

**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: 62/ 2020**

1. Smt. Bimala Rajbangshi  
W/o : Late Diganta Rajbangshi
  
2. Smt. Sumi Rajbangshi  
D/o Late Diganta Rajbangshi  
Both are R/O Vill.: Upper Panbari  
P.O.: Panbari, P.S.: Dhekiajuli  
Dist.: Sonitpur, Assam  
----- Claimant

-Vs-

1. Sri Barun Tamuli  
S/o Nerai Tamuli  
R/o Vill: Dipota  
P.O.: Dipota  
P.S.: Tezpur  
Dist.: Sonitpur, Assam  
---- Owner of the offending vehicle

2. Sri Chitta Charan Bora  
S/o Late Bijoy Chandra Borah  
R/o Vill: Namchuburi Panbari  
P.O.: Panbari, P.S.: Dhekiajuli  
Dist.: Sonitpur, Assam  
---- Driver of the offending vehicle

3. The Oriental Insurance Co. Ltd.  
---- Insurer of the offending vehicle  
----Opposite parties.

Date of argument: 04-11-2022, 30-11-2022

Date of Judgment: 12-12-2022

**APPEARANCE:**

Advocate for the claimant : Mr. B. B. Biswas

Advocate for the opposite party No.2 : Mr. Dipak Kalita

Advocate for the opposite party No.3 : Mr. A. K. Paul

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

**1.** The claimant – Smt. Bimala Rajbangshi has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs. 25,00,000/- (Rupees Twenty five Lakhs) for the death of their son/brother– Dipjyoti Rajbangshi in a Motor Vehicle Accident.

**2.** The claimant's case, in brief is that on 26.10.2020 at about 7.05 pm, the son/younger brother of the claimant Nos. 1 & 2 respectively was proceeding from Belsiri side towards Panbari village by the vehicle bearing Registration No. AS-12-E-9611 (Tractor). The offending vehicle was driven by its driver with rush and negligent manner and endangering to human life. When the said vehicle reached near Torajan village, suddenly the said vehicle capsized on the PWD Road and the accident occurred. Due to the accident, Dipjyoti Rajbangshi, the son/younger brother of the claimants sustained grievous injuries on his head. As a result of injuries sustained, he expired on the spot. After the accident, he was taken to Tezpur Medical College & Hospital where the doctor declared him dead.

It is claimed that the deceased was working as an Electrician and earning Rs. 10,000/-(Rupees Ten Thousand) only per month and he was the sole earning member of his family. The claimant No.1 is a widow and the claimant No.2 is the unmarried daughter of the Claimant No.1 and both of them having no individual source of income of their own. They were solely dependent upon the income of the deceased and now they have been passing their days in extreme financial hardship.

**3.** The case proceeded exparte against OP No. 1. While the O.P NO 2 i.e. driver of the offending vehicle registration No. AS-12-E-9611(Tractor) filed the written statement and he stated that the

deceased was fully drunk on the day of accident (Durga Puja Vijaya Dashami) and he forcefully got up on the tractor trolley and suddenly fell down from the said tractor trolley and sustained grievous injuries and died. He denied driving the offending tractor in rush and negligent manner and endangering to human life. It is stated that the OP No.2 is not liable to pay compensation to the claimant and as such the claim petition is liable to be dismissed with cost.

**4.** Opposite Party No.3 i.e. The Oriental Insurance Company Ltd. has filed written statement denying the claims and all the allegations of the claimant made in the claim petition. It is admitted the deceased Dipjyoti Rajbangshi was travelling with the Tractor bearing Registration No. AS-12E-9611 at the relevant time of alleged accident as a gratuitous passenger which is not a passenger carrying vehicle. Hence, the claimant is not entitled to any compensation as per settled law even though it is proved that the driver concerned of said Tractor drove it in a rash and negligent manner. Furthermore, the tractor was not insured with the Insurance Company at the relevant time of the alleged accident. Hence, this claim application is liable to be dismissed with cost and compensatory cost to this opposite party.

**5.** 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 namely late Dipjyoti Rajbangshi died in a road traffic accident on 26.10.2020, due to the rash and negligent driving of the driver of the offending vehicle bearing registration No. AS-12-E-9611(Tractor) ?

**(2)** Whether the offending vehicle bearing registration number AS-12-E-9611(Tractor) was covered with insurance policy?

**(3)** Whether the claimants are entitled to the relief as claimed for?

**(4)** To what relief/reliefs parties are entitled to?

**6.** During the course of hearing, the claimant side examined 1 (one) number of witness i.e. the claimant No.1 herself. The Opposite Parties did not adduce any evidence.

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

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

**8.** I have considered the evidences on record and after hearing the arguments advanced by the Learned Counsels for the claimant and the Opposite Party passed the judgment on the issues so framed.

**Issue No. (1):**

**9.** It is in the evidence of CW-1 that on 26.10.2020 at about 7:05 p.m. while her son Dipjyoti Rajbangshi was proceeding from Belsiri side towards Panbari village by the vehicle bearing Registration No. AS-12-E-9611 (Tractor), the said vehicle was driven by its driver in rush and negligent manner and endangering to human life. When the said vehicle reached near Torajan village and suddenly the said vehicle capsized on the said PWD Road and the accident occurred. Due to the accident, the son/younger brother of the claimants sustained grievous injuries on his head and he expired on the spot.

**10.** In her cross examination CW-1 disclosed that she did not see the accident. She also disclosed that the tractor was not under insurance coverage at the time of accident and her deceased son who was working as an electrician was travelling in the offending Tractor bearing registration No. AS-12E-9611 as he could not avail other passenger vehicle.

**11.** *To determine the negligence, I am being guided by the judgment reported in 2009 ACI 287, 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."*

**12. In Bimla Devi and Ors. V. Himachal Road Transport Corporation and Ors., (2009) 13 SC 530**, the Hon'ble Supreme Court held:

*"8. In a petition under Section 166 of the Act, the Petitioners were merely to establish their case on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:*

*15. in a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the Petitioners. The Petitioners were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

**13.** Now, the instant case is filed by the claimant under section 166 of M.V. Act. Hence, the burden of the proving the rash and negligent driving of the driver of the offending vehicle is upon the claimant with the only exception that she has no prove the same

on the basis of preponderance of probability, not beyond all reasonable doubt.

**14.** Perused the documents on record, Ext.1 is the Accident Information Report(Form-54) from which it reveals that an accident occurred on 26-10-2020 at about 7:05 p.m. in which the claimants' son/brother died. The vehicle bearing Registration No. AS-12-E-9611(Tractor) is shown to be the offending vehicle. Ext.2(1) to 2(3) are the FIR & Ejahar lodged by the claimant Smti. Bimala Rajbangshi. On the basis of the Ejahar, a case was registered vide Dhekiajuli P.S. case No. 672/20, u/s-279/304(A) IPC. Ext.3 is the seizure list of seizing the Tractor bearing Registration No. AS-12-E-9611, Ext.4 is the MVI Report of the offending vehicle, Ext.5(1) to 5(5) is the Post Mortem Report, Ext.6(1) to 6(2) is the Inquest Report Form and Ext.7(1) to 7(2) is the Charge Sheet submitted against the driver of the offending Tractor u/s 279/334(A) IPC.

**15.** In view of the evidence of CW-1 as well as the documents relating to criminal case, it can be said that the claimants are able to prove the their son/younger brother –Dipjyoti Rajbangshi died in a road traffic accident on 26.10.2020 due to rash and negligent driving by the driver of the offending vehicle bearing registration No. AS-12-E-9611(Tractor).

Hence, issue 1 is decided in favour of the claimants.



**Issue No. (2):**

**16.** In Ext.1 Accident Information Report (Form-54), there is no mention of the Insurance Policy number of the offending Tractor. OP. No.-3 i.e. Oriental Insurance Company Ltd. has clearly stated in the written statement that the tractor bearing registration no. AS 12E-9611 was not insured with the Insurance Company at the time of alleged accident. Even CW-1 has clearly revealed in her cross-examination that the tractor was not under insurance coverage at the time of the accident. So, it is concluded that the offending tractor was not covered with insurance policy.

Issue is decided accordingly.

**Issue Nos. (3) and (4):**

**17.** The claimants have claimed that the deceased-Dipjyoti Rajbangshi was 19 years old at the time of accident. He was working as an electrician and he used to earn Rs. 10,000/- only per month. But no age proof document of the deceased son has been submitted in this regard. CW-1, mother of the deceased also admitted in her cross examination that she has not submitted any documents to show that her deceased son was working as an electrician.

**18.** The postmortem report of deceased (Ext.5) reveals that he was aged 19 years at the time of his death and the appropriate multiplier for the said age as per direction of Sarala Verma VS Delhi Transport Corporation is 18.

**19.** Regarding the monthly income of the deceased, though the claimants have claimed that he was earning Rs. 10,000/- per month by working as an electrician and they were totally dependent upon him, but no documentary proof or salary certificate is submitted in this regard. Hence income of the deceased is taken to be Rs. 3000/- per month. The claimants are the mother and unmarried sister of the deceased- Dipjyoti Rajbangshi.

**20.** In the decision arrived at in National Insurance Co. Ltd.- vs- Pranay Sethi and ors., Hon'ble Apex Court contemplated on addition of 40 % of the established income should be the warrant where deceased was below the age of 40 years In the instant case, the age of the deceased was 19 years when the accident took place. So, 40% should be added to his established income of Rs. 3,000/-. Hence, the notional income of the deceased comes to Rs. 3000/- + 1,200/- = Rs. 4,200/- (Rupees four thousand two hundred only)

**21.** Regarding deduction towards personal and living expenses of the deceased, as the deceased was a bachelor, there has to be deduction of 50% of his income on the head of his own personal and living expenses.

**22.** As per SLP (Civil) No. 25590 of 2014 (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 and Funeral expenses should be Rs. 15,000/- and Rs.15,000/-respectively.

**23.** So, in view of the above discussion, in the computation of compensation is awarded as follows:

A) Annual income of the deceased (Rs.4200/-x 12)	= Rs. 50,400/-
B) After deduction 50% of the annual income of the deceased.	= Rs. 25,200/-
(c) After multiplied with multiplier ( 25,200/- x 18)	= Rs. 4,53,600/-
D) Funeral expenses	= Rs. 15,000/-
E) Loss of estate	= Rs. 15,000/-
<b>TOTAL = Rs. 4,83,600/-</b>	

**(Rupees Four lakhs Eighty three thousand Six hundred only.)**

**24.** Now, coming to the question as to by whom the amount of compensation is to be borne.

Admittedly, deceased- Dipjyoti Rajbangshi was travelling in the offending tractor when the accident occurred and the offending tractor did not have any valid insurance policy on the date of accident. The offending tractor was not insured with the Insurance Company i.e. OP No.-3 as has come out from the evidences on record.

**25.** Moreover, the tractor is not a passenger carrying vehicle. The deceased- Dipjyoti Rajbangshi was travelling as an unauthorized passenger in the tractor. It is found that the OP NO.2 i.e. driver of the offending tractor in his written statement has not mentioned about possession any of valid driving licence. Ext.-1 i.e. Accident Information Report (Form-54) does not mention the Driving licence number and date of expiring of the Driving Licence of the driver of the offending tractor bearing registration No. AS-12E-9611. Ext.-3 which is the Seizure List also does not reflect the seizure of any Driving Licence of the driver of the offending tractor. So, it is clear that the deceased was travelling as an unauthorized passenger in the tractor was driven by OP No.2, who was not possessing a valid driving licence at the time of accident.

**26.** It is an admitted fact that the offending tractor bearing Registration No. AS-12E-9611 had no valid insurance policy at the relevant time of accident. So, the Insurance company is exonerated of its liability to pay compensation to the claimants. But, the OP No.1 i.e. owner of the offending tractor is liable to pay the compensation to the claimants.

Issues are decided accordingly in favour of the claimants.

**ORDER**

In the result, the claim petition is allowed, awarding **Rs. 4,83,600/- (Rupees Four lakhs Eighty three thousand Six hundred)** only with interest thereon @ 6% per annum from the date of filing of the case i.e. 28.12.2020 till final realization. The OP No.-1 i.e. Sri Barun Tamuli owner of the offending vehicle bearing Registration No. AS-12-E-9611(Tractor) is directed to deposit the awarded amount within a period of 30(thirty) days from the date of receipt of this order to this Tribunal only by RTGS/NEFT, for transfer of the same to the account of the claimants.

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.

Accordingly, this instant case is disposed of on contest.

Given under my hand and seal of this Tribunal on this 12<sup>th</sup> day of December, 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) Smt. Bimala Rajbangshi.

2. Witness of the Defence:

Nil

3. Claimant's Exhibits:

Ext. 1 Accident Information Report (Form 54).

Ext. 2(1) to 2(3) Certified copy of FIR & Ejahar.

Ext. 3 Certified copy of Seizure List.

Ext. 4 Certified copy of MVI Report.

Ext. 5(1) to 5(5) Certified copy of Postmortem Report.

Ext. 6(1) to 6(2) Certified copy of Inquest Report Form.

Ext. 7(1) to 7(2) Certified copy of Charge Sheet.

Ext. 8 Photocopy of Voter I/D of Claimant No.1

Ext. 9 Photocopy of Voter I/D of Claimant No.2

4. Exhibits of the Defence:

NIL.

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