

**IN THE COURT OF THE MEMBER, MOTOR ACCIDENT
CLAIMS TRIBUNAL, SONITPUR AT TEZPUR**

Present : Sri R. Goswami.,
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

MAC Case No. 57 of 2019(D)

1. Smti. Maya Rani Dhar
Wife of Sri Mihir Kumar Dhar
Vill. Gobinda Nagar,
P.S. Misamari,
Dist. Sonitpur, Assam,.....Claimant.

-Versus-

1. Sri Dambar Bahadur Chetry,
Son of Uday Narayan Chetry,
Vill. Gobinda Nagar,
P.S. Misamari,
Dist. Sonitpur
Owner-cum-driver of the vehicle AS-12Q/6454 (Bajaj
Pulsar Bike),
2. The Chola Mandalam MS General Ins. Co. Ltd.
Gawahati Branch,
Astha Plaza, 7th floor
G. S. Road, Gawahati, Assam
Insurer of the vehicle AS-12Q/6454 (Bajaj Pulsar
Bike),

ADVOCATES APPEARED

For the claimant : - P. Ch. Sarmah, Advocate.
For the O.P. No. 1 : -Jadab Adhakari, Advocate.

For the O.P. No. 2 :-Kishore Kr. Bordoloi, Advocate,

Date of Argument :-**12-11-2021.**

Date of Judgment :-**30-11-2021.**

J U D G M E N T

This is an application u/s 166 of M.V Act, 1988 filed by one Smti. Maya Rani Dhar who shall hereinafter be referred to as the 'claimant' for purpose of this case, praying for grant of compensation on account of death of her son Kajal Dhar in a RTA.

1. The case in brief is that on 15-10-2017 at about 6-00 P.M. Kajal Dhar, deceased son of the claimant was on his way back home from Balipara, riding pillion on the Motor cycle bearing No. AS-12Q/6454 (Bajaj Pulsar Bike) that O.P. No. 1 was riding at the relevant point of time. On the way in front of Rangapara College, the Motor Cycle, the deceased Kajal was riding pillion while negotiating a cow that it had confronted fell down. Both Kajal Dhar and the OP-1 , the rider, sustained injuries as a result. Kajal Dhar, due to severe nature of injuries sustained by him, had to be shifted to Dispur Hospital Guwahati where on 08/11/2017 he succumbed to his injuries. Hence this claim petition U/S 166 of MVI Act. 1988.

2. O.P. No.1, owner-cum- rider of the alleged offending two wheeler on the day of the alleged occurrence admitted to being the owner of the two wheeler bearing regd.No.AS-12Q/6454 (Bajaj Pulsar Bike) insured with Cholamandalam

MS General Insurance Co. Ltd. Guwahati Branch and the insurance policy being valid up to 13/09/2018. The answering O.P. claimed riding the above two wheeler being in possession of a valid driving license and relevant documents on the day of the alleged occurrence. Thus the insurer is liable to indemnify the answering OP, the insured, as regard payment of compensation, if any, to the claimant. Thus the answering OP claims to be exonerated from the case.

3. O.P. No. 2 Cholamandalam MS General Insurance Co. Ltd. the insurer of the offending vehicle bearing regd. AS-12Q/6454 (Bajaj Pulsar Bike) in its written statement inter alia denied the contention raised by the claimant. The answering OP contended that the case is bad for noncompliance of section 134(c) of the Act, the insured having failed to communicate to the insurer essential particulars with regard to policy cover, name of the injured and date of accident. It is claimed by the answering O.P. that noncompliance of mandatory provision u/s- 158(6) of the M.V. Act 1988 by the police station, that registered the criminal case following the RTA, renders the case not being maintainable in law. The answering O.P. further contended that since it is not aware if the insurer riding his Motor Cycle had a valid driving license or not, it reserves its right of defence available u/s- 149(2) (a) (ii) of the Act. The answering O.P. thus claims to be exonerated from this case.

4 . Upon pleadings above following issues have been framed.

- I. Whether the deceased son of the claimant Kajal Dhar had died on 08-11-2017 at about 4-00 A.M.in a RTA that had been caused due to rash and negligent manner of the person riding the Motor Cycle bearing registration No.AS-12Q/6454.
- II. Whether the claimant is entitled to get any compensation as prayed for? If so, from whom and to what extent?

5. I have heard argument by Learned Counsels on both sides. I have also perused the documents available on record.

Issue No. 1

6. CW-1 Smti. Maya Rani Dhar in her deposition claimed having filed this claim petition for compensation due to death of her son kajal Dhar of injuries sustained in a RTA at about 6.00 P.M. on 15-10-2017 at Rangapara Balipara PWD road. According to PW-1 on the day of the alleged occurrence, her son, on his way back home from Balipara, riding pillion on the Motor cycle bearing registration No.AS-12Q/6454 had met with an accident on the way. Her son had died on 08-11-2017 at Dispur Hospital while undergoing treatment for injuries sustained in the RTA on 15-10-2017. According to CW-1 a sum of Rupees 5,15,000/- was required to be spent on the treatment of her son before he finally succumbed to his injuries. The C.W. 1 further claimed that her son was running a Mobile repairing shop earning around Rs. 15000/- per month.

7. CW-1 has exhibited following documents in support of her claim; the certified copy of G.D.E. Extract No. 293 dated 15-10-2017 as ext-1, certified copy of GDE extract No. 295 dated 15-10-2017 as ext-2, accident information Report (Form 54) ext-3, reference letters along with Diagnosis Report issued by Baptist Mission Hospital, Mission Charali, Tezpur as exhibits 4(i)to 4(iii), admission and Discharge letter as exts. 5 (i) to 5 (ii) A, death Certificate as ext. 6 D, ext-7 is the certified copy of Post Mortem Report, ext. 8 (1) to 8 (69) are Prescription, examination/ diagnosis reports and advice Slips, ext-9(1) to 9 (233) are advice slips, cash memos/ vouchers,ext. 10(1) to 10 (2) are miscellaneous vouchers (fooding, lodging and transportation) and ext-11 is the Voter Identity Card of the deceased.

8. In her cross-examination CW-1 admitted to not being an eye witness to the RTA in which her son Kajal had died. CW-1 has also admitted to her husband Mihir Dhar being a pensioner and she being dependent on her husband. CW-1 admitted to not having submitted any proof of employment of her deceased son. CW-1 denied the suggestion that she is not entitled to reimbursement on the cash memos, ext-9(5) to ext-9(12)(iii) as medicines purchased in this cash memos have not been prescribed by doctors. CW-1 denied the suggestion that she is only entitled to Rs.1,00,000/- in reimbursement on medical expenditure.

9. CW-2 an eye witness to the alleged occurrence in his deposition claimed to be on his way back home from

Balipara on his motorcycle at around 5-30 p.m. on 15/10/2017. On the way CW-2 claimed having seen saw a motorcycle with two on it trying to negotiate a cow that suddenly fell across it and then both occupants along with the motorcycle falling down the ditch by the side of the road. One of the occupants of the two wheeler had sustained serious injuries. According to CW-2 he had come to know later that the injured at Dispur Hospital Guwahatidied 25 days later.CW-2 attributed the cause of the RTA to the negligence of the person riding the offending Motorcycle bearing registration No. AS12Q6454.

10. CW-2 in his cross-examination reiterated to having seen on 15-10-2017 the motor cycle on which Kajal Dhar, deceased son of the claimant, was riding pillion, striking a cow that suddenly came across the moving motor cycle, throwing both the occupants off the motor cycle on to the ground. According to CW-2 one Dambarudhar Chetri was riding the motor cycle on the day of the alleged occurrence. CW-2 however was not specific if it was the negligence of Dambarudhar Chetri that resulted in the RTA on 15-10-2017 or not. According to CW-2 he had found Kajal lying unconscious following the accident. CW-2 claimed having helped shifting both injured persons to hospital in an ambulance. CW-2 claimed to have later learnt about Kajal succumbing to injuries sustained on 8-11-2017. CW-2 denied the suggestion that he had not seen the alleged occurrence.

11. OP-2 had the opportunity to cross examine CW-2 on the content of CW-2's evidence in the affidavit filed. Cross examination could not shake the credit of CW-2 or for that matter generate doubt as to the veracity of his evidence. And as such the evidence of CW-2 appears reliable as to the cause of the RTA on 15-10-2017 and the death of Kajal Dhar in the said RTA.

12. It has been held by our Apex court time and again in catena of its decisions that the approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witnesses in the case but to analyze the evidence already on record to ascertain whether that is sufficient to answer the matter in issue on the touch stone of preponderance of probability.

13. The evidence adduced by the claimant on record indicate to complicity of OP-1 Dambar Bahadur Chetry alone in causing the RTA on 15-10-2017 resulting in pillion rider Kajal Dhar succumbing to injuries sustained by him in the said RTA. Thus this issue is decided in favour of the claimant.

Issue No. 2

14. Now it apparent from the information reflected in ext-3 produced in evidence by CW-1 claimant Smti. Maya Rani Dhar that the offending two wheeler bearing registration No.AS-12Q/6454 on the day of the alleged occurrence had been insured with CholaMandalam MS General Ins Co,OP-2 with insurance policy

No.3361/00627837/000/00. The O.P.No.2, insurer, is not on record to have adduced any evidence in the light of defence available under section 149(2) a (ii) of the Act with regard to any alleged violation of specific conditions of the policy. Neither it had questioned the validity of the insurance policy of the offending two wheeler on the day of the alleged occurrence as mentioned by the OP-1, the insured in his written statement.

15. The argument of the Id counsel of the OP-2 is confined primarily to the legal proposition arrived at in the decision of our Apex court in *Jai Prakash Vs National Insurance Company Ltd* that contemplates police station concerned being required to submit AIR in Form 54 to the jurisdictional tribunal within 30 days of registration of the FIR and registration of FIR to be mandatory if information pertains to cognizable offence.

16. Whether non filing of FIR or for that matter criminal case having not been registered by the police following RTA is serious enough to render the application for compensation legally not being maintainable is put to rest in **Sunita & others Vs Rajasthan SRTC & others as reported in (2020)SCC 486** where in Apex court had followed its earlier decision in the judgment in **Dulcina Fernandes case as reported in(2013) 10 SCC 646**. In paras 8 and 9 of the said decision legal propositions arrived at by a three judge bench of this court in **United India Insurance Co. Ltd. Vs. Shila Datta** had been adverted to as under;

'8, In United India Insurance Co. Ltd. V. Shila Datta while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii) , (v) and (vi) would be relevant to the facts of the present case and , therefore, may be extracted herein below: (SCC p. 518, para 10).

" 10.....(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo moto initiated by the Tribunal.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation....

(vi)The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of matters relevant to inquiry, to assist it in holding the enquiry."

(9) The following further observation available in para 10 of the Report would require specific note: (Shila Datta case, SCC p. 519)

"10.....We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on

the occurrence of an accident, after due enquiry, in accordance with the statute.”

17. Section 166(4) of the Motor Vehicle Act 1988 that contemplates the tribunal to consider the AIR in Form 54 as an application for registering a case and section 168 of the M.V. Act that contemplates payment of just compensation respectively following an enquiry and section 169 contemplates holding any enquiry in summary procedure and as such relevant provision of law is indicative of the fact that the inquiry in a mac case is independent of the outcome in the criminal case.

18. According to the claimant, her son was running a mobile repairing shop prior to his death but in her cross-examination she claimed her son running a computer service centre and he was earning around Rs. 15,000/- in a month and was the only bread winner of the family.

19. Since there is contrast with regard to the occupation of the deceased disclosed by CW-1 in her affidavit and in her cross-examination and income certificate issued by competent authority or for that matter ITRs for the current financial year and previous two years being not available on record in evidence, the tribunal is inclined to hold the monthly income of the deceased on the basis of the minimum rates of wages paid to unskilled labourers of the State of Assam. As per labour welfare department Govt. of Assam notification dated 18/8/2021, the present minimum rates of wages of the State of unskilled worker made

effective w.e.f. 1/6/2021 is Rs.8,946.30/-. Considering the alleged occurrence had taken place on 5/10/2017, the notional monthly income of the deceased if pegged at Rs.7,000/- per month appears plausible.

20. In absence of birth certificate issued by competent authority exhibited in evidence, I am inclined to consider age as on 5-10-2017 i.e.27 years mentioned in the post mortem report, only acceptable public document in proof of age submitted by the claimant.

21. In the recent case of National Insurance Co. Ltd. Vs Pranay Sethi and Ors. reported in SLP (Civil) No. 25590 of 2014 it was observed that while determining the income of the deceased in case of self employed or on a fixed salary an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.

22. In the case in hand, the age of the deceased was 27years when the accident took place. So, 40% should be added along with his established income of Rs.7,000/-. Hence, monthly income of the deceased be considered as Rs.7,000 /-+ Rs.2800/- = Rs.9,800/-.

23. As per the case of Sarla Verma -vs.- DTC,[AIR 2009(6) SC 121] the multiplier applicable is 17.

24. In the instant case, the deceased was a bachelor. Therefore 50% of his income is to be deducted on the presumption that had the deceased been alive, he would have spent 50% of his income on his personal and living expenses.

25. In the constitution bench judgment(National Insurance Co. Ltd. Vs- Pranay Shethi & Ors.) the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate, consortium and Funeral expenses at Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. Subsequently our Apex court in a three judge bench in Magma General Insurance Co. Ltd. Vs. Nanuram alias Chururam as reported in (2018)18 SCC 130 had contemplated compensation parental consortium, spousal consortium and filial consortium for loss of parent, spouse and children respectively.

26. So, in view of the aforesaid discussion, in the instant case, the computation of compensation to be awarded is as follows :-

Loss of dependency

A) Annual income of the deceased Rs.9,800/-X 12
= Rs.1,17,600/-.

B) After deducting 50% of the annual income of the deceased, amount comes to =Rs.58,800/-

C) After multiplied with multiplier, amount comes to
Rs. 58800/-X 17 =Rs.9,99,600/-

Conventional head

D) Funeral expenses	=Rs. 15,000/-
E) Loss of estate	=Rs. 15,000/-
F) Loss on filial Consortium to both living parents at the rate of Rs. 30,000/- each	=Rs. 60,000/
G) Medical expenses for the period 16-10-2017 to 17-11-2017	=Rs. 4,18,843/-

TOTAL=Rs.15,08,443/-(Rupees fifteen lakhs eight thousand four hundred forty three) only.

27. Hence, issue No. 2 is decided accordingly.

ORDER

In the result, the claim petition is allowed, awarding a sum of **Rs.15,08,443/- (Rupees fifteen lakhs eight thousand four hundred forty three)** only to the claimant, Smti. Maya Rani Dhar, the mother of the deceased Kajal Dhar. O.P. No. 2 i.e. Chola Mandalam MS General Insurance Co. Ltd., the insurer of the offending vehicle is directed to make payment of the aforesaid amount with interest thereon @ 6 % per annum from the date of filing of the case **i.e. on 02-09-2019 till** full and final realization within a period of 30(thirty) days from the date of receipt of order into the Bank Account of the MACT, Sonitpur, Tezpur in compliance to the Guidelines of the Apex Court in its order in Writ petition (S)(Civil)

No(S).534/2020 and same being notified by the Hon'ble Gauhati High Court.

Given under my hand and seal on this 30th day of November, 2021.

Dictated and corrected by me

Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

(R.Goswami.)
Member,
Motor Accident Claims Tribunal,
Sonitpur, Tezpur.

A N N E X U R E

1. Witness of the Claimant:

- (i) Smti. Maya Rani Dhar,
- (ii) Sri Raj Kumar Dhar,

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 and 2 are GDE extract copies.

Ext. 3 Accident Information Report (Form 54)

Ext. 4(i) to 5(ii) are medical documents.

Ext. 6 death certificate.

Ext. 7 certified copy of P.M.

Ext.8(1) to 10(2) are medical document/advice slip/cash memo/vouchers etc.

4. Exhibits of the defence.

None.

(R. Goswami.)
Member
MACT, Sonitpur,