt of commons from this Tribunal, Sri Rajesh Singha, Asstt Accounts Officer, Barrac Store Office, Defence Accounts Department, Government of India, Missamari appeared and deposed in the Court. The said witness confirmed that the deceased Thuleswar Das was working as Senior Auditor in the office of Asstt Accounts Officer, Barrac Store Officer, Defence Accounts Department, Government of India, Missamari before he expired in a motor accident on 23.1.2011. The said witness exhibited the pay slip for the month of October, 2010, November 2010 and December, 2010 in respect of the deceased as Ext 5, 6 and 8. He also exhibited the age proof certificate of the deceased as Ext 7. In cross examination he stated that the net pay in Ext 6 was shown as Rs.33,544/-

Ext - 1 is the Accident Information Report wherein it has been recorded that Super Bus No. AS-01/U-3866 and AS 12-G-0871 (Alto LXI car) were involved in an accident on 23.1.2011 in which Thuleswar Das died. Bokakhat PS Case No.18/11 was registered in respect of the said accident. The insurance policy details of both the vehicles, i.e (i) National Insurance Co Ltd Policy No. 200100/31/10/6300001385 valid upto 3.1.2012 in respect of the Bus and (ii) Oriental Insurance Co Ltd Policy No. 321202/31/2011/1932 valid upto 11.10.2011 in respect of the car are also seen to have been recorded in Ext 1. Also recorded are, the driving license details of the driver of the said vehicles. From Ext 1 it is seen that the driver of the Bus, that is, OP No.2 had Driving License No. T/F-2045/JHT valid upto 11.8.2011 issued by Jorhat DTO and the deceased was holder of driving license No. 2932/3/Miss valid upto 14.2.2011 issued by DTO, Tezpur.

Ext 2 (2) is the charge sheet filed again OP No.2 in Bokakhat PS Case No. 15/11.

Ld Counsel for the O.P. 3, National Insurance Co Ltd relying upon the judgment of the Hon'ble Supreme Court in **Lachoo Ram & Ors vs Himachal Road Transport Corporation** reported in **2014 (1) TAC 724 (SC)** strenuously argued that merely because charge sheet has been filed against the driver of the Bus, it cannot be said that the OP No.2 was driving the Bus rashly and negligently. Ld Counsel submits that the accident having occurred because of the negligence on the part of the deceased himself, who at the relevant time was driving the Maruti Alto car, the OP No.3 is not liable to indemnify the owner of the Bus. In the alternative, submits the Ld Counsel, there ought to be some deduction for the contributory negligence on the part of the deceased.

I have carefully perused the judgment of the Hon'ble Supreme Court in Lachoo Ram (Supra). The facts of the said case in a nutshell, was that an FIR was lodged alleging negligence on the part of Bus in the accidental death of a motor cyclist. Compensation awarded by the Tribunal was interfered with by the Hon'ble High on the ground of lack of rash and

negligence on the part of the driver of the Bus. While upholding the judgment of the Hon'ble High Court, the Apex Court observed in paragraph 10 of the judgment as such... "*But simply the involvement of the bus in the accident cannot make the respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver-respondent no.2*". Hon'ble Apex Court affirmed the finding of the Hon'ble Himachal Pradesh High Court that accident occurred because the motor cyclist tried to overtake the Bus at the signal on the road and not because of the negligence on the part of the driver of the Bus.

The case at hand is clearly distinguishable in facts and circumstance. In the instant case neither the owner nor the driver of the Bus have come forward to contest the case. Claimant No.3, who himself was in the car along with the deceased and who himself was severely injured in the accident has categorically stated that the accident occurred because of the rash and negligence of the OP No.2. Only because two vehicles are involved, it cannot be said that the deceased had contributed and was responsible for the accident. Moreover, Charge sheet having been filed against the OP No.2, this Tribunal is not inclined to look further. Thus, in view of the oral evidence and documentary evidence placed on record by the claimants and in absence of any contra evidence, it can be safely concluded that accident occurred because of the rash and negligence of the OP No.2 alone.

In view of the discussion made hereinbefore, claimants are 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 7 is the certificate issued by the employer of the deceased wherein it has been certified that the date of birth of

Thuleswar Das, as recorded in the Service Book was 20.8.1952. The age of the deceased therefore was 58 years 5 months at the time of accident. Therefore the relevant multiplier as per Sarla Verma (Supra) will be 9 (nine).

Ext- 5 is the certificate issued by the AAO,BSO, Missamari certifying that the deceased was an employee under the Defence Account Department and was serving in the office of the AAO, BSO, Missamari under CDA Guwahati till 23.1.2011, when he died in a road accident.

Ext 6 the pay Bill in respect of the deceased for the month of December 2010 and Ext 8, issued by the Asstt Controller, CDA Guwahati, Office of the Controller of Defence Accounts shows that the Gross Pay of the deceased was Rs.43,574/-

Ld Counsel for the OP No.3, National Insurance Co Ltd submitted that net pay of the deceased , that is Rs. 33544/- ought to be taken into account for computation of the loss of dependency. In view of the judgment of the Hon'ble Supreme Court in Sarla Verma (Supra) that deduction ought to be made only towards the income tax payable, this Tribunal is not inclined to accept the proposition advanced by the Ld Counsel for the Insurance Co.

The Income Tax Slab for Individual Male (Below 65 Years Age) for the Financial Year 2009-2010 (Assessment Year 2010-2011) for the slab above Rs.5,00,00 was (30% + 54,000/-).

The annual income of the deceased was Rs. 43574/- x 12 = 5,22,888/-.

Thus in order to ascertain the 'actual income', an amount of [(Rs.6,866/- being 30%) + Rs.54,000/-] that is, total Rs.60,866/- of the taxable income Plus 3% of education cess , that is, Rs.1826/- (Sum Total Rs. 62,692/-) is to be deducted from the annual income of the deceased.

The annual income of the deceased after income tax deduction thus is computed to be 5,22,888/- (-) Rs. 62,692/- = Rs. 4,60,196/-

Again as per the judgment in Sarla Verma (Supra) there should be no addition towards future prospects where the age of the deceased was more than 50 years. Since the age of the deceased in the instant case was 58 years, no enhancement towards future prospect can be made.

At the time of death, the deceased left behind the claimants and his wife, that is, in all four dependents. As per ratio laid down in Sarla Verma (Supra), deduction from the salary of the deceased towards his personal expences will be 1/4th that is, { 1/4th of Rs. 4,60,196/-}- . Thus, so deducting [Rs. 4,60,196/- (-) Rs.1,15,049/-], the figure would be Rs.3,45,147/- .

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 (3,45,147/- x 9)	:	Rs. 31,06,323.00
Loss of love and affection for the children	:	Rs. 1,00,000.00
Funeral expences	:	Rs. 25,000.00
Total	:	Rs. 32,31,323.00

Having held the Bus No. AS-01/U-3866 to be responsible for the accident, the Opposite Party No. 3, National India Insurance Company Ltd is to pay the award.

A W A R D

Rs. 32,31,323.00/- (Thirty two lakh thirty one thousand, three hundred and twenty three only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e.23.5.2011 till payment to the claimants. Since the wife of the deceased, Nilima Das expired during the pendency of the instant claim petition, this Tribunal deems it appropriate to apportion the total awarded amount in equal proportion amongst the three claimants, who are the children of the deceased. Hence the total awarded amount is to be distributed equally amongst the three claimants and amounts released accordingly.

The OP No. 3, National 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 29th day of May, 2014.

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