

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR, TEZPUR.

MAC Case No. 199 of 2011

1) Smti Kiran Devi
W/o Late Bhagirath Rai

2) Uday Kumar Rai
S/o Late Bhagirath Rai

3) Niranjana Kumar Rai
S/o Late Bhagirath Rai

4) Binay Kumar Rai
S/o Late Bhagirath Rai

All, Resident of Dhekiajuli, Ward No.5
Dhekiajuli, Dist: Sonitpur, Assam
(Claimant Nos. 2, 3 and 4 are minors and
Represented by the Claimant No.1, their mother
and natural guardian)

...Claimants

-VS -

1) Sri Anil Kr. Rathi
S/o Sri Ashok Kr Rathi
R/o of Ward No.6, PO and PS-Dhekiajuli
Dist: Sonitpur, Assam
(Owner of the TRUCK : AS-14-C-1194)

2) Sri Prasanta Basumatary
S/o Sri Tularam Basumatary
R/o of Vill: Majgaon, PO- Silapathar
Dist: Dhemaji, Assam
(Driver of the TRUCK : AS-14-C-1194)

3) The New India Assurance Co Ltd.
Tezpur Branch, Tezpur, Assam
(Insurer of TRUCK : AS-14-C-1194)

...Opposite Parties

Date of Argument : 10.4.2014

Date of Judgment : 6.05.2014

ADVOCATES FOR THE PARTIES

For the Claimant	:	Sri S.L Gupta
For the OP No. 1	:	Sri T.Paul
For the OP No. 2	:	None appeared
For the OP No. 3	:	Sri M Borah

J U D G M E N T

This claim case has arisen out of a road traffic accident which occurred on 22.9.2010, involving the Truck bearing No: AS-14-C-1194 and Truck bearing No: AS-12D-0421.

The claim has been instituted u/s 166 of the M.V Act for the death of the driver of the Truck bearing No: AS-12D-0421, namely, Bhagirath Rai. It is pertinent to mention at the outset that the claimant No.1 is the wife of Bhagirath Rai and the registered owner of the Truck No. AS-12 D-0421, which her husband was driving at the relevant time.

The case of the claimant in brief is that, on 22.9.2010, when her husband, Bhagirath Rai was driving the Truck No. AS-12D-0421 and proceeding from Tezpur to Guwahati with articles in the said Truck, the offending Truck No. AS-14-C-1194 being driven in a rash and negligent manner by OP No.2, Sri Prashanta Basumatary, hit the truck being driven by her husband from the front, resulting in the death of her husband. It has been stated that her husband was declared dead when he was taken to Mangaldai Civil Hospital after the accident. The claimants have stated that the deceased, the sole earning member of the family, used to carry on the business of supply of articles and on the date of accident too, he was carrying vegetables to be supplied in Guwahati.

The O.P. No. 1, Owner of Truck No. AS-14-C-1194 filed his 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 New India Insurance Co Ltd with which the said vehicle was duly insured vide Policy No. 53070431100100003108 [valid from 14.7.2010 to 13.7.2011].

The O.P. No. 2 did not take part in the proceeding and, as such, the case against him proceeded ex-parte.

The O.P Nos. 3, the Insurer of Truck No. AS-14C/1194, in his written statement denied all material averments of the claim petition and pleaded, inter-alia, that the amount of compensation claimed by the claimants 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 were not violated by the insured. The O.P. No.3 stated that the accident occurred due to the claimant No.1's husband who was driving the Truck No. AS-12D-0421 and, as such, the claimants are not entitled to be awarded compensation in the instant case.

On the basis of pleadings of the parties, the following issues were framed for adjudication :-

- (i) Whether victim, (Late) Bhagirath Rai, died as a result of the injuries sustained by him in the alleged road accident dated 22.9.2010, involving the vehicle/s No. AS-14C-1194 (Truck) and Truck No. AS-12D-0421 and whether the said accident took place due to rash and negligent driving by the driver of the offending vehicle (Truck No. AS-14C-1194)?
- (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 is payable ?

During enquiry, the claimant, Smti Kiran Devi, wife of the deceased, examined herself as PW-1 and filed relevant documents. She also examined the handyman of her truck, Sri Sonkar Sahani and one other witness in support of her 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. Both the issues are taken up together for the sake of brevity and convenience.

Reiterating her contentions raised in the claim petition, PW 1 has averred in her evidence that her husband, who was proceeding towards Guwahati by driving her truck No. AS 12 D 0421, died when the offending Truck No. AS-14 C/1194, being driven in a rash and negligent manner hit her truck from the front. She stated that Dalgaon P.S registered Case No. 512/10 in respect of the said accident. In her cross examination she admitted that she had not seen the accident.

In support of her oral evidence, PW 1 has proved the certified copy of the FIR as Ex-1, Post Mortem Report as Ext 2, Chargesheet as Ext 4, Seizure list as Ext 4, Death Certificate as Ext 5 and three number of birth certificates of the minor claimants as Ext 6,7,8.

PW 2, Sri Shankar Sahani, deposed that on 22.9.2010, he was the handyman of the Truck No. AS-12-D-0421. He stated that the accident occurred because of the rash and negligence of the driver of the Truck No. AS -14-C-1194 and that in the said accident he too was injured. He stated that he and Bhagirath Rai, the driver of the Truck No. AS-14 C-1194 were sent to Mangaldai Hospital where the latter was declared dead. PW 2 could not be demolished in cross examination.

PW 3, Sri Ramzan Rai deposed that on hearing about the accident he reached the spot and came to learn about the accident. He then proceeded to Mangaldai Hospital where the handyman PW 2, narrated to him the manner in which the accident occurred because of the rash and negligence of the driver of Truck No. AS-14-C-1194.

The instant case is one of clash between two vehicles. But, merely because two vehicles are involved it cannot be concluded that the drivers of both the vehicles are at fault. The allegation in the claim petition is that the Truck No. AS-14-C-1194 was driven in a rash and negligent manner. This is also what the allegation in the F.I.R is. Pursuant to the same Dhaligaon PS Case No. 512/10 was registered and subsequently Chargesheet, Ext-4 has been filed against the OP No.2. These allegations have been substantiated by P.W.2 who was the handyman of the vehicle which the deceased was driving.

The evidence adduced would show that the accident occurred due to the fault of the driver of the Truck No. AS-14-C-1194. On the other hand, there is no contra evidence implicating the deceased. In the circumstances, merely on account of involvement of two vehicles, it cannot be construed that there was contributory negligence on the part of the deceased who was driving Truck No. AS-142-D-0421, at the relevant time.

Thus, the oral evidence of the claimant, coupled with documentary evidence mentioned above, establishes that claimant No.1's husband died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle/Truck No. AS-14-C-1194. That the said Truck, the offending vehicle was insured with the opposite party No.3, The New India Assurance Co Ltd is not in dispute.

Ld Counsel for the claimant has relied upon the judgment of the Hon'ble Gauhati High Court in Jagdish Prasad Agarwalla vs Upendra Singh and others reported in 2012 (1) TAC 208 (Gau), which being an authority on composite negligence, is not relevant for the case at hand. On the other hand, Ld Counsel for the Insurance Co. has submitted that the instant case being that of contributory negligence on the part of the deceased himself, deduction on that count ought to be considered by this Tribunal.

For the reasons stated hereinbefore, the said plea of the Insurance Co. is held to be untenable by this Tribunal.

In view of the discussion aforesaid, claimant is held to be entitled to compensation. Claimants in the instant case are the wife and three minor children of the deceased. In the Post Mortem Report (Ext 2), the age of the deceased has been recorded as 35 years. As per the ratio laid down in **Sarla Verma -vs- Delhi Transport Corporation, (2009) 6 SCC 121**, 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 16.

PW 1 has stated that her husband used to earn Rs.8,000/- per month as a businessman supplying goods. In absence of cogent proof to that effect, in my considered view, the income of the deceased, can safely be taken to be Rs.4000/- per month since he was looking after a large family. The wife being the owner of the truck which was being driven by the deceased at the relevant time, is a pointer towards the fact that the deceased used to carry on business. The amount of Rs.4000/- per month is taken as the monthly income of the deceased as it has come on record that the deceased was driving the Truck belonging to his wife and proceeding to Guwahati to supply goods. The deceased being self employed and looking after his wife and three minor children, the said amount, if not more, can be safely taken to be the income of the deceased. No income tax is to be deducted since the income of the deceased does not fall within the slab of taxable income.

The Hon'ble Supreme Court in **Santosh Devi Vs. National Insurance Company Ltd. reported in (2012) 6 SCC 421** has held that *"... 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 being 35 years of age, in the instant case, is entitled to get 50% increase towards future prospect. The annual income of the deceased is computed to be [Rs.4000/- + (50% of Rs.4000/-) x 12 = Rs.72,000/-].

Since the deceased left behind four dependents, relying once again on the ratio in Sarla Verma (Supra) case, one fifth is to be deducted for the personal expences of the deceased. Annual dependency therefore is calculated as Rs. 57,600/-.

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. (Supra) 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/loss of guidance and affection to minor children 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 Rs.57,600/- x 16	:	Rs. 9,21,600.00
Loss of consortium for claimant No.1	:	Rs. 1,00,000.00
Loss of love and affection for minor children	:	Rs. 1,00,000.00
Funeral expences	:	<u>Rs. 25,000.00</u>
TOTAL	:	Rs.11,46,600.00

Having held the Truck bearing No: AS-14-C-1194 to be responsible for the accident, the Opposite Party No. 3, New India Insurance Co Ltd is to pay the award.

A W A R D

Rs. 11,46,600/- (Rupees Eleven Lakh Forty Six Thousand Six hundred only) inclusive of no-fault is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 10.6.2011 till payment. The OP No. 3, New India Insurance Co Ltd, is directed to pay the award within one month from the date of order. From the total awarded amount, an amount of Rs.1,50,000/- (Rupees One Lakh Fifty thousand) **each** is directed to be deposited in any Nationalised Bank, in the name of the three minor children of the deceased, namely, (i) Uday Kumar Rai, (ii) Niranjana Kumar Rai, (iii) Binay Kumar Rai till they attain the age of majority.

Given under my hand & seal of this Court on this 6th day of May, 2014.

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