

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

MAC Case No. 88 of 2010

Smti Trishna Das
W/o Late Hareswar Das
Vill: Kacharigaon
P.O and P.S.: Tezpur
District: Sonitpur, Assam. ... Claimant

-Versus-

1) Smt Bimola Agarwal
W/O Sri Sitaram Agarwal
R/O Haibargaon,
PO & PS: Nagaon
Assam
(Owner of Truck No. AS-02-5147)

2) Md Saidul Islam
C/o Smt Bimola Agarwal
W/O Sri Sitaram Agarwal
R/O Haibargaon,
PO & PS: Nagaon
Assam
(Driver of Truck No. AS-02-5147)
(Struck off by order dtd 9.7.2012)

3) United India Insurance Co Ltd.
Nagaon Branch
(Insurer of Truck No. AS-02-5147) ... Opp Party

Advocate for the claimant	:	Sri N. Islam
Advocate for OP No.1	:	Sri S.Kothari
Advocate for OP No.3	:	Sri S.K.Singh

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

Date of Argument	:	2.05.2014
Date of Judgment	:	31.05.2014

J U D G M E N T

Initially, Sri Hareswar Das (since deceased), as claimant, instituted the present claim praying for award of compensation, on account of injuries sustained by him in a road accident on 2.2.2010. During the pendency of the said petition, Hareswar Das expired and Smti Trishna Das was allowed to be substituted and carry forward the claim petition.

The brief case of the claimant is that on the said day, the Hareswar Das (since deceased) was proceeding from Natun Bazar towards Samuguri Bus Stand on his Scooter No. AMS 7186 and when he reached Himatsingka Petrol Pump Depot, the Truck No. AS -02-5147, being driven in a rash and negligent manner, hit his scooter from the back due to which her husband suffered grievous injuries. The injured was immediately taken to Nagaon Civil Hospital and thereafter admitted at Gauhati Medical College Hospital, Guwahati. Later he was given treatment by Dr Satyajee Bora at Tezpur.

The OP No. 1 filed her written statement denying the averments made in the claim petition and stating that liability, if there be any ought to be borne by the Insurance Co, as the vehicle /Truck was duly insured vide Policy No. 130101/31/09/0200007637 valid upto 28.1.2011.

The OP Nos. 3, insurer of 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 claimant 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 was not violated by the insured.

On the basis of pleadings of the parties, my learned predecessor, framed the following issues for adjudication :-

ISSUES

- 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 Hareswar Das (since deceased)'s wife examined himself as Claimant Witness No.1. The contesting respondent, however, declined to adduce any evidence.

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 convenience and brevity.

Reiterating the averments made in the claim petition as to the factual aspects of the accident, Smt Trishna Das has further stated that apart from suffering grievous fracture injuries, Hareswar Das also developed minor psychiatric problem due to the accident which later aggravated into depression, for which he was treated at Mental Hospital, Tezpur and subsequently on 19.16.13, he committed suicide out of depression. Smt Trishna Das stated that the deceased left behind herself and two children aged about 24 years and 19 years who were studying. She further stated that an amount of Rs. 44,164/- was incurred for the medical treatment of her injured husband. Claimant Witness No.1 has stated that at the time of accident, her husband was 53 years of age and was carrying out business but after the accident he closed down the said business and was earning Rs.8000/- per month.

In support of the claim, the claimant witness No.1 has exhibited Form 54 as Ext 1, Death Certificate as Ext 2, medical documents as Ext 3,4,6 and cash memos as Ext 5.

Ext 1 is the Accident Information report which shows that Truck No. AS-02-5147 was involved in an accident in which the claimant sustained injuries. It has been recorded in Ext 1 that Nagaon PS Case No. 205/2010 was registered pursuant to the said

accident. It has also been recorded that the said Truck was insured with United India Insurance Co Ltd vide policy No. 130101/31/09/0200007637 valid upto 28.1.2011.

From the evidence adduced and in absence of any contra evidence, it is established that Truck No. AS-02-5147 was involved in an accident in which the claimant sustained injuries. Thus, the oral evidence of the claimant, coupled with the documentary evidence mentioned above, establishes that claimant's husband, Hareswar Das (since deceased) sustained injuries in the motor vehicle accident, due to rash and negligent driving of the offending Truck. That said Truck, was insured with the opposite party, the National Insurance Co Ltd, is not in dispute.

In view of the discussion aforesaid, the claimant is held entitled to compensation.

Whereas Ld Counsel for the petitioner submitted that depression suffered by the claimant's husband was because of the accident and depression being the proximate cause of the suicide committed by the claimant's husband, the claimant is entitled to be compensated for the loss of dependency. In short, the Ld Counsel for the claimant argued that the cause of death of the claimant's husband was the injuries suffered in the accident.

Ld Counsel for the Insurance Co, OP No.3 submitted that no there is no nexus with the cause of death of Hareswar Das and the accident and, as such, the claimant is only entitled to be reimbursed the medical expences incurred for the treatment of the deceased and she is not entitled either on the count of pain and suffering or on the count of loss of dependency.

Claimant has proved various medical documents. Ex- 3 is the Doctor's Advice Slip of Nagaon Civil Hospital from where it is seen that Hareswar Das was treated in the Emergency department of the hospital on 2.2.2010 and diagnosed with fracture of upper right ulna. The injured was referred to GMCH, Guwahati.

Ext 3 (2) is the Discharge Certificate of City Heart Hospital, Guwahati shows that the patient was admitted on 4.2.2010 and discharged on 6.2.2010. In Ext 3 (2) it has been recorded in the column of for Brief Clinical Notes that, "the patient (Hareswar Das) had history of alleged RTA on 2.2.2010 causing pain and swelling of the right elbow. Patient had psychiatric problem and was under treatment till investigation. Patient also has congenital atelertoris of right lung." Ext 3 (2) shows that Hareswar Das was diagnosed with fracture of upper end of ulna and operated for the same.

Ext 4 shows that plaster was removed on 26.2.2010, patient was adviced to wear an "arm ponch" at rest and was adviced some medicines for a month.

Thus from Ext 3 (2) itself it is apparent that Hareswar Das had history of psychiatric problems even before his accident, hence the contention of the Ld Counsel for the claimant that he developed the same after his accident which lead to depression and suicide, cannot be accepted. The documents pertaining to the treatment of Hareswar Das in LGBRI Mental Hospital , Tezpur (Ext 6 series) thus need not be considered by this Tribunal. Therefore it is held that the injuries suffered by the claimant's husband or the accident itself, cannot be related to the death of Hareswar Das.

Ld Counsel for the claimant has relied upon the judgment of the **Hon'ble Madras High Court in Baby and ors -vs- K Venugopal** to ascertain that the claimant ought to be granted compensation for loss of estate. I have carefully perused the said judgment. In a similar facts, the Hon'ble Madras High Court had held in paragraph 8 of the said judgment that the claimants would not be entitled to be compensated for the pain and suffering since the injured had already expired, but the claimants would be entitled to be compensated for the loss of income for the period which the injured could not work.

Though the claimant has stated that her husband was earning though business, there is nothing on record to suggest the same.

Moreover in cross examination it has been revealed that the claimant's husband was an employee of STATEFED. In absence of any cogent proof, monthly income of the claimant's husband at the relevant time is taken to be Rs.3000/- per month. Claimant is held to be entitled to a reasonable amount for loss of income. Having suffered from fracture of the hand and having been operated, it can be said that the claimant's husband was under treatment for about 2 months, more so since his plaster was opened about 3 weeks after the accident and he was placed under medication for further thirty days.

The claimant has exhibited vouchers amounting to approximately Rs.25024/-. Ext 7 (12) is the sum total of the amounts reflected in Ext 7 (13) (14) (15) and (16), hence the claimant is not entitled to the amounts reflected in the said exhibits separately. The claimant is thus entitled to Rs.25024/- towards reimbursement of the medical expences.

As held in Baby (Supra), the right to get compensation for the personal suffering of the deceased claimant cannot be inherited by the legal representatives of the deceased. The principle actio personalis moritur cum persona will apply. The action to be taken by the claimant for his personal suffering will die with him. Thus the claimant is not entitled to any amount for pain, shock and suffering.

Thus, in view of the discussion hereinabove, just and reasonable compensation to which the claimant would be entitled in the instant case is assessed as under :-

Medical expences	:	Rs. 25,024.00
Loss of income (2 month)	:	6,000.00
Total	:	31,024.00

(Rounded off to Rs. 31,025/-)

Evidently, Truck No. AS-02-5147, was insured with United India Insurance Co Ltd. Hence the O.P. No.3, United India

Insurance Co Ltd is liable to indemnify the owner of the vehicle and satisfy the award.

A W A R D

Rs.31,025/- (Thirty one thousand twenty five only) is awarded with interest @ 7.5% p.a. from the date of filing the claim petition, i. e. 5.3.2010, till payment. The opposite party No. 3, the United India Insurance Co Ltd, is directed to pay the award to the claimant, within one month from the date of order.

Judgment is pronounced in open court, written on separate sheets and enclosed with the case record.

Given under my hand & seal of this Court on this 31st day of May, 2014.

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