

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

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

Member, MACT, Sonitpur

Tezpur

MAC No. Case No: 61/ 2020 (Death)

1. Smti Gauri Bepari
D/o: Late Gobinda Bepari
Vill: Bogipukhuri, Alisinga
P/S: Dhekiajuli
Dist: Sonitpur, Assam

2. Smt. Parbati Bepari
D/o: Late Gobinda Bepari
Vill: Bogipukhuri, Alisinga
P/S: Dhekiajuli
Dist: Sonitpur, Assam

3. Sri Kamala Bepari
W/o: Late Gobinda Bepari
Vill: Bogipukhuri, Alisinga
P/S: Dhekiajuli
Dist: Sonitpur, Assam

-----Claimants

-Vs-

1. Sri Pradip Sharma
S/O: Late Gopal Sharma
Vill: Purani Bheti
PO- Jamuguri
Dist- Sonitpur, Assam
----- Driver of the offending vehicle

2. Managing Director
Assam State Transport Corporation
Paltan Bazar, Guwahati
Dist- Kamrup (M), Assam
----- Owner of the offending vehicle

-----Opposite parties.

Date of argument: 26-09-2022

Date of Judgment: 19-10-2022

APPEARANCE:

Advocate for the claimant : Mr. Srikanta Karmakar

Advocate for the opposite party No.1 & 2 : Mr. Diplu Baruah

J U D G M E N T

1. The claimants – Gauri Bepari, Parbati Bepari and Kamala Bepari have filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs. 20,55,000/- (Rupees Twenty Lakh Fifty Five Thousand only) for the death of

their Father/husband- Gobinda Bepari in the motor vehicle accident.

2. The claimants' case in brief is that on 26-10-2020 at about 5.30 p.m., the husband/father of claimants- Gobinda Bepari (since deceased) was on his way to Alisinga Centre for purchasing vegetables and at that relevant point of time, the offending vehicle bearing Registration No. AS-20/1506 (ASTC Bus) was coming from Tezpur side and going towards Orang side. The said vehicle (ASTC Bus) was driven by its driver in a very rash and negligent manner and lost there by lost control of the said Bus. As a result the bus hit the deceased Gobinda Bepari from his back side. The deceased Gobinda Bepari was walking by the side of the road on N.H.-15 at Alisinga centre and due to the said impact, the said victim sustained grievous injuries on his person specially on his head and he died on the spot of accident. Subsequently, the body was shifted to the hospital and his post-mortem was done at the Tezpur Medical College & Hospital, Tezpur.

It is stated that the said deceased was of sound health and mind prior to his death and was the only earning male member of his family who used to maintain his said whole family by his earnings. Both the daughters of the deceased are unmarried and were fully dependent on their father's Income. The deceased prior to his death was a skilled labour who was expertized in cutting huge trees and he was also taken on a hire basis by the Forest Department officials of Assam for cutting huge trees and Jungle in

which he was expertized and he used to earn handsome amount from the said work.

3. Notices were issued on the opposite party Nos. 1, & 2. The case proceeded ex parte against them as they failed to appear and contest the case after due service of notices. Later, vide order dated 07.03.2022, the ex parte order against OP Nos. 1 and 2 was vacated and their written statement was accepted.

4. The OP No.1 and 2 filed joint written statement denying the claims and allegation of the claimants made in the claim petition. It is stated that the deceased must have sustained injuries due to negligence on his part and there was no rash and negligent driving on the part of OP No.-1 (Driver) . It is further stated that at the time of the alleged accident, the OP No.1 had a valid driving license.

The answering Opp. Parties also vehemently denied the monthly income of the deceased and the source of income as the claimants have deliberately failed to describe elaborately about the nature of services. Hence, prayed for dismissal of the claim petition.

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

(i) Whether the deceased, namely Late Gobinda Bepari died in a road traffic accident occurred on 26.10.20, due to the rash and

negligent driving of the driver of the offending vehicle bearing registration No: AS-20-1506 (ASTC Bus) ?

(ii) Whether the claimants are entitled to receive compensation? If so, from whom and to what extent ?

6. During the course of hearing, the claimants side examined 4 (Four) numbers of witnesses including claimants themselves. 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 claimants and the Opposite Party, passed the judgment on the issues as follows.

Issue No. 1 :

9. The Claimant- Smti Gauri Bepari examined herself in the case as CW-1 She has reiterated the same facts as narrated by her in her claim petition regarding accident of her deceased father.

10. It is in the evidence of CW-1 that on 26-10-2020 at about 5.30 p.m., her father– Gobinda Bepari (since deceased) was on his way to Alisinga Centre for purchasing vegetables and at that relevant point of time, the offending vehicle bearing Registration No. AS-20-1506 (ASTC Bus) was coming from Tezpur side and going towards Orang side. It is alleged that the said vehicle (ASTC

Bus) was driven by its driver in a very rash and negligent manner and he lost control of the said Bus. As a result, the Bus hit the deceased Gobinda Bepari from the back side. The deceased Gobinda Bepari was walking by the side of the road on N.H.-15 at Alisinga centre. Due to the said impact, he sustained grievous injuries on his person specially on his head and he died on the spot of accident. Subsequently, the body was shifted to the hospital and his post-mortem was done at the Tezpur Medical College & Hospital, Tezpur.

CW-1 further stated that the deceased was sound health and mind prior to his death and was the only earning male member of her family. The two sisters are unmarried and were fully dependent of their father's income. Her father about 60 years and earning handsome amount by working as a skilled labour for cutting huge trees.

11. CW-2 Smti Kamala Bepari, CW-3 Smti Parbati Bepari, are the wife and another daughter of deceased- Gobinda Bepari. CW-4 Sri Paresh Sarkar is the son in law of deceased Gobinda Bepari. They also narrated the same facts regarding the said accident and supported CW-1. CW-4 claimed to have witnessed the accident as he was with the Gobinda Bepari (since deceased) at that time.

12. Perused the documents submitted by the CW-1. in support of her claim petition Exhibit- 4 is Form 54 i.e. the Accident Information Report which clearly shows that the deceased, namely, Gobinda Bepari met with an accident on 26-10-2020 at about 5.30

p.m. at Alisinga Centre, on NH-15. At the time of said accident, the offending vehicle (ASTC Bus) bearing Registration No. AS-20-1506 was involved, Regarding the said accident, a police case has been registered vide Dhekiajuli P.S. Case No. 664/20 u/s 279/304(A) of I.P.C., Exhibit-1 is the certified copy of printed form of FIR, Exhibit- 2 is the certified copy of hand written FIR lodged by Sri Paresh Sarkar (CW-4) regarding the accident, Exhibit- 3 is the Postmortem Report, Exhibit- 5 is the Charge Sheet, Exhibit- 6 is the Death Certificate of the deceased Gobinda Bepari. In cross examination CW-1 stated that she did not see the accident.

13. *To determine the negligence, reliance is placed on the judgment reported in 2009 ACJ 287, National Insurance company Limited vs. Pushpa Rana & ors. 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.*

14. In the case of Ranu Bala Paul & Ors. v. Bani Chakraborty & ors. reported in 1999 ACJ 634, it was observed as under:

"In deciding a matter tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor

Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accidents Claims Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation' But the tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary inquiry and this is a legislation for the welfare of the society."

15. *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."

16. Therefore, from the above discussion, it is held that the deceased – Gobinda Bepari died in a road traffic accident on 26-10-2020 and that the accident had taken place due to rash and negligent driving of the driver of the offending vehicle bearing

Registration No. AS20/1506 (ASTC Bus). Hence issue no.-1 is decided in favour of the claimants.

Issue No. 2:

17. It. Is admitted fact that the offending vehicle bearing Registration No. AS-20-1506 (ASTC Bus) is a Govt. vehicle which had no insurance coverage. So, O.P. No. 2 is liable to pay compensation to the claimant.

18. According to the claimants who adduce evidences as CW-1, CW-2 and CW-3, the deceased was of sound health and mind prior to his death and he was the only earning male member of the family working as a skilled labour who was expertized in cutting huge trees. The claimants being the wife and daughters of the deceased were fully dependent on his income. But after his death, they are facing acute financial hardship.

In the cross examination, CW-1 stated that she has not produced any income certificate of her deceased father. She did not furnish any age proof document to prove the age of her father at the time of accident.

19. Regarding age of the deceased, the claimants stated in the claim petition that the deceased was about 60 years at the time of accident and PM report also mentioned the same age. So, there is no dispute as regards the age of the deceased. Hence ,the age of the deceased as 60 years be considered in this case.

20. As per the case of Sarla Verma –vs- DTC, [AIR 2009(6) SC 121] the multiplier would be 9.

21. Regarding as the monthly income of the deceased concerned, the claimants have claimed in the claim petition that his monthly earning was Rs. 30,000/- by working as a skilled labour. But, nowhere in their evidence, the claimants have stated the actual income of the deceased. Even the income certificate is not produced. Opposite parties denied the earning of the deceased. However, for the ends of justice since there is death and MV Act is also a beneficial legislation, so to give to some extent relief to the family of the deceased, the monthly income of the deceased to be considered as Rs. 6,000/-, considering the family income of such category persons in the concerned locality at the prevailing time.

22. So far future prospects to be added is concerned, the five judge bench of Hon'ble Apex Court, in the case of National Insurance Co. Ltd. Vs. Pranay Sethi, reported in (2017) 16 SCC 680, has held at Para 61(iii) and 61(iv) as follows :

23. "61(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15% actual salary should be read as actual salary less tax.

24. 61(iv) in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of compensation. The established income means the income minus the tax component."

Thus relying on the ratio of the aforesaid judgment of the Hon'ble Supreme Court, the claimant in the instant case, is entitled to get 10% increase towards future prospect. The annual income of the deceased is thus computed to be [Rs. 72,000/- + 10% of Rs. 72,000/- = Rs. 79,200/-]

25. So far dependency is concerned the deceased was married and he was left behind his wife and two unmarried daughters. Therefore the deduction towards personal and living expenses of the deceased should be $\frac{1}{3}^{\text{rd}}$.

The annual income of the deceased is, thus computed to be [Rs. 79,200/- Rs. 26,400/- = Rs. 52,800/-]

26. 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.

27. In view of the aforesaid discussion, the total amount of compensation is as follows :-

A) Loss of dependency (Rs. 52,800 x 9) = Rs. 4,75,200/-

B) Funeral expenses = Rs. 15,000/-

C) Loss of estate = Rs. 15,000/-

TOTAL = Rs.5,05,200/-

Rupees Five lakhs five thousand two hundred only.

28. Hence, issue No. 2 is decided accordingly.

ORDER

In the result, the claim petition is allowed, awarding Rs. 5,05,200/- (Rupees five lakhs five thousand two hundred) only with interest @ 6% per annum to the claimants from the date of filing of the case i.e. 24-12-2020 till full and final realization

The OP No.- 2 i.e. Managing Director, Assam State Transport Corporation, Paltan Bazar, Guwahati, Kamrup(M), Assam is directed to deposit the awarded amount within a period 30(thirty) days from the date of this order to this Tribunal only by RTGS/NEFT, for transfer of the same to the account of the claimants.

The case is disposed of on contest.

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 19th day of October, 2022, at Sontipur, 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 Gauri Bepari.
- (ii) Smt. Parbati Bepari
- (iii) Smti Kamala Bepari

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

- Ext. 1 Certified copy of printed form of FIR.
- Ext. 2 Certified copy of hand written FIR.
- Ext. 3 Postmortem Report
- Ext. 4 Accident information report (Form 54).
- Ext. 5 Charge Sheet.
- Ext. 6 Death Certificate

4. Exhibits of the defence:

NIL.

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