

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

Present: **Smti Bobita Kshetry , AJS,**
Member, MACT, Sonitpur
Tezpur

MAC No. (D) Case No: 14/ 2017

1. Smti Priti Chanda
W/o : Late Kamakhya Chanda
R/o Village : Amaribari
P.S. : Rangapara
Dist.: Sonitpur, Assam
----- Claimant

-Vs-

1. Sri Arup Kumar Hazarika
S/o J. N. Hazarika
Village : Balishiha Gaon
P.O. & P.S. : Dhekiajuli
Dist.: Sonitpur, Assam
---- Owner of the offending vehicle

2. Sri Trinayan Nath
S/o Priya Kanta Nath
Village : Jahamari
P.O. & P.S. : Thelamara
Dist.: Sonitpur, Assam
---- Driver of the offending vehicle

3. National Insurance Company Ltd.
Tezpur Branch
Dist- Sonitpur (Assam)
---- Insurer of the offending vehicle
----Opposite parties.

Date of argument: 11-10-2022, 09-11-2022

Date of Judgment: 11-11-2022

APPEARANCE:

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

Advocate for the opposite party No.1 & No.2: Mr. R. Pandit

Advocate for the opposite party No.3 : Mr. T. Ghosh

J U D G M E N T

1. The claimant – Smti. Priti Chanda has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs.20,00,000/- (Rupees Twenty Lakh only) for the death of her husband–Kamakhya Chanda in a Motor Vehicle Accident.

2. The claimant's case in brief is that on 27-08-2016 at about 12.30 p.m., her husband- Kamakhya Chanda(since deceased) was travelling as a pillion rider on the Activa Scooty, vide Registration No.AS-12N-9512 and was proceeding from Tezpur towards Dhekiajuli being driven by its driver-Sri Trinayan Nath. When they

reached Keherukhanda, the driver of the offending vehicle lost his control. As a result, Kamakhya Chanda fell down from the offending vehicle and he sustained multiple grievous injuries, mainly, on his head and he was immediately taken to Christian Mission Hospital, Tezpur. But due to his critical condition, he was taken to the GNRC, Guwahati, on same day and treated there upto 28-09-2016. Thereafter, Kamakhya Chanda died on 03-10-2016 at his residence. It is stated that the accident took place due to rash and negligent driving by the driver of the offending vehicle.

3. It is stated that the deceased was about 67 years and he was the sole bread earner of the family, earning about Rs. 22,110/- (Rupees Twenty Two Thousand one hundred ten only) per month and he was a private serviceman. Due to his sudden and untimely death, the family has been subjected to great financial loss.

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. AS-12N-9512 (Activa Scooty) filed their joint written statement by denying all the facts and stated that the accident occurred due to the own fault of the deceased and there is 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 was duly insured with National Insurance Company Limited, having policy No.20090031156260001360 with required validity from 02-10-2015 to 01-10-2016. The OP No.2

was having a valid driving licence. Hence prayed to dismiss the claim petition against OP No.- 1 and 2.

5. Opposite Party No.3 i.e. the National Insurance Company Ltd. has filed written statement denying all the averments made in the claim petition and pleaded, inter-alia, that the Insurance Company is not liable to pay any compensation to the claimant as the said vehicle was driven by the driver, who was not holding a valid and effective driving licence at the time of accident. It is further stated that the amount claimed by the claimant is too excessive, baseless, unreasonable and not categorically mentioned. OP No.3 denied the accident as no case has been registered. Hence, prayed for dismissal of the claim petition.

6. 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 27/08/2016 at about 12.30 PM due to rash and negligent driving by the driver of the vehicle bearing registration No. AS-12N- 9512(Activa Scooty) and whether the victim Kamakhya Chanda died due to the alleged accident?

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

7. During the course of hearing, the claimant side examined 2 (two) numbers of witnesses including the claimant herself. The Opposite Parties did not adduce any evidence.

8. Heard arguments of Learned Counsels for both the parties. Perused the case record as well as the documents. The OP No.3 submitted written argument also.

Discussion, Decision and Reason there of :

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

Issue No. (1) and (2)

Both the issues are taken up together for discussion.

10. The Claimant Smti Priti Chanda examined herself in the case as CW-1, She has reiterated the same facts as narrated by her in the claim petition regarding the accident of her deceased husband.

11. CW-1 deposed that on 27-08-2016 at about 12.30 p.m., her husband– Kamakhya Chanda (since deceased) was travelling as a pillion rider on the offending vehicle, vide Registration No. AS-12N-9512 and was going from Tezpur towards Dhekiajuli direction being driven by its driver-Sri Trinayan Nath (OP No.2). When they reached Kherukhanda, O.P. No.2 lost his control which resulted in the breakdown of the vehicle. Thereafter, Kamakhya Chanda fell down from the offending vehicle and he sustained multiple grievous injuries, mainly, on his head and he was immediately taken to Christian Mission Hospital, Tezpur. But due to

his critical condition he was taken to the GNRC, Guwahati on same day and treated there upto 28-09-2016. But for the impact of the said accident, Kamakhya Chanda died on 03-10-2016 at his residence. It is alleged that the accident took place due to rash and negligent driving of the offending vehicle by OP No.2.

12. In her cross-examination, CW-1 deposed that she did not lodge any FIR following the accident and no formal case was registered against the person riding the alleged offending two wheeler following the accident. CW-1 admitted that the police having not found the person riding the offending two wheeler guilty did not register any criminal case against him. This witness further revealed that no post-mortem had been conducted on the dead body of her husband. She also admitted that she did not submit any medical documents to show that her husband was admitted at Baptist Mission Hospital, Tezpur on 27.08.2016 immediately following the accident and that she did not submit any documents of treatment of her husband for the period from 27.08.2016 to 17.09.2016.

13. Witness CW-2 Sri Tapan Das claimed to have witnessed the said accident. He had seen the deceased Kamakhya Chanda travelling as a pillion rider and falling down from the Scooty (Activa). CW-2 is not aware whether the police had found the driver of the alleged offending scooty guilty of causing the RTA in which the deceased died.

14. Learned Counsel for the Insurance Company argued that in connection with the accident, no formal case has been registered and police only made a GDE entry. The claimant also did not file any FIR which is vital as the FIR proves the factum of accident and reliance is placed on AIR 2011 SC1226 wherein it is specially stated that filing of FIR is a must in a Motor Claim case. Moreover, there is no PM Report of the deceased husband of the claimant, for which the actual cause of his death cannot be ascertained.

15. Admittedly, the claimant did not file any FIR against the alleged accident that had taken place on 27/08/2016. No postmortem done on the dead body of the deceased. Ext.-1 is the Accident Information Report (Form 54). Ext-2 is the GDE Extract copy. But, there is no evidence of the claimant side as to whether any case was registered against the rider of the offending vehicle (Scooty) and whether the investigation started. Even the O/C, Dhekiajuli P.S. is not examined to prove the accident as well as rash and negligent driving of the offending vehicle by the driver.

16. No doubt, it is now well settled that claimant in a petition under section 166 of MV Act, has to prove the rash and negligent driving of the driver of the offending vehicle in preponderance of probability, and not beyond reasonable doubt. When the claimant filed the claim petition under section 166 of MV Act, it is his entire responsibility to prove the involvement of the offending vehicle along with rash and negligent driving of the driver of the offending vehicle, in manner of preponderance of probability. Had the

claimant filed the claim petition under Section 163-A of MV Act, matter would have been different as the said provision is based on "no fault liability" of the injured.

17. In the *Oriental Insurance company Ltd. -vs- Meena Variyal, 2007 (5) SCC 428*, Hon'ble Apex court held that *"Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."*

18. Now, the instant claim is filed by the claimant under Section 166 of MV Act and not under Section 163-A of MV Act. Hence, burden of proving the rash and negligent driving of the rider of the offending vehicle is upon the claimant, with the only exception that he has to prove the same on the basis of preponderance of probability and not beyond all reasonable doubt.

19. Now, it is clear from the evidence of the claimant (CW-1) that she did not lodge any FIR against the driver of the offending vehicle. So, there is no formal case registered against the driver of the offending vehicle and the case is based only upon a GDE Entry.

But to prove the fault of the driver, an FIR has to be lodged in the police station.

20. The only purpose of lodging the FIR immediately after the accident is to inform the police about the accident and for initiation of the investigation against the erring driver to find out the details of the offending vehicle and also to find out after proper investigation as to whether any accident had occurred as alleged and whether the driver is negligent or not.

21. In the case of Ravi Vs. Badrinarayan and Ors. reported in AIR 2011 SC 1226 where substantial delay was caused in lodging the FIR, Hon'ble Apex Court held that *"The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR*

assumes much more significance than delay in lodging thereof supported by cogent reasons."

22. Furthermore, it comes out that the claimant(CW-1) is not the eye witness to the accident. CW-2, who claimed to have witnessed the accident stated that the offending Scooty was driven in a rash and negligent manner by its rider. His version is that he was coming in his car behind the Scooty and he saw the claimant's husband falling down from the Scooty. But , his cross examination reveals that he does not know the colour of the alleged offending Scooty and the registration number of the same.

23. Perused the medical documents submitted by the claimant. Admitted fact is that the claimant did not submit any Medical documents to show that her husband was admitted at Baptist Mission Hospital on 21-08-2016 immediately following the accident. Ext.-5 which is the Discharge Certificate issued by GNRC reveals clearly that her husband was admitted at GNRC, Guwahati on 17-09-2016 and was discharged from the hospital on 28.09.16. CW-1 has clearly admitted in her cross examination that she did not submit any documents of treatment of her husband from 27-08-2016 to 17-09-2016. Her evidence reveals that her husband was a diabetic since the age of 45 years and he was under medication. Exts.-6 to 87 which are the Medical documents are not related to treatment of any injuries of the claimant's deceased husband.

24. Moreover, in this instant case there is no any evidence of registration of any case against the driver. There is also no iota of proof to show that the offending vehicle(Scooty)was driven by the driver rashly and negligently due to which the accident took place and the claimant's husband expired.

25. Considering all these aspects, it is found that the claimant failed to prove her claim of the involvement of the alleged offending vehicle (Scooty) in causing the accident. Non filing of FIR regarding the accident and absence of Post mortem report clearly goes to show that the claimant has not approached this Tribunal with clear hands. Post Mortem Report is a mandatory document for processing of any PA death claim. It is the primary and mandatory document to determine the accidental nature of the death and to confirm absence the admissibility of the claim.

26. Therefore, the claimant failed to prove that the factum of accident, rash and negligent driving by the driver of the offending vehicle (Scooty) and that her husband died in a RTA, as claimed. The vehicle bearing Registration No.AS-12N-9512 (Activa Scooty) has no such liability to the accident in question.

Hence, the claimant is not entitled to get any compensation as prayed for.

Issue No. 1 and 2 are decided accordingly.

ORDER

In the result, the claim petition is dismissed.

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.

Given under my hand and seal of this Tribunal on this 11th 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 Priti Chanda

(ii) Sri Tapan Das

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Accident information report (Form 54).

Ext. 2 GDE Extract copy of Dhekiajuli P.S.

Ext. 3 Death Certificate.

Ext. 4 (i),4(ii),4(iii) Salary Slip

Ext. 5 Discharge Summary.

Ext. 6 to Ext. 87 Medical documents.

4. Exhibits of the defence:

NIL.

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