

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

MAC Case No. :- **307 of 2013**

Present : **Mridul Kumar Kalita, AJS
Member, MACT, Sonitpur/
District Judge, Sonitpur
Tezpur**

Claimants 1. **Smti Manju Basumatary,**
Wife of Sri Nabin Basumatary,
R/O village Batahbari,
PO – Ghoramai, PS- Tezpur,
Dist. Sonitpur (Assam)

-Versus-

Opposite Parties 1. **Sri Jitendra Prasad,**
S/o Radha Krishna Prasad,
R/O of Vill- Jamuguri,
P.O.- Bampurai North,
Dist. Lakhimpur, Assam
(Owner of Vehicle No. AS-07/C-
5688)

2. **Sri Jitu Gogoi,**
S/o Sri Golap Gogoi,,
Village- Nabapur,
P.O.- Meramukh,
Dist. Lakhimpur, Assam

3. **National Insurance Co. Ltd.**
Lakhimpur Branch,
Dist. Lakhimpur Assam
(Policy No. 2533113150000243
valid upto 17-04-2014.)

Counsel for the Claimant : Mr. S.K. Nath, Advocate
Counsel for Opposite Party No 1 & 2 : Mr. P.K. Sarmah, Advocate
Counsel for the Opposite Party No. 3 : Sri M. Baruah, Adv. (Insurance Co.)

Date of hearing : 08/05/2015

Date of Judgment : 26/05/2015

J U D G M E N T

1. This instant claim case was registered on an application u/s 166 of the Motor Vehicles Act, 1988 filed by the claimant Smti Manju Basumatary for claiming compensation for the death of her son, namely Jacky Basumatary, who was the resident of village Batahbari, PO – Ghoramari, PS – Tezpur, in the district of Sonitpur, Assam, (*hereinafter referred to as the "deceased"*).

2. The case of the Claimants, in brief, is that on 24-05-2013 at about 1 p.m the claimant's son Jacky Basumatary, aged about 5 years and a student of Saint John School, while trying to cross the National High Way No. 52 at Ghoramari Centre, a bus bearing registration No. **AS-07/C-6588**, driven in a rash and negligent manner, at a very high speed, coming from Tezpur to Balipara knocked down her son, as a result of which, her son died at the spot. After a while, police came to the spot and they immediately brought the dead body to Kanaklata Civil Hospital, Tezpur for post-mortem examination. The claimants have claimed Rs. 4,00,000/- (Rupees Four Lakhs only) as compensation.

3. The Opposite parties No.1 & 2 have filed their joint written statement, inter-alia, stating that the incident occurred on 24-04-2013 was not for the cause of rash and negligent driving of OP No. 2 but for the complete negligence of the mother (claimant) of the deceased child. The Opposite Parties have also stated in their written statement that the liability arising out of the said accident, if there be any, ought to be borne by National Insurance Co. Ltd. with whom, the said vehicle (star Bus) was comprehensively insured at the relevant time of the alleged accident with Insurance Policy No. 2533113113015000243 w.e. f. 18-04-2013 to 17-04-2014 covering the date of accident. It is also stated that the vehicle was driven by the OP No. 2 by holding a valid driving license bearing No. AS-07200700111528 valid upto 06-11-2016 authorised to drive LMV – NT, LMVCAB, PSVBUS issued by the DTO, Lakhimpur, Assam. Moreover, the said vehicle was having valid route permit for contract carriage valid upto 05-03-2014 issued by the Regional Transport Authority, Lakhimpur and fitness certificate valid upto 14-05-15 issue by the Motor Vehicle Inspector, Lakhimpur.

4. The O.P No. 3, the Insurer of the offending vehicle, in its written statement, denied all the material averments of the claim petition and pleaded, *inter-alia*, that the

amount of compensation claimed by the petitioners is highly exaggerated and speculative. It is also alleged that this OP denied about the accident alleged to have been taken place on 24-05-2013 at Ghoramara Centre on NH 52 at about 1 p.m. under Tezpur PS as stated in the claim petition. It is also stated that the claimants are put to strict proof of the case with cogent proofs.

5. On the basis of pleadings of the parties, following issues were framed by my Id. Predecessor in office:-

- i) Whether any vehicular accident took place on 24-05-2013 at about 1 p.m., near Ghoramari Centre, on NH 52, under Tezpur Police Station, Dist. Sonitpur Assam?
- ii) Whether the accident took place due to rash and negligent driving by the driver of the vehicle No. AS-07/C-5688 (709 Bus) and due to that accident, the deceased Jacky Basumatary died?
- iii) Whether the claimant is entitled to get any compensation, as prayed for, and if so, from whom and to what extent?

6. During enquiry, the claimants adduced the evidence of two witnesses namely, Smti Manju Basumatary as CW 1 and Sri Lileswar Narzary as CW 2. The claimant's witnesses also exhibited 7 documents namely, Accident Information Report as Ext. 1, certified copy of FIR as Ext. 2, certified copy of charge sheet as Ext. 3, certified copy of Sketch map as Ext. 4, certified copy of seizure list as Ext. 5, certified copy of Post – mortem Report as Ext 6 and copy of death certificate of deceased as Ext. 7.

7. I have carefully perused the entire materials brought on record, heard both sides. All the issues are taken up together for discussion and decision, for the sake of convenience and brevity.

8. Claimant witness No.1 i.e. Smti Manju Basumatary, has reiterated the facts stated in her claim petition. She has stated that when her son Jacky Basumatary, aged about 5 years, was trying to cross the road (NH No. 52) at Ghoramari Centre, the bus bearing registration No. AS 07 C-5688 came at a very high speed and hit her son thereby causing severe injuries to her son and as a result of which her son died at the spot. She has

also stated that with regard to the accident, a police case was registered vide Tezpur PS Case No. 629/2013 u/s 279/304(A) of IPC. During cross-examination, CW 1 has deposed that after getting down from Magic vehicle, she crossed the NH 52 to go the other side. Though she crossed the road, her son could not cross the road. She has denied certain suggestive questions put to her by learned counsel for the OP. She has denied that the accident occurred due to her fault. A few suggestive questions were put to her by learned counsel for the OP, which were all answered in negative by her.

9. The Claimant Witness No.2, Sri Lileswar Narzary has also, in his evidence-in-affidavit, has reiterated the facts stated by the claimant in her claim petition. He has stated that on 24-05-2013 at about 1 p.m., when he was standing in front of the "Jironi Chora" at Ghoramari Centre he saw that Manju Basumatary and Jacky Basumatary were standing on the side of NH 52 for crossing the said road, at that time a Bus bearing registration No. AS 07 C-5688 came at a very high speed from Tezpur side and hit Jacky Basumatary as a result of which, Jacky Basumatary died on the spot. He was also cross-examined by learned counsel for the National Insurance Company Ltd. He has stated that at the time of accident, the claimant had to cross the National High Way after getting down from the vehicle. At that time many other people were there at the place of occurrence. He denied that the vehicle involved in the accident was not driven in rash and negligent manner and the accident occurred due to negligence of the claimant.

10. The Ext. 1 is the accident information report. On perusal of Ext. 1, it appears that vehicle No. AS 07 C-5688 (709 Bus) was involved in an accident which occurred at 1 p.m. on 24-05-2013, at Ghoramari Centre at National High Way No. 52. It also appears that in the said accident Jacky Basumatary died. Tezpur PS Case No. 629/13 u/s 279/304-A IPC was registered and investigation was going on. It also appears, on perusal of Ext. 3, which is the charge-sheet laid in connection with aforementioned PS case, that charge sheet u/s 279/304-A IPC was laid against the driver of the offending Bus Sri Jitu Gogoi. Thus, on perusal of exhibited documents as well as after going through the testimony of claimant's witness No. 1 and 2 (which remains unshaken), prima-facie it appears that the offending Bus was driven in a rash and negligent manner. The learned counsel for the Opposite Party has submitted that there was contributory negligence on the part of the deceased in the accident, however, there is nothing on record to show the contributory negligence of the

deceased child in the accident. The evidence on record clearly shows that the accident occurred due to rash and negligent driving of the offending vehicle. For the reasons stated above, the claimant is entitled to the compensation on account of death of her son in the vehicular accident as discussed above.

11. On perusal of Exhibit 6 which is the Post-Mortem report, it appears that at the time of his death deceased Jacky Basumatary was 5 (five) years of age. As the minor son of the claimant is 5 (five) years of age, the claimant is entitled to pecuniary damages calculated on the basis of second schedule to the Motor Vehicle Act. As the age of the deceased is below 15 years of age, the multiplier of "15" is applicable in this case. As the deceased was a child having no income prior to the accident is notional income is taken at Rs. 15,000/- as per second schedule of the Motor Vehicle Act. The pecuniary compensation thus comes at Rs. 2,25,000/- (Rs.15,000/- x 15).

12. In **R.K. Mallick vs Kiran Pal and Anr reported in 2009(8) Scale 451**, the Hon'ble Supreme Court observed that "... *It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children.....*" . In the said case the Hon'ble Supreme Court awarded Rs.75,000/- towards future prospect of children and the Hon'ble Supreme Court further upheld the grant of Rs. 75,000/- towards non-pecuniary damages for pain and suffering by the Hon'ble Delhi High Court.

13. Again, the Hon'ble Supreme Court in **Rajesh and Ors. Vs. Rajbir Singh and Ors. reported in MANU/SC/0480/2013** held that an amount of Rupees twenty five thousand should be granted for funeral expenses unless there is proof of higher expenditure on the said count. Therefore, in this case also an amount of Rs. 25,000/- is awarded to the claimant on account of funeral expenses.

14. In the case of **Shyam Narayan Vs. Kitty Tours and Travels**, reported in **2006 ACJ 320**, the Delhi High Court in the case of death of a child aged about 5 years, relying on the Apex Court Judgment in **Manju Devi & another Vs. Musafir Pasowan & another reported in MANU /SC/1276/2003** awarded compensation to the parents by applying the notional income of Rs. 15,000/- and a multiplier of 15 as per second schedule and also

awarded further compensation of Rs. 50,000/- for loss of companion of child as well as for pain and sufferings etc. as in the instant case also the deceased is a child of about 5 years and the facts are similar to the case referred above, therefore, in the instant case also a further compensation of Rs. 50,000/- for loss of companion of child as well as for pain and sufferings is awarded to the claimant.

15. Thus on the basis of what has been discussed in the foregoing paragraphs, just and reasonable compensation to which the claimant is entitled is assessed as hereunder :-

Pecuniary loss (15,000/- x 15)	:	Rs. 2,25,000.00
Loss of future prospect	:	75,000.00
Loss of companion of the child, pain and sufferings.	:	50,000.00
Funeral expenses	:	25,000.00
TOTAL	:	3,75,000.00

Having held that the vehicle No AS 07 C-5688 (709 Bus) is responsible for the accident, the Opposite Party No. 3, National Insurance Company Ltd, with which the said 709 Bus is insured is liable to pay the awarded amount.

AWARD

16. A sum of Rs. 3,75,000/- (Three Lakhs Seventy Five Thousand only) is awarded with interest @ 7.5% per annum from the date of filing of the claim petition, i.e. 18-12-2013 till payment. The awarded amount be released in the name of the mother of the deceased, namely, Smti Manju Basumatary. The OP No. 3, National Insurance Co Ltd, is directed to pay the award to the claimant, within one month from the date of order.

Given under my hand & seal of this Court on this 26th day of May 2015.

(M.K. Kalita)
Member, MACT,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M.K. Kalita)
Member, MACT,
Sonitpur, Tezpur.