

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

Present: **Smti Bobita Kshetry , AJS,**

Member, MACT, Sonitpur

Tezpur

MAC No. Case No: 18/ 2020 (Death)

1. Smti Sumitra Kuri
W/o: Sri Kajol Kuri
Vill: Nutunpara
P.O. & P.S: Tezpur
Dist: Sonitpur, Assam

-----Claimant

-Vs-

1. Sri Jiten Rai
S/O: Late Ghogaru Rai
Hatibilkhana (Hatipilkhana),
P.O. & P.S.: Tezpur
Dist- Sonitpur, Assam
---- Driver of the offending vehicle(Truck)
2. Sri Diganta Saikia
S/O Late Tukheswar Saikia
Vill.- Majgaon
P.O. & P.S.: Tezpur
Dist- Sonitpur, Assam
---- Owner of the offending vehicle(Ertiga)

3. Sri Jiten Rai
S/O: Late Ghogaru Rai
Hatibilkhana (Hatipilkhana),
P.O. & P.S.: Tezpur
Dist- Sonitpur, Assam
---- Owner of the offending vehicle(Truck)
 4. Sri Durlav Nath
S/O Late Guna Kanta Nath
Vill.- Pukharia
P.O.: Besseria
P.S.: Tezpur
Dist- Sonitpur, Assam
---- Owner of the offending vehicle(Ertiga)
 5. Bajaj Allianz General Insurance Co. Ltd.
---- Insurer of the offending vehicle(Truck)
 6. HDFC Ergo General Insurance Co. Ltd.
---- Insurer of the offending vehicle(Ertiga)
- Opposite parties.

Date of argument: 10-10-2022

Date of Judgment: 04-11-2022

APPEARANCE:

Advocate for the claimant: Mr. Pulin Biswas

Advocate for the opposite party No.1 & 3: Mr. Santosh Kr. Sharmah

Advocate for the opposite party No.2 : Since deceased

Advocate for the opposite party No.4: Miss Rose Bharali

Advocate for the opposite party No.5: Mr. Diplu Baruah

Advocate for the opposite party No.6: Mr. Binod Kr. Sarmah

J U D G M E N T

1. The claimant – Sumitra Kuri have filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs. 55,00,000/- (Rupees Fifty Five Lakhs only) for the death of her Son- Partho Kuri in the motor vehicle accident.

2. The claimant's case in brief is that on 19-11-2019, the claimant's son – Partha Kuri (since deceased) went to attend marriage function at Baihata along with other (7) seven friends and after enjoying marriage reception, all friends were returning back in the vehicle No. AS-12C-9333 (Ertiga). It was almost 2.30 a.m. on 20-11-2019. Then the offending vehicle (Truck) No. AS-12B-2022 was parked on the wrong side of NH-15 without any sign of Red cloth or red light as indicator or any branch of tree or any indication. Moreover it was heavy foggy night. The Ertiga vehicle with 8(eight) friends and the driver of Ertiga dashed on the back of Truck. As a result all the friends including claimant's son died in the accident i.e., in total 8 (eight) persons and the driver. The accident occurred due to rash and negligent, carelessness as well as fault of Truck.

3. It is stated that the claimant/mother- Sumitra Kuri and her husband have lost their beloved son and they both were fully dependent upon the deceased- Partha Kuri, who was only 27 (twenty seven) years of age, Deceased was Executive Accountant of KRC Place, KF, Mission Charali as part time basis. Besides that,

he was working under B.S. Industries-II (A unit of B.S. Concrete LLP), Office at Ambagan Road Bye lane near Madhuban Factory, deceased was an accountant of different Firms of Tezpur, Rangapara and Dhekiajuli and many students used attend his Chamber for tuition purpose. It is claimed that from different sources, the monthly income of the deceased was around Rs. 30,000/- to Rs. 35,000/- (Rupees Thirty thousand to Thirty Five thousand) only. This accident caused a heavy financial loss to the entire family. The deceased was also an income Tax payee. Hence, the claim petition.

4. Notices were issued on the Opposite Party Nos. 1, 3, 4, 5, & 6. The Opposite party No. 2 Diganta Saikia, (since deceased) was the Driver of the vehicle No. AS-12V-9333(Ertiga) (involved in the accident). Opposite Party Nos.1 & 3 i.e. driver cum owner of the Vehicle bearing Regd. No. AS-12B-2022 (Truck) filed the written statement.

5. In the written statement the OP No.1 & 3 Sri Jiten Rai denied that the alleged accident took place due to the rash and negligent driving of the said Truck by its driver. On the contrary, claimed that the said vehicle was driven with due care and caution at normal speed. But the Ertiga bearing Regd. No. AS-12V-9333 was driven in a rash and negligent manner and it hit against the Truck bearing Regd. No. AS-12B-2022 standby on the extreme left side of the road by indicating red light. At the time of accident, Sri Jiten Rai (owner and driver) was having a valid driving licence

(DL No. AS-0119910027680 valid upto 11-10-2021 (Transport) and 31-03-2022 (Non Transport). And the offending vehicle bearing Regd. No. AS-12B-2022(Truck) was duly insured with The Bajaj Allianz General Insurance Company Ltd. Therefore, this answering Opp. Party is not liable to pay any compensation to the claimant.

6. O.P. No.4 Sri Durlav Kumar Nath who is the owner of the offending vehicle Registration No. AS 12V 9333(Ertiga) stated that the vehicle was duly insured with HDFC Ergo General Insurance Co. Ltd. OP No.6 and said OP (No.6) is liable for payment against any claim, if allowed by any competent Tribunal. Moreover, the driver of the Ertiga possessed a valid Driving licence at the time of accident. Hence, prayed for dismissal of the claim petition against OP No.4.

7. In the written statement, OP No.5 i.e. Bajaj Allianz General Insurance Co. Ltd. denied that the alleged accident occurred due to negligence of the driver of vehicle bearing Regd. No. AS-12B-2022, which was illegally and negligently parked on road without any indicators. But alleged that the accident occurred due to sole negligence of driver of Ertiga car bearing Regd. No. AS-12V-9333, who negligently and without adhering to the traffic and highway norms and rules dashed the stationed Truck from behind. Hence prayed for discharging OP No.5 from any liability. Again, in the written statement OP. No.6 stated that the claim petition is not at all maintainable in the present from and this Opp. party being the insurer of the Ertiga bearing Regd. No. AS-12V-9333 is in no way

liable to pay any compensation as there is no fault on the part of the driver of the Ertiga.

8. On perusal of the pleadings and after hearing from the Learned Counsels for both the parties, the following issues are framed :-

(1) Whether the deceased, Partho Kuri died in a RTA on 20/11/2019 at about 2-30 A.M. that had taken place due to negligence of both the drivers of the vehicles bearing Registration No. AS-12 B/2022 (Truck) and AS-12 V/9333 (Ertiga)?

(2) Whether the claimant is entitled to receive compensation? If so, from whom and to what extent ?

9. During the course of hearing, the claimant side examined 6 (Six) numbers of witnesses including the claimant. The Opposite Parties did not adduce any evidence.

10. Heard arguments of Learned Counsels for both the parties. Perused the case record as well as the documents.

Discussion, Decision and Reason there of :

11. I have considered the evidences on record and after hearing the arguments advanced by the Learned Counsels for the claimants and the Opposite Parties, passed the judgment on the issues as framed.

Issue No. 1 :

12. It is in the evidence of CW-1 i.e. claimant that on 20.11.2019 at about 2.30 am, the Ertiga bearing Regd. No. AS-12V-9333 in which her son Partha Kuri (since deceased) along with his friends were travelling and returning back to Tezpur after attending marriage at Baihata charali dashed against the Truck bearing Registration No. AS-12 B/2022 parked on the road without any indicators. As a result of the accident, Partha Kuri along with the friends including the driver died. Regarding the accident, Orang PS Case no 115/2019 U/S 283/304(A)/427 IPC was registered. CW1 stated that the deceased son was a bachelor and he left behind his mother (claimant) and father and they both were dependent on his income.

13. In support of her claim, CW1 exhibited certain documents. Ext 1 is the certified copy of the FIR, Ejahar and Charge sheet. Ext- 2 is the Accident Information Report (Form 54), Ext 3 is the Post mortem Report. Ext 4 is the Death Certificate, Ext 5, 6 and 7 are the salary Certificates. Ext-8 (1 to 3) are Income Tax Returns, Ext 9 is another Salary Certificate.

14. In her cross-examination, CW1 disclosed that she did not furnish any document in the instant case to prove the age of her son at the time of accident. She further revealed that her son had resigned from service (hotel) prior to the accident. CW 1 denied that the offending vehicle which kept on the side of the road properly and the driver of Ertiga in which her son was travelling

drove the same rashly and negligently and so, the accident took place. CW1 confirmed that offending vehicle was parked on the wrong side of the road and there was no any parking light or signal.

15. CW1 further stated that as the accident was caused due to the negligent act of the driver of the offending vehicle, hence the insurer of the offending vehicle is liable to pay the compensation.

16. CW2 Raju Sankar is the maternal uncle of the deceased. He claimed that on arriving at the place of occurrence, he saw the offending truck no AS-12B-2022 standing almost in the middle of the road without any signal of red cloth or red light indicator.

17. In his cross examination, CW2 claimed that the accident was caused due to the fault of the driver of the offending vehicle (Truck).

18. Coming to the issue of negligence, I am being guided by the decision in *2009 ACI 282 National Insurance Company Limited Vs. Pushpa Rana wherein it was held that "in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under section 279 /304 A IPC or the certified copy of the FIR or in addition the recovery memo and the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent."*

19. In this context, Ext -1 is the certified copy of the FIR and Charge sheet, Ext-2 is Form- 54, submitted by the claimant are prima facie proof of the happening of the RTA on 20.11.2019 and that the accident took place due to the fault of the driver of the offending truck (AS-12B-2022). Evidence of CW-1 (claimant) is fully corroborated by CW2, who on arrival at the spot found the offending truck parked in the middle of the road without any signal or indicator. Admittedly, the accident took place in a foggy winter night. Thus, evidence of the CW 2 fully confirms that the accident occurred due to negligence of the offending truck.

20. In view of the above discussion, it is found that the clamant has succeeded in establishing that the accident, in which her son died, had been caused due to the negligence of the driver of the alleged offending truck bearing Regd. No. AS-12 B-2022.

The issue is decided in favour of the claimant.

Issue No.2:

21. Admittedly, the offending truck bearing Registration No. AS-12B/2022 had been insured with OP No.5 i.e. Bajaj Allianz General Insurance Co. Ltd. on 20.11.2019. As thus is no part of violation of any specific condition of policy by the insured, So the OP No.5 being the insurer of the offending vehicle, is liable to pay compensation to the claimant.

22. As regards the payment of compensation in case of death, the first requirement is the age of the deceased. The claimant has stated the age of the deceased to be 27 years on the date of the accident. No age proof document is submitted. But, the PM report (Ext.3) confirmed his age to be 27 years. Hence, the age of the deceased as on 20.11.2019 should be 27 years.

23. Coming to the income of the deceased, claimant has stated that the deceased was Executive Accountant of KRC Palace, Tezpur on part time basis and he was working under B.S. Industry, Sonitpur, Tezpur. He was also accountant of different firms and took tuitions. The claimant claimed that his monthly income was around Rs. 30,000/- to Rs, 35,000/-. He was an Income Tax payee.

24. But in her cross examination, the claimant as CW-1 revealed that prior to the accident, her son had resigned from the services So, Ext.5 and 6 which are salary certificates have no evidentiary value and cannot be considered.

25. CW-3 Sujit Sarkar is an Accountant and he stated in the evidence that the deceased was an Accountant of his Firm since March 2017 and he was a part time worker. His salary was Rs. 8000/- per month. CW-5 and CW-6 confirmed that the deceased was not working in KRC Palace and Shree Krishna Associates at the time of accident.

26. Under such circumstances, it is confirmed that the deceased was not in employment with KRC palace and Sri Krishna Associates. As per Ext.-7, the deceased was working in B.S.

Industries. He was an Accountant Executive from 1st April 2019 and he was withdrawing monthly salary of Rs. 13,500/-. Ext-9 is the Salary Certificate showing that the deceased was working (part time) in the accounting firm of CW-3 since last few years and his monthly remuneration was Rs. 8000/-

According to CW-1, deceased used to take tuition of commerce student and earned amount of Rs. 10,000/-, Exts.-8, 8(1 to 3) are the Income Tax Returns of the deceased showing his income from tuition also. So, the monthly income of the deceased is taken to be Rs. 26,000/- as appears from the documentary evidence and he was not in permanent job.

27. In this instant case, the age of the deceased was 27 years when the accident took place. So 40% is to be added on future prospect to his monthly income of Rs.26,000/-, which comes to Rs.36,400/- [Rs.26,000/- + Rs.10,400/-]

28. As per Sarla Verma – VS- DTC [AIR 2009(6) SC121], the multiplier is 17 as the deceased was 27 years on the day of alleged occurrence.

29. In the instant case, the deceased was unmarried with the present claimant (Mother) and father living and they were dependent on his income. Therefore, ½ (one half) of the established income is to be deducted with a presumption that had the deceased been alive, he would have spent ½ of the monthly income on his personal and living expenses.

30. In the constitutional bench Judgment (National Insurance Co. Ltd. –Vs- Pranay Sethi & 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.

31. In view of the aforesaid discussions, the total amount of compensation is as follows:-

A) Annual income of the deceased	
Rs.36,400/-x 12	=Rs. 4,36,800/-
B) After deducting ½ of the annual income of the deceased, amount comes to	=Rs. 2,18,400/-
C) After multiplied with multiplier, amount	
Rs.2,18,400/- X 17 comes to	=Rs.37,12,800/-
D) Funeral expenses	= Rs. 15,000/-
E) Loss of estate	= Rs. 15,000/-
F) <u>Loss of spousal consortium</u>	= Rs. 40,000/-
Total = Rs. 37,82,800/-	

Total Rupees Thirty seven lakhs eighty two thousand eight hundred only.

Hence, issue No. 2 is decided accordingly.

ORDER

32. In the result, the claim petition is allowed, awarding **Rs. 37,82,800/- (Rupees Thirty seven lakhs eighty two thousand eight hundred only)** OP. No.5 i.e. Bajaj Allianz General Insurance Company Ltd., insurer of the offending Truck bearing Registration No. AS-12B/2022 is directed to make payment of the aforesaid amount with interest @ 6% per annum to the claimants from the date of filing of the case i.e. 08/06/2020 till full and final realization within a period of 30(thirty) days from the date of receipt order into the Bank Account of MACT, Sonitpur, Tezpur, through RTGS or NEFT for transfer of the same to the claimant in her account.

33. Out of the said amount, Rs. 10,00,000/- (Rupees Ten Lakhs) be kept in the form of 10 Nos. of FDRs i.e. 1,00,000/- each for a period of 1(one) to 10(ten) years in any Nationalized Bank in her locality and remaining amount shall be released to the claimant to meet the immediate exigencies.

34. Let a free copy of judgment be furnished to the parties concerned as provided u/s 168(2) of MV Act within 7 days from the date of judgment.

35. Accordingly, this instant case is disposed of on contest.

Given under my hand and seal of this Tribunal on this 4th day of November, 2022, at Sonitpur, Tezpur.

Dictated and corrected by me.

Member, MACT
Sonitpur, Tezpur.

(Smti Bobita Kshetry)
Member, MACT
Sonitpur, Tezpur.

ANNEXURE

1. Witness of the Claimant:

(i) Smti Sumitra Kuri.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Certified copy of the FIR, Ejahar and Charge sheet.

Ext. 2 Accident Information Report (Form 54).

Ext. 3 Post mortem Report

Ext. 4 Death Certificate.

Ext. 5,6 & 7 Salary Certificates.

Ext. 8 (1 to 3) are Income Tax Returns.

Ext. 9 Salary Certificate.

Ext. A Authorization Certificate.

4. Exhibits of the defence:

NIL.

(Smti Bobita Kshetry)
Member,
MACT, Sonitpur, Tezpur