

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR, TEZPUR.

MAC Case No. 304 of 2008

Musstt Hazera Khatun
W/o – Late Afajuddin
P.S Dhekiajuli, Mouza: Borsola
Dist- Sonitpur, Assam ... Claimant

-VS-

(1) Sri Bijoy Borah
S/o Sri Jagat Borah
R/o Kamar Chuburi, PO & PS :Tezpur
Mouza: Bhairabpad
Dist : Sonitpur, Assam

(2) Sri Sushil Munda
S/o Late Akatos Munda
Vill: Dhekiajuli TE,
PS & PO : Dhekiajuli,
Mouza: Borsola
Dist : Sonitpur, Assam.

(3) The New India Assurance Co. Ltd.
Tezpur Branch
Tezpur. ...Opp Parties

Date of Argument : 20.3.2014
Date of Judgment : 12.5.2014

ADVOCATES FOR THE PARTIES

For the Claimant : Md Nizamuddin
For the OP No. 1 : None appeared
For the OP No. 2 : Name Struck Off
For the OP No. 3 : Sri P.C Sharma

PRESENT
MS. A. AJITSARIA, AJS,
MEMBER, MOTOR ACCIDENTS CLAIM TRIBUNAL
/ADDL DISTRICT JUDGE NO.2, SONITPUR, TEZPUR.

J U D G M E N T

The instant claim petition has been filed by the claimant, Mustt Hazera Khatun, seeking compensation for the death of her husband Afajuddin in a road traffic accident which occurred on 23.5.2008, involving the Truck No. AS-12-8461.

Case of the claimant is that, on 23.5.2008 at about 6.30 pm, the claimant's husband was proceeding towards Dangabasti on his bicycle, when the Truck No. AS-12-8461 proceeding towards Rangagorah from Dangabasti side, knocked her husband down, resulting in his instant death. 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, owner of the Truck did not participate in the proceeding and, as such, the same proceeded exparte against the OP No.1. The name of the driver, OP No.2 was struck off by order dated 1.4.2011.

The O.P No. 3, Insurance Company, 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. 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, if there be any, 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 of the driver of the offending vehicle ?
- 2 Whether the claimant is entitled to compensation as prayed for ?

During enquiry, the claimant examined herself and the contesting respondent, adduced the evidence of Divisional Manager, New India Assurance Co Ltd. as defence witness.

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.

The claimant in her evidence on affidavit, reiterated that her husband died on the spot when the Truck No. AS-12-8461 being driven in a rash and negligent manner by the OP No.2, knocked her husband at village Keherukhanda Pathar under Dhekiajuli PS on 23.5.2008 at about 6.30 PM. The claimant stated that her husband was a mason/carpenter and cultivator and he earned Rs.6000/- per month. She further stated that the deceased left behind herself and three minor daughters, namely (i) Miss Salma Aktara 14 years (ii) Miss Sultana Khatun aged 9 years (iii) Miss Shahnaz Khatun aged 5 years and (iv) Md Hasibul Islam aged 7 years.

In support of her oral evidence, CW 1 has proved the Accident Information Report as Ext-1, Post Mortem Report of the claimant's husband as Ext-2.

From Ext 1, the accident information report it is apparent that the claimant's husband died in an accident involving the Truck No. AS-12-8461 on 23.5.2008. In Ext I, it has been recorded that Dhekiajuli PS Case No. 161/08 was registered in connection with the accident and the Truck No. AS-12-8461 was insured with New India Assurance Co Ltd vide Policy No. 530704/31/08/02/00001413 (valid upto 27.05.2009).

Ext 2 is the post mortem report of the deceased wherein his age has been recorded as 47 years.

Claimant Witness No. 2, Md Abdul Jalil deposed that the claimant's husband died on the spot when the Truck No. AS-12-8461 knocked him down on 23.5.2008. He claimed to have witnessed the accident. In cross examination he denied having knowledge of the fact as to whether at the relevant time, the truck was covered by a valid Insurance Policy.

The Opposite Party No.3, New India Assurance Co Ltd, adduced evidence of Sri Bibhuti Bhushan Chandra, Administrative Officer, Tezpur Divisional Office. DW 1 stated that the Policy No. 530704/31/08/02/00001413 (Ext A) was valid from 28.5.2008 to 27.5.2009. DW 1 further stated that the Policy did not cover the accident as the accident had taken place on 23.5.2009.

Thus, the oral evidence of the claimant, coupled with the documentary evidence, establishes that the claimant's husband died in the motor vehicle accident, due to rash and negligent driving of the offending Truck No. AS-12-8461, by the OP No.2.

In view of the discussion hereinabove, 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 -vs- 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. Age of the deceased in the Post Mortem Report has been recorded as 47 years. Hence the age of the deceased at the time of accident is held to be 47 years. Therefore the relevant multiplier will be 13 (Thirteen).

The claimant has stated that at the time of accident, the deceased was earning Rs.6000/- by working as a mason/carpenter and by cultivation. In absence of any cogent proof, the monthly income of the deceased is taken to be Rs. 3000/- per month.

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."*

Hence in view of the judgment in Santosh (Supra), claimant is entitled to 30% enhancement in the present income of the deceased. The annual income of the deceased is computed to be [Rs.3000/- + 30% of Rs.3000 x 12 = Rs. 46,800/-].

The deceased left behind his wife and four children at the time of his death. Thus as per Sarla Verma (Supra), one fifth is to be deducted for the personal expences of the deceased. Annual dependency therefore is calculated as Rs. 37,440/-.

Besides loss of dependency, the claimant is entitled to some amount, on account of funeral expenses, loss of consortium 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 Rs.37,440 x 13	:	Rs.4,86,720/-
Loss of consortium for claimant (for wife)	:	Rs.1,00,000/-
Loss of love and affection for the children	:	Rs.1,00,000/-
Funeral Expences	:	Rs. 25,000/-
TOTAL		Rs. 7,11,720/-

Having determined the amount of compensation to be paid to the claimant, it is now to be decided as to who, amongst the opposite parties are liable to satisfy the award.

From the evidence of DW 1 and Ext A, the Insurance Policy it is apparent that the offending vehicle, that is, Truck No. AS-12-8461 was not effectively insured at the time of accident. From Ext-A it is seen that the said Insurance Policy No. 530704/31/08/02/00001413 (Ext A) was valid from 28.5.2008 to 27.5.2009 whereas the accident occurred on 23.5.2009. Hence in view of the same, OP No.3 cannot be directed to indemnify the owner of the said Truck. Hence Opposite Party No. 1, Sri Bijoy Borah owner of the Truck No. AS-12- 8461, is held to be liable to pay the award.

A W A R D

Rs. 7,11,720/- (Rupees Seven Lakh Eleven Thousand Seven hundred and twenty only) inclusive of no-fault is awarded with interest @ 6% pa from the date of filing of the claim petition, i.e. 22.7.2008 till payment to the claimant, Musstt Hazera Khatoon. Out of the total amount, an amount of Rs.50,000/- each, is to be invested in fixed deposit in the name of the children of the deceased who are still minors, that is (i) Sultana Khatun (ii) Miss Shahnaz Khatun and (iii) Md Hasibul Islam, in a Nationalised Bank, till they attain the age of majority.

The OP No. 1, Sri Bijoy Borah, is directed to pay the award within one month from the date of this order.

Given under my hand & seal of this Court on this 12th day of May, 2014.

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