

**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: 47/ 2020 (Death)**

1. Smti Kalpana Karmakar  
W/o : Late Ranjan Karmakar  
@ Late Rupam Karmakar
2. Smti. Bina Karmakar  
M/o : Late Ranjan Karmakar  
@ Late Rupam Karmakar
3. Smti. Laxmi Karmakar  
D/o : Late Ranjan Karmakar  
@ Late Rupam Karmakar
4. Smti. Lucky Karmakar  
D/o : Late Ranjan Karmakar  
@ Late Rupam Karmakar  
[Minor daughters are  
represented by their mother/  
legal and natural guardian]

All residence of :

Vill.: Dhenukhana Pahar

P.O. & P.S.: Tezpur

Dist.: Sonitpur, Assam

----- Claimants

-Vs-

1. Sri Tapan Karmakar  
S/o Sri Dhanaranjan karmakar  
Village : Dhenukhana Pahar  
P.O. & P.S. : Tezpur  
Dist.: Sonitpur, Assam  
----- Owner of the offending vehicle
2. Sri Tapan Karmakar  
S/o Sri Dhanaranjan Karmakar  
Village : Dhenukhana Pahar  
P.O. & P.S. : Tezpur  
Dist.: Sonitpur, Assam  
----- Driver of the offending vehicle
3. United India Insurance Company Ltd.  
Tezpur Branch  
Dist- Sonitpur (Assam)  
----- Insurer of the offending vehicle  
-----Opposite parties.

Date of argument: 10-10-2022

Date of Judgment: 07-11-2022

**APPEARANCE:**

Advocate for the claimant: Mr. S. S. Prasad

Advocate for the opposite party No.1 & No.2: Mr. S. Kr. Sarmah

Advocate for the opposite party No.3: Mr. P. Kakoty

## **J U D G M E N T**

**1.** The claimants, have filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs. 50,00,000/- (Rupees Fifty Lakhs only), for the death of husband/Son–Ranjan Karmakar @ Rupam Karmakar (hereinafter referred to as 'deceased') in the Motor Vehicle Accident.

**2.** The claimants' case, in brief is that on 13-04-2019 at about 12.30 p.m., Ranjan Karmakar @ Rupam Karmakar (since deceased) was proceeding on the motor cycle bearing Registration No. AS-12-N/9234 as pillion rider from Tezpur towards Mission Chariali. The motorcycle was being driven by its rider in a very rash and negligent manner endangering human lives and without due care and caution. While they reached at Vartek, the driver of the said offending vehicle, due to rash and negligent driving lost control over the vehicle and it capsized on the road side. As a result of the accident, Ranjan Karmakar @ Rupam Karmakar (Since deceased) sustained multiple grievous injuries on his person and more particularly sustained grievous head injuries. He was immediately taken to Christian Mission Hospital, Tezpur. Due to critical condition, the doctors referred him to Guwahati Medical College and Hospital Guwahati. But, the deceased succumbed to his injury on the way to Guwahati. Accordingly, post-mortem examination was conducted at Kanaklata Civil Hospital, Tezpur on 14-04-2019.

The death of Ranjan Karmakar @ Rupam Karmakar was due to the grievous head injury (Internal Hemorrhage) sustained in the Road Traffic Accident on 13-04-2019 caused by the offending vehicle bearing vehicle No. AS-12-N/9234 (M/cycle.)

**3.** It is stated that the deceased was about 42 years and he was a businessman and owner of Laxmi Motors situated at Murahteteli. He was the sole bread earner of the family, earning about Rs.30,000/- to Rs.35,000/- (Rupees Thirty to Thirty Five Thousand only) per month till his death. The family members/ claimants were fully dependant on the income of the deceased and due to the premature death of the sole earning member of the family, the family members are completely in distress and have been facing acute financial hardship and uncertainty.

**4.** Notices were issued on the opposite party Nos. 1, 2 & 3. Opposite Party No.1 & 2 i.e. owner and driver of the Vehicle bearing Regd. No. No. AS-12-N/9234 (M/Cycle) filed the written statement by denying all the facts and allegations and stated that there was no rash and negligent driving on the part of Opposite Party No.2 (driver). It is further stated that the vehicle was duly registered in the name of the owner and insured with United India Insurance Company Limited, Tezpur Branch having policy No.1307003118P110822120 with required validity from 24-11-2018 to 23-11-2019. The motor cycle driven by OP No.2 was having a valid driving licence (DL No. AS-1220050025429) valid upto

13.06.2025 and it was driven with due care and caution. Hence, prayed to dismiss the claim against OP Nos.- 1 and 2.

**5.** Opposite Party No.3 i.e. the United India Insurance Company Ltd. has filed written statement denying all the averments made in the claim petition and pleaded, inter-alia that the deceased was the pillion rider of the motor cycle and he was not a third party as defined in the policy document. The rider of the offending vehicle did not have driving licence and, as such, the claim petition should be rejected outright. There is no cause of action for this case against this answering Opp. Party. The claim petition is too vague, imaginary, fanciful, and speculative without any reason or basis whatsoever.

**6.** The opposite party further stated that the amount of Rs.50,00,000/- (Fifty Lakhs) only as claimed by the claimants is exorbitant, fanciful, imaginary and without any legal basis and is not recoverable under the law. The alleged rash and negligent driving of the opposite party no.1 is not relevant on this matter as the victim was not a third party. This answering opposite party has no liability to indemnify the owner/opposite Party No.1 & 2 as the victim is excluded from insurance coverage as per the express terms and conditions of the insurance policy. Hence prayed for dismissal of the claim against OP No.-3 .

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

**(1)** Whether the accident took place on 13-04-2019 at about 12.30 PM due to rash and negligent driving by the driver of the vehicle No. AS-12N- 9234(M/Cycle) and whether Ranjan karmakar @ Rupam Karmakar died due to the alleged accident?

**(2)** Whether the claimant is/are entitled to get any compensation as prayed for and if so, from whom and to what extent?

**8.** During the course of hearing, the claimant's side examined 3(three) numbers of witnesses including claimants themselves. The Opposite Parties did not adduce any evidence.

**9.** Heard arguments of Learned Counsels for both the parties. Perused the case record as well as the documents submitted by the claimant side.

**Discussion, Decision and Reason there of:**

**10. Issue No. (1) :**

The Claimant No.1 Smti Kalpana Karmakar in the claim petition and also in her evidence on affidavit as CW-1 deposed that on 13-04-2019 at about 12.30 p.m., her husband Ranjan Karmakar @ Rupam karmakar (since deceased) was traveling on motorcycle bearing Registration No. AS-12-N/9234 as pillion rider from Tezpur towards Mission Chariali being driven by its rider in a very rash and negligent manner endangering human lives and

without due to cure and caution. While they reached at Vartek, the driver of the said offending vehicle due to rash and negligent driving lost control over the vehicle and it capsized on road side. As the result of the accident, Ranjan Karmakar @ Rupam Karmakar sustained multiple grievous injuries on his person and more particularly, sustained grievous head injuries and he was immediately taken to Christian Mission Hospital, Tezpur. But due to critical condition, the doctors referred him to Guwahati Medical College and Hospital, Guwahati. The deceased succumbed to his injury on the way to Guwahati and accordingly post-mortem examination was conducted at Kanaklata Civil Hospital, Tezpur on 14-04-2019. The death of Ranjan Karmakar @ Rupam Karmakar was due to the grievous head injury (Internal Hemorrhage) sustained in the Road Traffic Accident on 13-04-2019 caused by the offending vehicle bearing vehicle No. AS-12-N/9234 (M/cycle.)

**11.** It is stated that the accident took place due to rash and negligent driving of the driver of the motorcycle. As far the accident, negligent driving and death of Ranjan Karmakar @ Rupam Karmakar are concerned, CW-1 has proved the Form-54(Accident Information Report) as Ext.-1, Copy of FIR, Ejahar, and Post Mortem Report as Exhibits- 2, 3 and 4 respectively. In her cross examination, CW-1 admitted that she did not see the accident. Defence did not challenge the fact of the death of the deceased who was declared brought dead at hospital. The fact of

death of the Ranjan Karmakar @ Rupam Karmakar in RTA was also confirmed by PM report and police report.

**12.** So far negligence aspect in the accident is concerned, the pleaded case of the claimants' is that accident took place as OP No.3 (rider) lost control of the motor cycle and the pillion rider (deceased) sustained injuries and he died.

**13.** During cross-examination, the fact of involvement of the offending motor cycle and death remained unchallenged. The OP No.3 also did not deny the accident by the motorcycle and that the accident took place due to the negligence of OP No.2. Moreover by issuing Form 54 against the motorcycle driver (OP. No.2), police has also supported the case of claimants so far negligence of motor cycle driver is concerned.

**14.** The argument of the Learned Counsel for the claimant is that the deceased was the pillion rider of the offending motor cycle, which met with an accident for the negligent driving of OP No.2. OPs have not adduced any rebuttal evidence against the above claim. Evidence of CW-3 is that he was an eye witness of the accident and he saw that the motorcycle was driven in rash and negligent manner. He confirmed that deceased sustained injuries on the scalp. Both the rider and pillion rider of the offending motor cycle were wearing helmets at the time of accident. His evidence is found to be is found reliable and trustworthy.

**15.** It may be mentioned that the standard of proof of negligence as required in a claim petition U/S 166 M.V Act is on the

touchstone of preponderance of probability [(2009), 13 SCC530 Primala Devi Vs Himachal Road Transport Corporation]

**16.** Reliance is also placed in the case of Godavari Devi Sharma and ors. –Vs- United India Insurance Company Ltd. and ors. [2012(4) GLT516] wherein it is held as follows.:

*"Moreover, while conducting the enquiry into a claim under Section 166 of the MV Act, The Tribunal is not expected to search for proof of evidence beyond reasonable doubt, rather it is preponderance of probability, what the tool is for assessment of the evidence. The Tribunal can arrive at its finding on prima facie materials, such as First Information Report to presume existence of the certain facts, in absence of other evidence which might debar such presumption."*

**17.** Evidences of the claimants' side, both oral as well as documentary, in regards the accident involving the motor cycle bearing Registration no.- AS-12-N/9234 in which the deceased was travelling as pillion rider and that the offending motor cycle was driven in a rash and negligent manner is found reliable. As such, it is held that the road traffic accident occurred on 13-04-2019 due to rash and negligent riding of the offending motorcycle bearing registration no. AS-12-N/9234 by Opp. No.2 in which Ranjan Karmakar @ Rupam Karmakar was travelling as pillion rider and in the said accident, Ranjan Karmakar @ Rupam Karmakar died on the spot.

The issue is decided accordingly.

**18. Issue No. (2)**

This issue relates to entitlement of compensation. The Learned Counsel for the OP No.3 argued that the claimants are not entitled to get the compensation and that the offending motor cycle belonged to the brother of the deceased. As such, the deceased cannot be treated as third party. Moreover, the claimants cannot claim any compensation from the other son, who is the owner of the offending motor cycle.

**19.** So far claim by mother and dependency is concerned, it may be mentioned that the father of the deceased has already expired. Mother of the deceased is certainly a legal representative of the deceased Ranjan Karmakar @ Rupam Karmakar and as provided U/S 166 MV Act, she can maintain a claim on the death of her earning son, even if she is not a dependent on the deceased. In this case, the claimants have claimed that, they are dependent on the earning of the deceased. No rebuttal evidence was brought on record.

**20.** The other ground that the deceased being brother of the owner of the motorcycle (OP No. 1), he cannot be treated as third party is also not based on any established principle of law. The claimants have filed the claim petition against the other son (Owner/rider of the motor cycle). Said owner/rider of the motorcycle though was the brother of the deceased, but he is not

the legal heir of the deceased and had not claimed any relief of compensation for the death of his brother. He is a separate entity from his mother as well as deceased and hence, for the purpose of this case, the deceased being a pillion rider in the offending motor cycle was a third party. The mother being surviving legal representative is certainly entitled for claiming compensation from the owner of the motor cycle through the owner is her own son.

**21.** In view of the above observations, the claimants being the mother/wife and children of the deceased and legal representatives cum dependents are entitled to get compensation under provision of Section 166 of MV Act.

**22.** Now, the prime question is what should be the just and fair quantum of compensation and who will pay the same. In determining the compensation, essential factors e.g. age of the deceased, income, dependency etc are relevant.

**23.** As far age of the deceased is concerned for deciding the multiplier to be used, it is found that in the claim petition and in the evidences, claimants have stated the age of the deceased as 42 years. In the PM report (Ext.4,) age of the deceased is mentioned as 42 years. No rebuttal evidence was laid by the other side on the age of the deceased. So, from of the evidences on the record, it can be held that on date of death, deceased was age about 42 years.

**24.** So far multiplier to be adopted in case of death of Ranjan Karmakar @ Rupam Karmakar following the ratio of Sarala Verma

-vs- Delhi Transport Corporation[(2009)6 SCC121], the multiplier will be 14.

**25.** So, far income of the deceased is concerned, CW-1 in her evidence deposed that deceased was a businessman and owner of Laxmi Store situated at Murahateteli, Tezpur and earned Rs.30,000/- to Rs. 35,000/- per month Ext-7 is the Trade license. Deceased was an income tax payee. Ext-8,9,10 are the Income Tax Return Verification Forms. But, no income certificates/document is produced. So, the monthly income of the deceased is taken to be Rs. 30,000/- as he is an Income Tax payee.

**26.** So far the question of deduction on account of personal expenses of deceased is concerned, following the ratio of Sarla Verma's case, it will be 1/4<sup>th</sup> as the deceased was married and left behind his mother, wife and two minor children aged 8 and 4 years respectively. Ext.- 5 and 6 are the Birth Certificates. So, the monthly income after 1/4<sup>th</sup> deduction will be Rs. 22,500/-

**27.** As the deceased was married and was aged about 42 years, 30% addition has to be made to his income as future prospects for calculating the compensation as held by Honb'le Supreme Court of India in the case of Pranay Sethi (Supra). As such, the monthly net income for the purpose of calculation of compensation, comes to Rs. 29,250/-

**28.** In addition to the compensation, claimants are entitled for loss of consortium, funeral expenses and loss of estate as per guidelines of Pranay Sethi (Supra) .

**29.** Thus, having considered the facts and circumstances of the case, just and reasonable compensation is assessed as under:

i) Loss of dependency	Rs. 29,250/-x 12x 14 = Rs. 49,14,000/-
ii) Loss of Consortium	= Rs. 40,000/-
iii) Loss of estate	= Rs. 15,000/-
iv) Funeral expenses	= Rs. 15,000/-

**Total =Rs. 49,84,000/-**

In total, the claimants are entitled to receive **Rs.49,84,000/-(Rs. Forty nine lakhs eighty four thousand only)** as compensation.

**30.** Now, the question as to is who is liable to pay the compensation to the claimants.

As discussed earlier, the accident took place due rash and negligent act on the part of the rider of the offending motorcycle bearing Registration No. AS-12-N/9234. It transpires from the record that the offending vehicle is insured with United India Insurance Company Limited, Tezpur Branch having policy No. 1307003118P110822120 with required validity from 24-11-2018 to 23-11-2019. The OP No. 3 has failed to prove that at the time of accident, the driving licence of the rider was not valid. There is also no evidence to show that the owner violated any terms and

condition of Insurance Policy. Hence, the United India Insurance Company Limited.( OP No.3) is liable to pay compensation to the claimants.

This issue is decided accordingly in favour of the claimants.

### **AWARD**

**31.** In a result, the claim petition is allowed on contest and an amount of **Rs.49,84,000/- (Rupees Forty nine lakhs eighty four thousand only)** is awarded as compensation to the claimants. The Opposite party No. 3, United India Insurance Company Limited, the Insurer of the offending Motorcycle bearing Registration No. AS-12-N/9234 (M/cycle.) is directed to pay the compensation amount of **Rs.49,84,000/- (Rupees Forty nine lakhs eighty four thousand only)** to the claimants within a period of 30 (thirty) days from today, along with interest at the rate of 6% percent per annum from the date of filing of the claim petition i.e.16.10.2020, till the date of payment. The OP No. 3 United India Insurance Co. Ltd. is also directed to deposit the awarded amount with interest by NEFT/RTGS directed to Bank account of this Tribunal.

**32.** Share of the claimant No.1 Smti Kalpana Karmakar wife of the deceased: Out of the total awarded amount a sum of

Rs. 21,84,000/- (Rupees twenty one lakhs eighty four thousand only) is awarded to the claimant No. 1, Smti Kalpana Karmakar being wife of the deceased. Out of the said amount and amount of Rs. 10,00,000/- (Rupees ten lakhs) be kept in the form of 10 Nos. of FDRs i.e. Rs. 1,00,000/- (Rupees one lakh) each for a period of 1(one) to 10(ten) years in any Nationalized Bank in her locality and remaining amount of Rs. 11,84,000/- (Rupees eleven lakhs eighty four thousand only) shall be released to the claimant No.1 to meet the immediate exigencies.

**33.** Share of the claimant No. 2- Smti Bina Karmakar mother of deceased: A sum of Rs. 8,00,000/- (Rupees eight lakhs) only is awarded to the claimant No.2, being mother of the deceased. Out of the said amount, an amount of Rs. 5,00,000/- (Rupees Five lakhs) be kept in the form of 05 Nos. of FDRs i.e. Rs. 1,00,000/- (Rupees One lakh) each for a period of 1 (one) to 5(five) years in any Nationalized Bank in her locality and remaining amount of Rs.3,00,000/- (Rupees three lakhs) shall be released to the claimant No.2 to meet the immediate exigencies..

**34.** The interest accrued on the awarded amount **Rs.49,84,000/- (Rupees Forty nine lakhs eighty four thousand only)** is to be equally apportioned to the claimant No.1 and claimant No.2.

**35.** Share of the two minor daughter of the deceased i.e. claimant Nos.3 & 4: -

A sum of Rs. 10,00,000/- (Rupees Ten Lakhs) each awarded to the claimant Nos.3 & 4 (minor daughters of the deceased). The said amount i.e. Rs. 10,00,000/-(Rupees ten lakhs) only each be kept in the Form of FDRs in any Nationalized bank in their locality till they attain majority.

**36.** To meet any urgent need for money, the claimant has the liberty to make application to the Tribunal for withdrawal of fixed deposit amount. The Tribunal shall consider the application and pass appropriate order.

**37.** The following conditions are also imposed with respect to the fixed deposits:-

- a) The Bank shall not permit any joint names(s) to be added in the saving bank account or fixed deposit account of the claimant(s) i.e. the savings bank account(s) of the claimant(s) shall be an individual savings bank account(s) and not a joint account(s).
- b) The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by bank to the claimant(s).
- c) The monthly interest be credited by Electronic Clearing System(ECS) in the saving bank account of the claimant(s) near the place of their residence.

- d) The maturity amount of the FDR(s) be credit by Electronic Clearing System(ECS) in the saving bank account of the claimant(s) near the place of their residence.
- e) No. loan, advance, withdrawal or pre-mature discharge be allowed on the fixed deposits without permission of the Tribunal.

**38.** 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.

**39.** The MAC case is disposed of accordingly.

Given under my hand and seal Of this Tribunal on this 07<sup>th</sup> day of November, 2022, at Sonitpur, Tezpur

Dictated and corrected by me.

Member, MACT  
Sonitpur, Tezpur.

(Bobita Kshetry)  
Member,MACT  
Sonitpur, Tezpur

## **ANNEXURE**

1. Witness of the Claimant:

- (i) Smti Kalpana Karmakar.
- (ii) Smt. Bina Karmakar
- (iii) Smti Laxmi Karmakar
- (iv) Smti Lucky Karmakar

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

- Ext. 1 Accident information report (Form 54).
- Ext. 2 Certified copy of FIR.
- Ext. 3 Certified copy of Ejahar.
- Ext. 4 Certified copy of Postmortem Report.
- Ext. 5 Birth certificate of Laxmi Karmakar.
- Ext. 6 Birth certificate of Lucky Karmakar
- Ext. 7 Trade License.
- Ext. 8 Indian Income Tax Return Verification Form.
- Ext. 9 Indian Income Tax Return Verification Form.
- Ext. 10 Indian Income Tax Return Verification Form.

4. Exhibits of the defence:

NIL.

(Bobita Kshetry)  
Member,  
MACT, Sonitpur, Tezpur