

**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: 05/ 2021

1. Smti. Alengi Udia
W/o : Late Tisha Udia
2. Miss Drupoti Udia
D/o Late Tisha Udia
3. Sri Rajen Udia
D/o Late Tisha Udia
4. Miss Himanti Udia
D/o Late Tisha Udia
5. Miss Jyanti Udia
D/o Late Tisha Udia
(Represented by mother cum claimant No.1)
All are residents of Vill.: Seesa Tea Estate,
Panabri Sowra Line,
P.O.: Thakurbari, P.S.: Tezpur
Dist.: Sonitpur, Assam

----- Claimant

-Vs-

1. Sri Bhuban Pegu
S/o Late Khogen Pegu
R/o House No. 25
Nayanpur Main Road
P.O.: Ganeshguri, Guwahati
Dist.: Kamrup(M), Assam
----- Owner of the offending vehicle
2. Sri Anuj Bora
S/o Sri Jiban Bora
R/o Vill: Rajkhowa Gaon
P.O.: Azad, P.S.: Panigaon
Dist.: Lakhimpur, Assam
----- Driver of the offending vehicle
3. United India Insurance Co. Ltd.
----- Insurer of the offending vehicle
-----Opposite parties.

Date of argument: 15-10-2022, 23-11-2022

Date of Judgment: 19-12-2022

APPEARANCE:

Advocate for the claimant : Mr. S. K. Biswas

Advocate for the opposite party No.3 : Mr. D. Bose

J U D G M E N T

1. The claimant – Smti Alengi Udia has filed an application u/s 166 of the M.V. Act 1988, seeking compensation for the death of her husband– Tisha Udia in a Motor Vehicle Accident.

2. The claimant's case, in brief is that on 18-08-2020 at about 1.00 pm, the deceased, Tisha Udia was coming home from Tezpur town in his motorcycle bearing registration No. AS-12V-3919 as a pillion rider along the left side of NH-15 in a very normal speed. The motor cycle was being driven by Sri Sawan Sawra who is a neighbour of the deceased. When they reached Kadamtall Ghoramari area, then the offending vehicle bearing Registration No. AS-01JC-6753 (Tourist Bus) come from the same direction from Tezpur towards Balipara in very high speed, driver recklessly and in negligent manner. At that time road repair works was going on and the labour/road workers stopped them for a while. At that moment, the driver of the offending vehicle hit the motorcycle and the deceased with high force from back side. The accident resulted in the death of the pillion rider, namely- Tisha Udia on the spot of accident and injury to the rider of the motorcycle. The motorcycle also got damaged in the accident.

Both the injured and the deceased were taken to Kanaklata Civil Hospital, Tezpur for treatment. The post mortem examination of the dead-body of the deceased was conducted at

kanaklata Civil Hospital, Tezpur. The accident occurred due to rash and negligent driving of the driver of the offending vehicle bearing Registration No. AS-01JC-6753 (Tourist Bus). The claimant were the dependants upon income of the deceased. The deceased was the owner of the rice-mill and a fair-price shop having licence under the Assam Public Distribution of Articles Order, 1982.

3. The case proceeded ex parte against OP Nos. 1 & 2. While the O.P NO 3 i.e. The United India Insurance Company Ltd. contested the case by submitting the written-statement whereby the claims and allegations made by the claimant are all denied. It is stated that there is no case of action against the Opp. Party in respect to the alleged accident because the offending vehicle bearing Registration No. AS-01JC-6753 (Tourist Bus) was not insured with this Opp. Party at the time of accident on 18/08/2018. It is further stated that the owner of the registered Motor Cycle bearing Registration No. AS-12V-3019 is also necessary party but he is not impleaded as party in the instant claim nor the Insurance Company of the said vehicle motor cycle bearing Registration No. AS-12V-3019 is impleaded as party in the claim. It is stated that the driver of the alleged offending vehicle bearing Registration No. AS-01JC-6753 (Tourist Bus) was not holding a valid and effective driving licence at the time of accident. It is also stated that the accident did not take place for the negligence of driver of the Tourist Bus bearing Registration No. AS-01JC-6753 rather it took place due to rash and negligent driving of the deceased driver of

the Motor cycle bearing Registration No. AS-12V-3019. Hence, prayed for dismissal of the claim petition.

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

(1) Whether deceased-Tisha Udia died in a RTA on 18-08-2020 that had taken place due to negligence of the driver of vehicle(Tourist Bus) bearing registration No. AS-01JC-6753?

(2) Whether the claimant is entitled to receive compensation? If so from whom and to what extent?

5. During the course of hearing, the claimant side examined 5 (five) numbers of witnesses. The Opposite Parties did not adduce any evidence.

6. Heard arguments of Learned Counsels for both the parties. Claimant side submitted written argument also. Perused the case record as well as the documents.

Discussion, Decision and Reason there of :

7. 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):

8. In support of the claim petition, claimant No.1 Smti Alengi Udia adduced her evidence as CW-1 and also examined other 4 CWs. CW-1 has reiterated the same facts as narrated in the claim petition. She has alleged that the accident took place due to rash and negligent driving of the driver of the offending vehicle (Tourist Bus). Other CWs-2, 3, 4, also fully supported her, CW-5 is the independent witness, He has stated clearly that he was riding the motorcycle all by himself and the deceased-Tisha Udia was travelling as a pillion rider. He alleged that the offending vehicle(Bus) hit the motorcycle and the pillion rider (deceased) with high force from the back side.

9. Ext.1.,which is the Accident Information Report(Form-54), It reveals that an accident occurred on 18-08-2020 at 1.00 P.M. at Kadamtali Gharamari, NH-15 under Tezpur P.S.. The vehicle bearing registration No. AS-01JC-6753(Tourist Bus) was shown to be the offending vehicle. Ext.2 and 3 are the FIR and Ejahar lodged by this claimant alleging involvement of the vehicle bearing registration No. AS-01JC-6753(Tourist Bus) causing death of Tisha Udia (Claimant No.1's husband) due to rash and negligent driving of the said bus by its driver. On receipt of the Ejahar, one Tezpur PS Case No. 1493/2020 u/s 279/338/304(A) IPC was registered. Ext.4 is the charge sheet which shows that the case has been Charge Sheet against the driver of the offending vehicle u/s

279/304(A)/337 IPC. Ext.-11 is the MVI report of the offending vehicle.

10. *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."*

11. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mentioned in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one.

12. *In Bimla Devi and ors. Vs. Himachal Road Transport Corporation and Ors (2009) 13 SC 530, the Hon'ble 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."

13. Therefore, in view of the evidences of the CWs as well as documents relating to criminal case, it is held that deceased- Tisha Udia sustained fatal injuries in the alleged accident due to rash and negligent driving by the driver of the offending vehicle(Tourist Bus) bearing registration No. AS-01JC-6753.

Hence, issue no.1 is decided in favour of the claimant.

Issue No. (2):

14. From the cross examination of the CW- Nos.1 to 4 and on perusal of Ext.1 Accident Information Report (Form-54), it has come out that the offending bus was insured with OP. No.3 vide policy No.1302003118P100593845 which was valid upto 09-04-2019. But there is no insurance policy after 09-04-2019. Accident took place on 18-08-2020. It is an admitted fact that the offending vehicle bearing registration No. AS-01JC-6753 (Tourist Bus) was not in insurance coverage at the relevant time of the accident. So, the OP No.1, owner of the vehicle bearing registration No. AS-01JC-6753(Tourist Bus) is liable to pay compensation to the claimant.

15. According to the claimant, the deceased was a businessman by occupation and his monthly earning was Rs. 40,000/-, but the claimant has failed to furnish any document to prove the

occupation and income of the deceased. Under such circumstances, the income of the deceased is taken to be Rs. 9000/- per month.

16. Regarding age of the deceased, as per claim petition the age of the deceased is stated to be 55 years when the accident took place. No age proof document of the deceased has been submitted. But in the P.M. report, the age of the deceased is also stated to be 55 years. The accident occurred on 18.08.2020. It transpires that the deceased was about 55 years at the time of accident, which can be taken into consideration in this case.

17. As per the case of Sarla Verma -vs- DTC [AIR 2009(6) SC121] the multiplier would be 11.

18. In this instant case, the deceased left behind his wife (Claimant No.1) and his 4 children (claimant Nos. 2 to 5). Therefore, the claimants being the legal heirs and successor of the deceased are found entitled to get the compensation.

19. As such, the standardized deduction towards personal and living expenses of deceased is applicable as in case of Sarla Verma. So $1/4^{\text{th}}$ is required to be deducted with a presumption that had the deceased been alive, he could have spent $1/4^{\text{th}}$ for his personal and living expenses.

20. 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, Loss of consortium

and Funeral expenses should be Rs. 15,000/- Rs.40,000/- and Rs.15,000/-respectively. Accordingly, the claimants are found entitled to get the following amount as compensation:-

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

A) Annual income of the deceased (Rs. 9000 /-x 12)	= Rs. 1,08,000/-
B) After deduction 1/4 th of the annual income of the deceased.	= Rs. 81,000/-
(c) After multiplied with multiplier (81,000/- x 11)	= Rs 8,91,000/-
D) Funeral expenses	= Rs. 15,000/-
C) loss of consortium	= Rs. 40,000/-
E) <u>Loss of estate</u>	= Rs. 15,000/-
TOTAL	= Rs. 9,61,000 /-

(Rupees Nine Lakhs Sixty one thousand only.)

Hence, issue No. 2 is decided accordingly.

ORDER

In the result, the claim petition is allowed, awarding **Rs. 9,61,000/- (Rupees Nine Lakhs Sixty one thousand)** only with interest thereon @ 6% per annum from the date of filing of the case i.e. 15-02-2021 till final realization. The OP No.-1 i.e.

Sri Bhuban Pegu, owner of the offending vehicle bearing Registration No. AS-01JC-6753(Tourist Bus) is directed to make payment of the aforesaid amount to the claimant No.1 Smti Alengi Udia, wife of deceased within a period of 30(thirty) days from the date this order to this Tribunal only by RTGS/NEFT, for transfer of the same to the account of the claimant.

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 19th 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) Smti. Alengi Udia
- (ii) Smti Drupoti Udia
- (iii) Sri Rajen Udia
- (iv) Smti Himanti Udia
- (v) Sri Sawan Sawrha

2. Witness of the Defence:

Nil

3. Claimant's Exhibits:

- Ext. 1 Accident Information Report (Form 54).
- Ext. 2 Certified copy of First Information Report (FIR).
- Ext. 3 Certified copy of Ejahar
- Ext. 4 Certified copy of Charge Sheet.
- Ext. 5 Magisterial Order of taking cognizance.
- Ext. 6 Post Mortem Report
- Ext. 7 Death Certificate.
- Ext. 8 R.C. of the offending vehicle
- Ext. 9 Driving Licence of the driver of the offending Vehicle.
- Ext. 10 Road Permit of the offending vehicle.
- Ext. 11 MVI Report of the offending vehicle.
- Ext. 12 Insurance policy of the offending vehicle (Lapsed)

Ext. 13 Elector Photo Identity card of the Alengi Udia.

Ext. 14 Aadhaar card of the Drupoti Udia.

Ext. 15 Elector Photo Identity card of the Rajen Udia.

Ext. 16 Elector Photo Identity card of the Himanti Udia.

Ext. 17 Birth certificate of Jyanti Udia.

Ext. 18 to 19 Photograph of the offending vehicle and
motorcycle.

4. Exhibits of the Defence:

NIL.

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