

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

Present : Sri R. Goswami,  
Member,  
Motor Accident Claims Tribunal,  
Sonitpur, Tezpur

**MAC CASE NO. 85 of 2019(D)**

1. Mrs. Juthika Dutta @ Jyotika Dutta,  
Wife of Sri Habul Dutta,
2. Sri Habul Dutta  
S/O- Late Paresh Dutta

Both are resident of  
Vill.- Narayanpur (Mijibari)  
P.O.- Alisinga  
P.S.- Dhekiajuli  
Dist.- Sonitpur, (Assam)  
Pin.- 784112  
Caste- General  
Phone No.- 9435222073.....claimants.

**-Versus-**

1. Sri Prodip Kr. Nath,  
S/O Pitambar Nath,  
Vill.- Naharbari Bangali,  
P.O.- Maz-Rowmari  
P.S.- Dhekiajuli  
Dist.- Sonitpur, Assam,  
Pin-784117  
[( Owner of the vehicle No. AS-12-L-4862, (Centuro  
M. Cycle)
2. Sri Kumardeed Nath  
S/O Sri Prodip Kr. Nath  
Vill.- Naharbari Bangali,  
P.O.- Maz-Rowmari  
P.S.- Dhekiajuli  
Dist.- Sonitpur, Assam,

Pin-784117

[( Driver of the vehicle No. AS-12-L-4862, (Centuro M. Cycle)

3. United India Insurance Co. Ltd.  
Branch Office, Dhekiajuli,  
Abala Bhawan, Main Road Dhekiajuli, Sonitpur,  
Assam,  
Insurer of the vehicle No. AS-12-L-4862, (Centuro M.Cycle)  
.....opposite parties.

### **ADVOCATES APPEARED**

For the claimant :- Najrul Islam, Advocate.  
For the O.P.No.1&2 :- Ex-parte  
For the O.P. No. 3 :- Paramananda Kakoty, Advocate.

Date of Argument :- **28-12-2021.**  
Date of Judgment :- **20-01-2022**

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

This is an application u/s- 166 of M.V. Act, 1988 filed by one Mrs. Juthika Dutta, praying for grant of compensation on account of death of her daughter Mallika Dutta, in a road traffic accident.

1. The case in brief is that on 19-04-2019 at about 6.45 P.M. the deceased Mallika Dutta accompanied by her mother, the present claimant, were on their way back home from Narayanpur chowk on NH-15 on foot. On the way a two wheeler bearing registration no. AS-12-L-4862 (Centuro motor cycle) had struck the minor daughter of the claimant. Mallika Dutta with her injuries sustained in the RTA had been declared dead at TMCH, Tezpur where

she was shifted immediately following the RTA. Hence this claim for compensation on account of death in a RTA.

2. Following the RTA, Dhekiajuli P.S. Case No. 283/2019 U/S 279/338/304A of IPC had been registered on 23/04/2019 against Kumardeed Nath, the rider of alleged offending motor cycle.

3. The case proceed ex-parte against OP No.-1 and OP No.-2 owner and rider respectively of the alleged offending motor cycle.

4. O.P. No. 3, the insurer of the alleged offending motor cycle United India Insurance Co. Ltd inter alia denied the contention raised by the claimant. The answering O.P contended about the present claim petition not being maintainable in law for failure of the driver/owner of the insured vehicle to communicate the information with regard to the date, time and place of RTA, the name of the driver, particulars of his driving license, particulars of persons injured or killed in the accident and the officer in charge of the police station concerned to communicate a copy of the report prepared following information regarding the accident involving death or bodily injury to any person within 30 days to claim tribunal, insurer and the owner of the offending vehicle under section 134(C) and 158(6) of the M.V Act respectively. The answering O.P. further contended that since indemnifying the insured, with regard to payment of compensation to the third party is subject to insured not violating specific conditions of the

insurance policy, the answering O.P. reserves its right to avail defence available u/s- 149(2) a (ii) by adducing evidence. The answering O.P. thus prays for dismissal of the claim.

5. On the pleadings aforesaid, following issues have been framed-

1. Whether on 19-04-2019 at about 6.45 PM the victim Mallika Dutta had died of injuries sustained in the RTA that had been caused due to negligence of the person riding the two wheeler bearing registration No.AS-12-L-4862,(Centuro motor cycle) at the relevant point of time ?
2. Whether the claimant is entitled to get any compensation, as prayed for, and if so, from whom and to what extent?

6. I have heard argument advanced by the Learned Counsel on both sides. I have also perused the documents available on record.

### **Issue No. 1**

7. The evidence of CW-1, claimant Juthika Dutta suggest that on 19-04-2019 at about 6.45 PM CW-1 accompanied by her minor daughter Mallika Dutta were on their way back home from Narayanpur Chowk on foot. On their way on NH-15, a two wheeler bearing Registration no. No. AS-12-L-4862, (Centuro motor cycle) had struck the minor daughter of CW-1. Mallika Dutta, the minor daughter of the CW-1 had succumbed to her injuries at

TMCH immediately their after. CW-1 also claimed having fractured her left leg in the said RTA. According CW-1 who was an eye witness the RTA had resulted due to negligence of the person riding the alleged offending vehicle.

8. The CW-1 exhibited following documents in course of his evidence; ext. 1 AIR in Form 54, ext. 2 P.M. report of the deceased, ext. 3 Certified copy of the FIR., ext. 4 birth certificate of deceased Mallika Dutta.

9. In her cross examination CW-1 reiterated to having received injuries along with her daughter in the RTA involving a two wheeler bearing Registration No.AS-12-L-4862(Centuro motor cycle). CW-1 further reiterated her minor daughter having succumbed to injuries received by her immediately their after. CW-1 admitted to the alleged offending motorcycle not insured on 19-04-2019 as the relevant insurance cover note in respect of the alleged offending motor cycle had been valid up to 16-02-2019.

10. CW-2 an eye witness, Parush Nath Orang claimed having seen the alleged offending motorcycle bearing registration no. AS-12-L-4862 striking at two pedestrians, a minor by name of Mallika Dutta and her mother, Juthika Dutta on 19-04-2019 at around 6.45 PM at Narayanpur Chowk on NH-15. According to CW-2 the RTA had resulted due to negligence of the person riding the above motor cycle at relevant point of time. CW-2 claimed having come

to know that Mallika Dutta had succumbed to her injuries sustained at TMCH immediately thereafter.

11. In his cross examination CW-2 reiterated to having seen the claimant and her daughter receiving injuries in the RTA at Narayan Chowk involving a two wheeler bearing Registration No.AS-12-L-4862(Centuro motor cycle). According to CW-2 the alleged offending vehicle belonged to one Prodip Kr Nath.

12. Now coming to the standard of proof in a MAC case with regard to negligence, that is summery in nature and the basic objective being payment of compensation on account of death of third person in a RTA, I am being guided by the judgment reported in **Kaushnumma Begum and others v/s New India Assurance Company Limited, 2001 ACJ 421 SC**, it was held that the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would make the petition maintainable under [section 166](#) and [140](#) of the Act. 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 mention 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.

13. I am also inclined to refer to the observation of our Apex court with regard to appreciation evidence in a MAC case in Sunita & others Vs Rajasthan SRTC & others as reported in (2020)SCC 486 where in two judges bench of Hon'ble Supreme Court had held in para 34 of the said decision as such "..... the approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witnesses in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matter in issue on the touch stone of preponderance of probability....."

14. Coming to the present case both CW-1 and CW-2 are eye witnesses to the alleged RTA and both of them corroborated each other with regard to circumstances related to by them their respective evidence that the person riding the alleged offending motorcycle had struck CW-1 and her eight year old daughter on a public way. The impact of the strike must have been so forceful that the child died of injuries sustained on the spot and her mother CW-1 had fractured her left leg. Cross examination of both these witnesses failed to weaken evidentiary value of their evidence. The content in the FIR ext-3 also point to the complicity of the person riding the alleged offending motor cycle in causing the RTA in which CW-1 and her minor daughter had sustained injuries. Thus FIR is prima facie proof of the happening. In absence of any evidence adduced by the opposite party alleging contributory negligence, the evidence above is sufficient to establish on

the touch stone of preponderance of probability that the RTA, in which CW-1 and her minor daughter had sustained injuries had been caused due to negligence of the rider of the offending two wheeler.

### **Issue No. 2**

15. The section 168 of the Act envisages that the compensation to be awarded in favour of the claimants should neither be excessive nor on the lower side, but the same should be just, fair and equitable. The difficulty that arises in the case of death of a minor aged 8 years and a student is that she is not earning at the time of the accident.

16. Considering deceased not being an earning member I am being guided by following legal propositions of our Apex court arrived at in its following judgments.

17. In the case of **R.K. Malik and Ors. Vs. Kiran Pal & Ors.(2009)14 SCC 1** the Apex Court suggested that in arriving at the notional income of the deceased, children, a non earning member, the second schedule to the Act is to be resorted to i.e. Rs. 15,000/- per annum. The second schedule is applicable to the claim petitions under section 163(A) of the Act, on the basis of principle of strict liability. The Second Schedule also provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. It is contemplated by Apex court in its above decision that even when compensation is payable under section 166 read with 168 of the Act, deviation from the

structured formula as provided in the Second schedule is not ordinarily permissible, except in exceptional cases.

18. In the decision in **Manju Devi and Ors. Musafir Paswan and Ors. IV (2005) ACC 15**, the Apex Court enhanced the compensation to Rs. 2,25,000/- on death of a boy aged 13 years in an accident by taking the notional income as Rs.15,000/- per annum and applying the multiplier 15 taking recourse to structured formula provided in the second schedule of the Act.

19. In the appeal against compensation of Rs.1 lakh awarded by the tribunal on the death of a five year old girl, the Delhi High court in **Shyam Narayan Vs Kitty tours IV 2005 ACC 1** enhanced the compensation to Rs.2,25,000/- using the structured formula provided in the second schedule of the Act and in addition Rs.50,000/- was awarded on loss of company of the child.

20. In **Lata Wadhwa Vs State of Bihar decided in 2001**, the Apex court, having deviated from its earlier decision in Sarla Verma case made proposition for payment of compensation on the head on "future prospect" even in case of children and women who are non earning members. Later in the appeal in **R.K. Malik and Ors. Vs. Kiran Pal & Ors.(2009)14 SCC 1** from a Delhi High Court's decision allowing Rs 75,000/- over and above the compensation allowed by the tribunal on the conventional head, the Apex court enhanced the compensation on the head "future prospect" to another Rs.75,000/- in addition to Rs.75,000/- allowed by Delhi High court. The Apex court suggested in its said decision

that claim with regard to future prospect in case of children should be addressed by subordinate courts also.

21. Considering claim for compensation in the present case also relate to death of a child in a RTA, legal proposition arrived at by our Apex Court in above decisions also hold true in the present case too. The date of birth of the deceased, Mallika Dutta, minor daughter of the claimant, is 05-07-2011 as per her birth certificate, ext-4. Thus the deceased was around 8 years old on the day of the alleged occurrence. Thus resorting to the structured formula in schedule II of the Act, holding the notional income at Rs. 15,000/- per annum and multiplier of 15 as applicable for victims under the age of 15, a sum of Rs. 2,25,000/- allowed on the head of loss of dependency. In the decision in **R.K.Malik Vs Kiran Paul & others**, discussed above, the Apex court did not contemplate deduction on personal expenses, though deduction on personal expenses is provided in the structured formula in schedule –II of the Act.

22. In the constitution bench judgment in 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, consortium and Funeral expenses at Rs.15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. Subsequently our Apex court in a three judges bench in **Magma General Insurance Co. Ltd. Vs. Nanuram alias Chururam as reported in (2018)18 SCC 130** had contemplated compensation on the head of parental

consortium, spousal consortium and filial consortium for loss of parent, spouse and children respectively.

23. Thus a sum of Rs.40,000/- each is allowed to both parents of the deceased on loss of filial consortium as they have been deprived of company and affection of their daughter for ever since the death was unforeseen. In addition Rs.15,000/- is allowed on the head of funeral expenses and finally Rs.75,000/- on the head of future prospect.

24. Now the insurance policy cover in respect of the offending vehicle, motorcycle bearing registration no. AS-12-L-4862 had expired on 16/2/2019 as per informations reflected in ext-1 AIR in form 54. The RTA in which the minor daughter of the claimant had died occurred on 19/4/2019. Thus the offending motorcycle involved in the RTA was not insured on the day of the alleged occurrence. The owner of the offending two wheeler bearing Registration no. No. AS-12-L-4862(Centuro motor cycle) is held liable to pay the awarded compensation to the claimant.

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

### **ORDER**

In the result, the claim petition is allowed, awarding **Rs.3,95,000/- ( Rupees three lakhs ninety five thousand)** only in compensation. The O.P. No. 1, the owner of the offending vehicle, Prodip Kumar Nath is

directed to make payment with interest thereon @ 6 % per annum from the date of filing of the case i.e. on 01-10-2019 till full and final realization within a period of 30(thirty) days from the date of receipt of order through NEFT in to the Bank Account of MACT, Tezpur.

Given under my hand and seal on this 20th day of January, 2022.

Member, Motor Accident Claims Tribunal, Sonitpur, Tezpur.	( R. Goswami) Member, Motor Accident Claims Tribunal, Sonitpur, Tezpur.
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## **ANNEXURE**

1. Witness of the Claimant:

- (i) Smti. Juthika Dutta alias Jyotika Dutta
- (ii) Sri Parush Nath Orang.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Accident Information Report in Form 54

Ext. 2 P.M. report.

Ext. 3 FIR.

Ext. 4 Birth Certificate of deceased Mallika Dutta.

4. Exhibits of the defence

None.

(R. Goswami.)  
Member  
MACT, Sonitpur, Tezpur