

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR, TEZPUR.

MAC Case No. 46 of 2014

Smti Renu Hazarika
W/o- Late Upendra Hazarika
Vill- Baruah Chuburi
P.O- Nikamul
P.S- Tezpur
Dist- Sonitpur, Assam

.... Claimant

-VERSUS-

1. Sri Manas Pratim Nath
S/o- Chandra Kt. Nath
R/o-Nikamul
P.S- Tezpur
Dist. - Sonitpur, Assam
(Owner & Driver of the vehicle Reg. No-AS-12/J-5136 Motor Cycle)

2. The New India Assurance Co. Ltd
Tezpur Branch, Main Road, Tezpur
P.O & P.S- Tezpur
Dist- Sonitpur, Assam
(Insurer of the vehicle No. AS-12/J-5136 Motor Cycle)

3. The United India Insurance Co. Ltd.
Tezpur Branch, Main Road, Tezpur
Dist-Sonitpur, Assam
(Insurer of the vehicle No. AS-06-2208)

....Opp Parties

Date of Argument :14.05.2015
Date of Judgment :30.05.2015

ADVOCATES FOR THE PARTIES

For the Claimant : Sri P.P Hazarika
For the OP No. 1 : Smti S.R Choudhury
For the OP No. 2 : Sri M. Borah
For the OP No. 3 : Sri. S.K. Singh

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 claim petition has been filed by the claimant u/s 166 of the Motor Vehicle Act, 1988 claiming compensation for the death of her husband, Late Upendra Hazarika (hereinafter referred to as the "deceased").

The case of the claimant, in brief, is that on 02-12-2013 at about 1.20 P.M. while her husband was returning home by riding his Scooter No. AS-06-2208, the offending Motor Cycle bearing Registration No. AS-12/J-5136, coming from the opposite direction and being driven in rash and negligent manner, knocked her husband from the front side resulting in multiple grievous injuries on his person. The claimant has stated that her husband succumbed to his injuries even before reaching the hospital.

The OP No.1 owner cum driver of the Motor Cycle bearing Registration No. AS-12-J-5136, have filed his written statement denying that the vehicle was driven in a rash and negligent manner by the OP No.1 and stating that OP No.1 had a valid driving licence. It has been further stated that liability arising of the said accident, if there be any, ought to be borne by the OP No. 2 with which the said vehicle was duly insured vide policy No. 53070431130100001492 valid up to 01-05-2014.

The OP No. 2 insurer of the Motor Cycle No. AS-12/J-5136 in its written statement denied all material averments of the claim petition and pleaded inter-alia, that the amount of the 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 driver of the offending vehicle had valid licence and the conditions of Insurance Policy was not violated by the insured.

The OP No. 3 , insurer of the scoter which the claimant's husband was riding at the relevant time, filed its written statement, stating inter alia, that since the accident is being attributed to the motor cycle, the OP No.3 is not liable in the instant case.

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

1. Whether victim, Late Upendra Hazarika, died as a result of the injuries sustained by him in the alleged road accident dated 02-12-2013, involving the vehicle No. AS-12/J-5136 and whether the said accident took place due to rash and negligent driving by the driver of the offending vehicles?
2. 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 examined 2 witnesses and filed relevant documents. The contesting respondent did not adduce evidence.

I have carefully perused the entire materials brought on record, heard both sides.

Evidence of the claimant (Claimant Witness No. 1/CW 1) is that her husband died due to the rash and negligence of the OP No.1, in the road accident on 02-12-2013. It has been stated that at the time of accident, the deceased was the sole earning member of the family and used to earn Rs. 18,400/- per month as a Homeopathy practitioner.

In cross examination, CW 1 submitted that she had not witnessed the accident and her husband was about 62 years of age at the time of the accident. CW 1 stated that she had two children, a daughter and a son. CW 1 stated that her son was an engineering student.

The claimant proved the Accident Information Report as Ext.1, F.I.R as Ext.2-3, Charge Sheet as Ext.4, Post Mortem report as Ext.5, Death Certificate as Ext.6, Diploma of Associated Homeopathic Institute as Ext.7, Driving licence as Ext.8, Registration certificate of the vehicle as Ext.9, Insurance certificate as Ext.10, Income Tax returns as Ext.11.

Claimant witness No.2, Sri Chandan Bhuyan filed his evidence on affidavit stating inter alia, that on the relevant date he was standing in front of his own shop M/S Ragini Enterprise at Nikamul at about 1.20 PM and it was then that he saw the motor cycle no. AS-12-J-5136 knock the scooterist/husband of the claimant, thereby injuring the rider, Upendra Hazarika. CW 2 stated that he immediately rushed to the spot and found that Upendra Hazarika had sustained grievous injuries. It has been stated the injured was immediately taken to Kanaklata Civil Hospital but was declared to be brought death. CW 2 has attributed the accident to the rash and negligent of the rider of the Motor Cycle No. AS-12-J-5136. CW 2 further stated the late Upendra Hazarika was a Homeopathic Doctor and till before the death, he was practicing Homeopathic Medicine in his own Chamber at Paruah Chairali. In cross examination, nothing adverse could be elicited from CW 2.

Ext.1 is the Accident Information Report wherein it has been recorded that the Motor Cycle No. AS-12-J-5136 was involved in an accident on 02.12.2013 in which Upendra Hazarika died. Ext 1 further shows that at the relevant time, the said motor cycle was driven by OP No. 1 and duly insured with OP No. 3. Ext. 4 is the certified copy of the chargesheet filed in Tezpur PS Case no. 1546/13, against the MP No. 2 Manas Pratim Nath, after the accident.

Ld Counsel for the Insurance Co. submitted that contributory negligence on the part of the deceased cannot be ruled out. This Court, in view of the chargesheet submitted by the investigation agency, is not inclined to accept the submission so advanced.

Thus, the oral evidence of the claimant, coupled with the documentary evidence mentioned above, establishes that claimant's husband died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle, Motor Cycle No. AS-12/J-5136. That the said Motor Cycle was insured with the OP. No. 2, The New India Assurance Co. Ltd., is not in dispute.

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 (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. The date of birth of the deceased in the driving licence (Ext. 8) is recorded 01.05.1951. Thus, at the time of accident age of the deceased was 62 years 7 months 2 days. Therefore the relevant multiplier will be 7 (Seven).

The claimant has stated that at the time of accident, her husband was earning of Rs. 18,400/- per month, as Homeopathic Doctor. In support, claimant has filed Income Tax Return of Late Upendra Hazarika for various years. The last Income Tax Return seen to have been filed was on 13.03.2014 i.e. after the death of Upendra Hazarika, wherein the income of the deceased has been shown as Rs.221050/-. However, since the said return was filed after the death of the claimant's husband, the same, cannot be considered. Thus, Income Tax Return before the said return for the year 2012-2013 is taken into consideration. In the said return, the annual income from practicing Homeo Medicine, after deduction of expenses of Rs. 72,000/- is shown as 1,78,000/-. The annual income of the deceased therefore, is taken to be Rs.1,78,000/-. Since the income is below the taxable limit, no tax is to be deducted.

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."

Since the claimant's husband was above the age of 50 years, no enhancement towards future prospect is to be granted. Since the deceased left behind his wife, as per the ratio laid down in Sarla Verma (supra), 1/3rd is to be deducted towards the personal expenses of the deceased. So deducting, the annual income of the deceased is calculated as (Rs.178000/- (-) 1/3rd of Rs.178000/- ie. (Rs.59333/-) = Rs.118667/-).

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.118667 x 7)	:	Rs. 8,30,669.00
Loss of consortium	:	Rs. 1,00,000.00
Funeral expences	:	Rs. 25,000.00
Total	:	Rs. 9,55,669.00

(Rounded of to Rs.9,55,670/-)

Having held the Motor Cycle to be responsible for the accident, the opposite party No.2, the New India Assurance Co. Ltd. is to pay the award.

AWARD

Rs. 9,55,670/- (Nine Lakhs Fifty Five Thousand Six hundred and seventy) only inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, 30.06.2014 till payment to the claimant. The entire amount is to be disbursed in the name of the claimant No.1, the wife of the deceased. The OP No. 2, The New India Assurance Co. 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 30th day of May, 2015.

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