

**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: 33/ 2022

1. Smti Kaushala Khodal
W/o Late Supal Khodal @ Subal Khodal
@ Siphah Khodal @ Sukal Khodal
Vill : Alisinga
P.O. : Alisinga
P.S. : Dhekiajuli
Dist.: Sonitpur, Assam

---- Claimant

-Vs-

1. Sri Ramesh Rai
S/o Raj Mangal Rai
Vill.: Prince Road, Ward No.- 27
Nilachal Parking, Beharbari
P.O. & P.S.: Basistha
Dist : kamrup, Assam
----Owner of the offending vehicle

2. Sri Samnur Ali
S/o Muzamil Haque
Vill. : Santipukhuri
P.O. : Santipukhuri
P.S. : Sipajhar
Dist. : Darrang, Assam
----Driver of the offending vehicle

---- Opposite parties.

Date of argument: 29-11-2022, 12-12-2022

Date of Judgment: 15-12-2022

APPEARANCE:

Advocate for the claimant: Mr. S. Das

J U D G M E N T

1. The claimant– Smti Kaushala Khodal 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 Lakhs) only for the death of her husband- Supal Khodal @ Subal Khodal@ Sukal Khodal @ Siphah Khodal, in a motor vehicle accident.

2. The case in brief is that on 01-03-2021 at about 2.30 pm, the claimant’s husband – Supal Khodal @ Subal Khodal@ Sukal Khodal @ Siphah Khodal was proceeding from Alisinga Centre towards his home by riding his bi-cycle in his proper side. When he

reached Rabartola Centre, then the vehicle bearing Registration no. NL-01K-1822(Tata Truck) came from the same direction in high speed and in negligent manner endangering human life and knocked the claimant's husband forcefully from the backside. As a result , he sustained multiple grievous injuries on his head, leg and several parts of his body. He was immediately admitted at 30 bedded hospital, Dhekiajuli. Thereafter, he was admitted at TMCH, Tezpur for better treatment but the doctors declared him dead.

It is stated that Rs. 20,000/- was spent for his treatment. The deceased was a daily worker and businessman by profession and he earned Rs 15,000/- per month from his work and business. He was the only earning member of the family. The claimant and other family members were fully dependent upon his income and now they are facing acute financial hardship.

3. The case proceeded exparte against OP-1 and OP-2, owner and driver respectively of the alleged offending vehicle.

4. I have heard the argument advanced by the Learned Counsel for the claimant. I have also perused the documents available on record.

5. In support of the claim, claimant side adduced the evidences of 2 CWS and exhibited some documents.

6. In her evidence, claimant as cw-1 reiterated the same facts as narrated in the claim petition. She has claimed a sum of Rs. 20,00,000/- (Rupees twenty lakhs) only a compensation. Cw-1 has exhibited the following documents-:

Ext-1: Accident Information Report (Form 54)

Ext-2: Postmortem Report

Ext-3: FIR

Ext-4: Charge-sheet

Ext-5, 6 & 7: Money-receipts of TMCH dated 01/03/2021

Ext-8, 9 & 10 : Tax Invoice dated 01/03/2021

Ext-11: Elector Photo Identity card of the claimant.

7. Cw-2 Sri Dhanesh Khodal is the eye-witness to the accident. He deposed that on 01/03/2021 at about 2.30 pm, while he was standing near Rabartola centre (NH 15), he saw the claimant's husband – Supal Khodal @ Subal Khodal@ Sukal Khodal @ Siphil Khodal was proceeding from Alisinga Centre towards his home by riding his bi-cycle in his proper side. When he reached Rabartola Centre, then the vehicle bearing Registration no NL-01K-1822(Tata Truck) came from the same direction in high speed and in negligent manner endangering human life and knocked the claimant's husband forcefully from the backside. As a result , he sustained multiple grievous injuries on his head, leg and several parts of his body. He was immediately admitted at 30 bedded hospital, Dhekiajuli. Thereafter, he was admitted at TMCH, Tezpur for better treatment but the doctors declared him dead.

8. So, the CWs have fully corroborated with each other as regards the accident. Perusal of Ext-1 (Form 54) reveals that the RTA in which the claimant's husband died had been caused by the offending Truck bearing Registration no NL-01K-1822 on

01-03-2021 at 2.00 PM on N.H. 15 , Robortola Centre, Dhekiajuli. Ext -1 further reveals that a Dhekiajuli P.S. case no -124/2021 u/s 279/304(A) IPC was registered. Ext-3 is the FIR lodged by the claimant regarding the accident. Ext- 4 is the charge-sheet, which clearly reveals that an FIR was lodged against Samnur Ali, the driver of the offending truck bearing Registration No. NL-01/K-1822(Tata Truck) and the case has been charge-sheeted against him u/s 279/304(A)/427 IPC.

9. To determine the negligence of the driver of the offending vehicle I am being guided by the judgment of Hon'ble High Court in the case of Basant Kaur & others Vs Chattar Pal Singh & others reported in 2003 ACJ 369 MP (DB), wherein it has been held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing the accident.

10. *In Bimla Devi and ors. Vs. Himachal Road Transport Corporation and Ors (2009) 13 SC 530, Supreme Court held that " In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary 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 claimants. The claimants 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."*

11. To determine the negligence of the driver of the offending vehicle, in the case of *Basant Kaur & Ors. Vs- Chattar Pal Singh and Ors.* [(2003 ACJ 369 MP (DB)], it has been held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing the accident. Further, it has been held in catena of cases that the proceeding under the Motor Vehicle Act are not akin to the proceeding as in civil suit and hence, strict rules of evidence are not required to be followed in this regard.

12. Thus, in view of the discussion of the evidences of the CWs and the exhibited documents relating to the criminal case produced by CW-1 in her evidence, it is found that the claimant has been able to establish that the RTA in which her husband had died had been caused due to rash and negligent driving by the driver of the offending vehicle(truck) bearing registration No.NL-01K-1822. The case is accordingly decided in favour of the claimant.

13. As per Form 54 (Ext-1) the Insurance policy with United India Insurance Co.Ltd , policy no 1311003119P111374986 of the offending Truck bearing No NL-01K-1822 was valid upto 05-12-2020 and does not cover 01-03-2021 , the date of alleged occurrence. As the offending vehicle bearing Registration No. NL-01K-1822(Tata Truck) was not in insurance coverage at the relevant time of accident, so, OP NO 1, owner of the offending

vehicle bearing Registration No. NL-01K-1822(Tata Truck) is liable to pay compensation, if any, awarded to the claimant.

14. Now, coming to the compensation with regard to the claimant, who is dependent on the income of the deceased, she has claimed in the claim petition as well as in her evidence that her deceased husband used to earn a sum of Rs. 15,000/- (fifteen thousand) per month from his daily work and business. And the claimant and the family members were fully dependant on his income. And , now they are facing acute hardship. As there is no income certificate in this regard, so Rs. 5000/- is taken to be his monthly income.

15. Claimant side has taken the plea that the claimant's husband was admitted at 30 bedded hospital, Dhekiajuli for medical examination and necessary treatment but due to grievous injury , he was admitted at Tezpur Medical College Hospital, Tezpur for better treatment. But, he was declared dead. Claimant has claimed that she spent Rs. 20,000/- for his treatment. She has exhibited some vouchers . Exts- 5 to 10 are the money receipts of TMCH and vouchers of different store . In the said voucher, the name of the injured-Sukal Khodal is there.

16. On calculation of the aforesaid vouchers, it comes to Rs.3,500/-. So, the claimant is entitled to get compensation amount regarding medical expenditure prior to death of the deceased and purchase of medicines from different medical stores.

17. As the deceased was 50 of years as per the PM report and also as mentioned in the claim petition , so multiplier 13 will be applicable in this case.

18. Now the deceased was 50 years when the accident took place, so 30% should be added along with his established income of Rs 5000/-. Hence, notional income of the deceased comes to Rs 5,000/- + Rs 1,500/- = Rs 6,500/-

19. Now, Sarla Verma & others –Vs- Delhi Transport Corporation & others(2009)6SCC 121 does not say anything about deduction on account of personal expenses if there is only one dependant. So, in case there is one dependent of the deceased, it should be calculated in the manner as in case of a bachelor. Taking into consideration that the claimant is the only dependant of the deceased, this Tribunal is of the opinion that the deduction as such should be 50% towards personal and living expenses of the deceased in this instant case.

20. Regarding loss of estate, loss of consortium and funeral expenses, claimant is entitled to get Rs 15,000/-, Rs 40,000/- and Rs 15,000/- respectively.

21. In view of the discussions made, the computation of compensation is awarded as follows:-

A. Annual income of the deceased (6,500/-x 12)	: Rs. 78,000/-
B. After deducting 50% of the annual income of the deceased	: Rs. 39,000/-
C. After multiplied with multiplier, amount comes to = 39,000x 13	: Rs 5,07,000/-
D. Loss of Estate	: Rs. 15000/-
E. Loss of consortium	: Rs. 40,000/-
F. Funeral expenses	: Rs 15,000/-
Regarding medical expenses, claimant is entitled to get	: Rs 3,500/-
Total : Rs. 5,80,500/-	

Thus, claimant is entitled to get **Rs. 5,80,500/- (Rupees Five lakhs Eighty Thousand Five Hundred only)**

ORDER

In the result, the claim petition is allowed, awarding **Rs. 5,80,500/- (Rupees Five lakhs Eighty Thousand Five Hundred only)** with interest thereon @ 6% per annum from the date of filing the case i.e. 06.04.2022 till realization. The OP NO 1 owner of the vehicle bearing Registration No. NL-01K-1822(Tata Truck), Sri Ramesh Rai is directed to make payment within a period of 30 days from the date of the order into the Bank Account of this

Tribunal through RTGS or NEFT for transfer of the same to the claimant in her account.

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 on contest.

Given under my hand and seal of this Tribunal on this 15th 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:

None.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext-1: Accident Information Report (Form 54).

Ext-2: Postmortem Report.

Ext-3: FIR.

Ext-4: Charge-sheet.

Ext-5, 6 & 7: Money-receipts of TMCH.

Ext-8, 9 & 10 : Tax Invoice.

Ext-11: Elector Photo Identity card of the claimant.

4. Exhibits of the Defence:

NIL.

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