

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR

MAC Case No. 217 of 2012

1. Musstt. Firoza Begum
Wife of Late Habibur Rahman @ Hobi
2. Md. Abu Samad
S/o Late Habibur Rahman @ Hobi
3. Miss Hasina Begum
D/o Late Habibur Rahman @ Hobi
4. Miss Amiron Nessa
D/O Late Habibur Rahman @ Hobi
5. Md. Sahil Rahman
S/o Late Habibur Rahman @ Hobi

Nos. 2 to 5 minors and represented by claimant No.1

All (1) to (5) are residents of
No. 1 Dolabari, P.O. Kaliabhomora
PS: Tezpur
District: Sonitpur, Assam.

... Claimants

-Versus-

1. Md. Kazi Matiur Rahman
S/o Lt Kazi M Hussain
R/O- Bormata, P.O. – Naharbari,
P.S. – Jamuguuri,
Dist- Sonitpur, Assam

2. Sri Babu Rai
S/o Sri Amit Rai
R/O- Bildoholai, P.O. – Naharbari,
P.S. – Jamuguuri,
Dist- Sonitpur, Assam

3. New India Assurance Co Ltd
Tezpur Branch

. .Opposite Parties

Advocate for the claimant : Mr. S. Khan
Advocate for OP No. 1 and 2 : Sri I. Ansari
Advocate for OP No. 3 : Sri M. Borah

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 Habibur Rahman @ Hobi (hereinafter referred to as the "deceased"), who was the husband of the claimant No. 1 and father of the claimant No. 2, 3, 4 and 5.

The case of the claimants, in brief, is that on 3.5.2012 at about 9:45 AM when Habibur Rahman (since deceased) was proceeding on his bicycle, the Truck bearing No. NL-05-D-9300, being driven in a rash and negligent manner, hit him from the back side near Dolabari Centre. He was immediately rushed to the Kanaklata Civil Hospital where he succumbed to his injuries. It has been stated that the accident occurred because of the rash and negligent driving of the OP No.2.

The Opposite party No.1 and Opposite party No.2, Owner and Driver of the Truck 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 OP No.3, with which the said vehicle was duly insured vide Policy No. 530704/31/10/200006049 valid upto 9-11-2012. The OP No. 1 and 2 have also placed on record copies of the registration certificate, Driving licence and Insurance Policy.

The O.P No. 3, the Insurer of the Truck, 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 :-

- (i) Whether victim, (Late) Habibur Rahman, died as a result of the injuries sustained by him in the alleged road accident dated 3-5-2012, involving the vehicle/s No. NL-05-D-9300 (Truck) 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 is payable ?

During enquiry, the claimant No. 1 examined herself. She was 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. 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, Habibur Rahman died due to rash and negligence of the OP No.2 in the road accident on 3-5-2012. It has been stated in the evidence-on-affidavit that her husband was a professional driver. It has been further stated that at the time of accident the deceased was earning Rs. 9,000/- per month.

Claimant No. 1 exhibited the FIR as Exbt. 1, Post Mortem Report as Exbt. 2, Accident Information Report as Exbt. 3, Charge Sheet as Ext. 4, Seizure List as Ext. 5, MVI Report as Ext. 6 and Salary Certificate as Ext 7.

Ext - 3 is the Accident Information Report wherein it has been recorded that the Truck No. NL-05-D-9300 was involved in an accident on 3-5-2012 in which Habibur Rahman @ Hobi died. Ext -1 is the FIR lodged after the accident, on the basis of which Tezpur PS Case No. 601/12 was registered and subsequently Charge sheet (Ext 4) was submitted against the OP No.2.

Thus, the oral evidence of the claimant, coupled with the documentary evidence, establishes that Habibur Rahman @ Hobi died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle, Truck No. NL-05-D-9300.

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 2 is the Post Mortem Report wherein the age of the deceased has been recorded as 35 years. Thus, age of the deceased is taken to be 35 years. Therefore, the relevant multiplier as per Sarla Verma (Supra) will be 16 (sixteen).

It has been stated in the evidence on affidavit that at the time of accident, the deceased, was a driver and that he was earning Rs. 9,000/- per month. It is to be noted that, in the claim petition, the claimant has showed the profession of her husband to be that of a 'welder'. Learned Counsel for the OP. No. 3 submitted that in view of the contradictory

statements made by the claimant herself, it cannot be believed that the deceased was a driver.

Ld Counsel for the Claimant submits that, even if it is taken that the deceased was a welder, the same falling within the category of skilled labour, it cannot be said that the deceased was not earning Rs. 9,000/- per month. In the alternative, Learned counsel for the claimants relying on the judgment of the Hon'ble Supreme Court in **Ramachandrapaa – vs- Manager, Royal Sundaram alliance Insurance Co. Ltd., reported in TAC 2011 Vol. 4 Page 1 (SC)** submits that in the said case Hon'ble Supreme Court assessed the salary of a labour / coolie to be Rs. 150/- per day. Hence, submits the Learned Counsel, the claimant's husband's income ought to be taken to be more than of an unskilled labour.

I have carefully perused the Judgment, referred to by the Learned Counsel for the claimant. In the said Judgment, the Hon'ble Supreme Court in paragraph 13, 14 and 15 held as under:

“13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to 150/- per day or Rs.4500/- per month. In our view, the claim

was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-."

I have carefully perused the said judgment referred to by the Ld Counsel. As reproduced above, the facts before the Hon'ble Apex Court in the case referred to was that the Tribunal had reduced the monthly income from Rs.150/- to Rs.100/- per day. Considering that the daily income of a labour in the year 2004 was between Rs.100/- to Rs 150/- per day, the Hon'ble Court accepted the income to be Rs.150/- per day (Rs.4500/- per month) as had been stated by the claimant before the Tribunal and held that it was incorrect on the part of the Tribunal to reduce the amount.

In the instant case, as submitted by the Ld Counsel for the Insurance Co, contradictory stand has been taken by the claimant as to the avocation of the deceased. Hence in absence of any cogent proof, the monthly earnings of the deceased can, at best, be taken to be equivalent to a daily wage earner.

Hence, applying the yardstick in Ramachandrappa (Supra) of daily income of a labour to be Rs.150/- per day (for the year 2004) and in absence of any cogent proof with regard to the profession or income of the deceased, this Tribunal can safely conclude and accept the deceased to be earning Rs.150/- per day (that is Rs.4500/- per month) as a daily wage earner for the accident which occurred in the year 2011.

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 50% increase towards future prospect. The annual income of the deceased is thus computed to be [Rs.4500/- + 50% of Rs.4,500/- x 12 = Rs.81,000/].

Since the deceased left behind 5 (five) dependants, as per the ratio laid down in Sarla Verma (supra), 1/5th is to be deducted towards the personal expences of the deceased. Thus so deducting [Rs. 81,000/- (-) Rs.16,200/-], the annual income of the deceased is assessed as Rs. 64,800/- .

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 (76,950/- x 16)	:	Rs. 10,36,800.00
Loss of consortium for the claimant No.1	:	Rs. 1,00,000.00
Loss of love and affection for children	:	Rs. 1,00,000.00
Funeral expences	:	Rs. 25,000.00
Total	:	Rs. 12,61,800.00

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. 12,61,800/- (Twelve lakh sixty one thousand and eight hundred only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 23-7-2012 till payment to the claimant.

Out of the total awarded amount, an amount of Rs.1,00,000/- each, be invested in fixed deposits in any nationalized bank, in the name of each of the minor children of the deceased, namely, Md. Abu Samad, Miss Hasina Begum, Miss Amiron Nessa and Md. Sahil Rahman, till they attain the age of majority.

The OP No. 3, New India Assurance 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