

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR

MAC Case No. 45 of 2010

Miss Rita Mukherjee
D/o Late Amal Krishna Mukherjee
Vill: Kharamukh, Mazbhat
P.O: Mazbhat, BTAD,
District: Udalguri, Assam.

... Claimant

-Versus-

(1) Sri Pranab Sharma
S/o Tilak Sarma
Vill: Gezangaguri
P.O: Sirajuli, P.S.: Dhekiajuli
District: Sonitpur, Assam.

(2) Sri Smith Mukherjee
S/o Late Aml Krishna Mukherjee
Vill: Kharamukh, Mazbhat
P.O: Mazbhat, BTAD,
District: Udalguri, Assam

(3) United India Insurance Co Ltd.
Dhekiajuli Branch,
Dhekiajuli, District: Sonitpur, Assam.

...Opposite Parties

Advocate for the claimant	:	Sri P. C. Biswas
Advocate for OP No. 1	:	None appeared
Advocate for OP No.2	:	None appeared
Advocate for OP No.3	:	Sri M.C Baruah

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

Date of Argument: 3.5.2014

Date of Judgment: 31.5.2014

J U D G M E N T

The instant claim has been preferred by the claimant, Rita Mukherjee for the death of her elder sister, Rubi Mukherjee in a motor accident. The claimant's case in brief is that on 8.10.2009 when her sister Rubi was travelling as a pillion rider of Hero Honda Motor Cycle No. AS-12F-2567 and proceeding from Mazbat towards her office situated at Lamabari at about 6.30 AM, she fell down from the motor cycle as the same was being driven by the OP No.2 in a rash and negligent manner on a road which was under construction. The claimant has stated that her sister sustained greivous head injuries and rushed to Mazbat Primary Health Centre and thereafter immediately taken to Guwahati Medical College Hospital, Guwahati where she succumbed to her injuries on 17.10.2009.

The claimant has stated that her sister was an employee of Amalgamated Plantation Pvt Ltd, Lambari Tea Estate and was drawing a sum of Rs.6000/- per month. It has also been stated that the deceased was a divorcee, having obtained divorce from one Sri Mrinal Bhattacharjee @ Shymal Bhattacharjee in the year 1999. The deceased left behind her (i) widowed mother, namely Lakhi Mukherjee, aged about 58 years of age (ii) two younger brothers, namely Joydeep and Smith and the claimant. The claimant has stated in her claim petition that at the relevant time, she was unmarried and all of them were dependent on the earnings of the deceased.

The Opposite Party No.1 and 2, that is , the owner and driver of the Motor cycle did not participate in the proceeding and hence the matter proceeded exparte against them.

The Opposite Party No.3, United India Insurance Co. Ltd, insurer of the vehicle, contested the case. In its written statement it denied all the material averments of the claim petition and pleaded inter-alia that the amount of compensation claimed by the claimant is highly exaggerated and speculative. It has been further stated that the insurer is not liable to pay any compensation until and

unless it is proved that the rider of the offending vehicle had valid driving licence and the conditions of Insurance Policy was not violated by the insured.

On the basis of pleadings my Ld predecessor 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 as PW-1 and one other witness. Both the witnesses were extensively cross examined by the O.P. Insurance Company. The insurer 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.

While reiterating the averments made in the claimant petition, the claimant has deposed that her father had predeceased her sister, Rubi. She further stated that at the time of the accident, her family consisting of her widowed mother, herself and her two younger brothers were solely dependent on the income of the deceased and, as such, she had instituted the present claim.

In support of her oral evidence PW1 has produced accident information report as Ex-1, Police Report as Ext 2, Pay Slip as Ext 3, Post Mortem Report as Ext 4, Death Certificate as Ext 5, Certificate in proof of income as Ext 6. Also placed on record is the Registration Certificate of the motor cycle and the Driving License of OP No.2 / deceased.

PW-2, Ratul Kalita in his deposition stated that on 8.10.2009 he was proceeding through Routa Mazbat Road on his motor cycle and he saw the OP No.2 ride the motor cycle No. AS-12-F-2567 in very high speed and in a negligent manner because of which his sister, Rubi Mukherjee who was sitting on the said motor cycle as pillion rider fell from the motor cycle and sustained greivous injuries on her head. PW 2 further stated that the condition of the said road was not good and the same was under repair by the PWD.

Ext 1 is the Accident Information Report wherein it is recorded that the Motor Cycle No. AS 12 F 2567 was involved in an accident on 8.10.2009 in which Rubi Mukherjee died. It has further been recorded that Mazbat PS Case No. 45 of 2009 was registered in respect of the said accident. Ext 2 is the Police Report wherein the details of the accident has been recorded. In Ext 2 it is further reflected that Rubi Mukherjee died on 17.10.2009 at GMC Hospital and was referred for post mortem by Dispur PS vide GDE No. 507 dated 17.10.2009.

The oral evidence of the claimant, coupled with the documentary evidence mentioned above, establishes that claimant's sister died in the motor vehicle accident, due to rash and negligent driving of the Motor Cycle No. AS 12 F 2567. The contesting opposite party has not adduced any rebuttal evidence to show that the deceased did not die due to the said accident or that the accident did not occur due to the rash and negligence of the OP No.2/rider of motor cycle. That the said Motor Cycle No. AS 12 F 2567, the offending vehicle was insured with the opposite party No.3, United India Insurance Co. Ltd is not in dispute.

Learned Counsel appearing for the OP No.3, insurer of the Motor cycle submitted that the claimant being the sister of the deceased, is not entitled to file the instant claim petition. Learned Counsel for the claimant on the other hand, submitted that from the evidence of PW 1 it was apparent that at the relevant time, she was unmarried and the entire family of the deceased was dependent on the earnings of the deceased. Ld Counsel for the claimant submitted

that the petitioner being one of the legal representatives of the deceased could institute the claim petition. Moreover, submits the Ld Counsel, names and details of all the family members of the deceased, including the widowed mother of the deceased is on record and the same may be duly considered by this Tribunal.

I have considered the submissions of the learned Counsels appearing for the parties. The submission of the Ld Counsel for the Insurance Co. that claimant being the sister of the deceased is not entitled to claim compensation cannot be accepted in view of the settled position of law in this regard.

The Hon'ble Supreme Court in **Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr reported in (1987) 3 SCC 234** upheld the verdict of the Gujarat High Court in declining to interfere with the award of compensation to the brother of the deceased. The Hon'ble Supreme Court held that all the Legal heirs and the Legal Representatives of the deceased can maintain a claim petition under Section 110-A (now under Section 166 (1) of the Motor Vehicles Act. It was held that *"...Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy, it is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the*

bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already, held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents...."

In view of the aforesaid and the basis of the materials on record in the instant case which clearly indicates that the claimant was dependent on her deceased sister at the relevant time, it is held that the claimant could have instituted the instant claim. Since details of all the legal heirs of the deceased have been placed on record by the claimant, rejecting the instant petition on the technical ground that the claim petition ought to have been instituted by the mother, Smt Lakhi Mazumdar, who is a Class I heir, would be against the spirit of the beneficial legislation.

It has come on record that at the relevant time and as on date, the mother of the deceased, Smt Lakhi Mukherjee is alive and that the present claimant has in the meantime, married and living with her husband. Thus in view of the latter, ends of justice would suffice if a direction is issued for release of the amount of compensation awarded by this Tribunal, in the name of Smt Lakhi Mukherjee, mother of the deceased, in as much as, from the materials on record, it is clear that mother of the deceased is entitled to be awarded compensation for the accidental death of her daughter, Rubi Mukherjee.

Ld Counsel for the OP No.3 further submitted that the OP No.2 who was riding the motor cycle at the relevant time was the younger brother of the deceased and, as such, the claimant is not entitled to be granted compensation for the fault of her brother. This Tribunal sees no justification in the proposition advanced by the Ld Counsel for the OP No.3, in as much, relationship of the person driving the motor cycle with that of the pillion rider is of no relevance, more so when OP No.2 had a valid driving license which has been duly placed on record by the claimant. Again, the entitlement of pillion riders to

compensation having been set at rest by the Hon'ble Supreme Court in **Oriental Insurance Co Ltd -vs- Surendra Nath Loomba and Others (Civil Appeal 1345-1346 of 2009 decided on 20.11.2012)**, this Tribunal has no hesitation in holding that compensation is to be granted in the instant case.

In view of the discussions made hereinbefore, the mother of the deceased, who is also the mother of the claimant is held to be entitled to compensation.

Since the instant petition has been filed u/s 166 of the M.V Act, 1988 and it has been already held hereinbefore that the accident occurred due to rash and negligence of the OP No.2/rider, this Tribunal proceeds to compute the compensation on the basis of the ratio laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121**

As per the said judgment, the multiplier to be applied for computing the compensation will depend on the age of the deceased. In the instant case, the age of the deceased as recorded in the Post Mortem Report is 40 years. Thus the age of the deceased, at the time of accident, is taken to be 40. Therefore the relevant multiplier which is to be taken is 15.

At the time of accident the deceased was earning Rs. 5382/- per month as an employee of Lambabari TE (Employee Code No. 40059) as reflected in Ext 6 issued by the Manager, Lambari TE. that is it was less than the first slab of taxable income. For the F.Y.2009-2010 rate of TDS when the income did not exceed Rs.1,60,000/- was Nil. Therefore since the annual income of the deceased did not fall within the taxable income slab, no amount of income tax needs be deducted in the instant case. The actual monthly income of the deceased is thus taken to be Rs. 5382/-.

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 40 years of age, in the instant case, is entitled to get 30% increase towards future prospect. The annual income of the deceased is computed to be [Rs. 5382/- + (30% of Rs. 5382/-) x 12 = Rs.83,964/-].

Since the deceased was single/divorcee, relying once again on the ratio in Sarla Verma (Supra) case, one half is to be deducted for the personal expences of the deceased. Annual dependency therefore is calculated as Rs. 41982/-.

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 Rs. 41982/- x 15	:	Rs. 6,29,730.00
Loss of consortium/love and affection	:	1,00,000.00
Funeral expenses	:	<u>25,000.00</u>
Total	:	Rs. 7,54,730.00

Having held the Motor cycle No. AS 12 F 2567 to be responsible for the accident, the Opposite Party No. 3, United India Insurance Company Ltd is to pay the award.

A W A R D

Rs. 7,54,730/- (Seven lakh fifty four thousand, seven hundred and thirty only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e.9.2.2010 till payment to the mother of the deceased, namely, Smt Lakhi Mukherjee.

The OP No. 3, United India 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 31st day of May, 2014.

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