

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

Present: **Smti Bobita Kshetry , AJS,**
Member, MACT, Sonitpur
Tezpur

MAC No. Case No: 83/2015 (Death)

1. Smti Alaka Deka
W/o : Late Jogesh Ch. Deka
Vill.: Napam, P.O.: Pachmile
P.S.: Tezpur, Dist.: Sonitpur, Assam

----- Claimant

-Vs-

1. Md. Jiabul Islam
S/o: Waheb Ali
R/o: Solmara, Punioni
P.S. : Tezpur
Dist.: Sonitpur, Assam
---- Owner of the offending vehicle

2. Md. Abdul Ohab, Abdul Mannan
Vill.: Punioni
P.O.: Solmara
P.S.: Tezpur
Dist.: Sonitpur, Assam
---- Driver of the offending vehicle

3. The New India Assurance Co. Ltd.
Tezpur Branch
Dist- Sonitpur (Assam)
---- Insurer of the offending vehicle
Vide Engine No.H00025189 &
Chassis No. 1414123.

4. The New India Assurance Co. Ltd.
Tezpur Branch
Dist- Sonitpur (Assam)
---- Insurer of the offending vehicle
No. AS-12-F-8521
----Opposite parties.

Date of argument: 20-10-2022, 19-11-2022

Date of Judgment: 30-11-2022

APPEARANCE:

Advocate for the claimant: Mr. P. P. Hazarika

Advocate for the opposite party No.1: Md. N. Uddin

Advocate for the opposite party No.2: Md. N. Uddin

Advocate for the opposite party No.3: Mr. R. Borah

Advocate for the opposite party No.4: Mr. R. Borah

J U D G M E N T

1. The claimant – Smti. Alaka Deka has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs.10,00,000/- (Rupees Ten Lakh only) for the death of her husband–Jogesh Ch. Deka in a Motor Vehicle Accident.

2. The claimants' case, in brief is that on 05-08-2014 at about 9.30 a.m., while the claimant's husband was proceeding from Tezpur towards his residence at Napam by riding his motor cycle AS12-F-8521 with due care and caution at a normal speed keeping the left side of the road, then the offending vehicle bearing temporary registration Mark AS01/AR/TEMP/2274 (JCB-Excavator loader) which was proceeding from the same direction being driven by its driver in a very rash and negligent manner without due care and caution dashed the claimant's husband with high speed near Punioni Solmara. As a result of the accident, claimant's husband sustained grievous head injuries and succumbed to his injuries on the same day. Accordingly, post-mortem examination was conducted at KCH, Tezpur, where it was revealed that death was due to the head injury sustained in the Road Traffic Accident on 05-08-2014.

It is stated that the deceased- Jogesh Ch. Deka was a businessman and till before his death, he had been earning minimum Rs.8000/- (Rupees Eight Thousand) only per month by doing supply business. The claimant and the family members were

fully dependant on the income of the deceased and due to the premature death of the head of the family members, the claimant has been facing acute financial hardship. It is further stated that the offending vehicle was duly registered in the name of its owner and also insured with the New India Assurance Company Limited, Tezpur Branch, So both the owner and insurer of the said offending vehicle jointly and severally are liable to pay compensation to the claimant as claimed under fact law and equity. Hence, the case.

3. Notices were issued on the opposite party Nos. 1, 2, 3 & 4. Opposite Party No.1 & 2 i.e. owner and driver of the offending Vehicle bearing temporary Regd. No. AS01/AR/TEMP/2274 (JCB-Excavator loader) filed the written statement by denying all the facts and allegations and stated that there was no rash and negligent driving on the part of Opposite Party No.2 (driver) and the accident occurred due to the fault of the deceased. It is further stated that the deceased was about 70 years and he did not possess valid driving licence to drive the motorcycle at the time of accident. Hence, prayed to dismiss the claim petition.

4. Opposite Party Nos.3 & 4 i.e. the New India Assurance Company Ltd. has filed written statement. The alleged accident, death due to the alleged accident are all denied by this opposite party. The age of deceased, occupation and monthly income are all denied by this opposite party. It is stated that the vehicle involved in the said accident as alleged by the claimant was not insured with this opposite party at the relevant time of the accident. The

accident occurred on 05-08-2014 at about 9.30 a.m., while the insurance policy for the alleged vehicle bearing temporary registration Mark AS01/AR/TEMP/2274 (JCB-Excavator loader) was covered from 05/08/2014, 12:19:41 PM to 04/08/2015, 11:59:59P.M. i.e. after 3(three) hours from the time of occurrence of the accident. It is further stated that the alleged vehicle was driver by OP No.2 on the relevant date of accident without holding a valid driving licence, Hence the claim is required to be dismissed.

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 accident took place due to rash and negligent driving by the driver of the vehicle No. AS-12F- 8521(M/Cycle) & No. AS/01/AR/TEMP/2274(JCB-Excavator loader) and whether the victim died due to that accident?

(2) Whether the claimant is entitled to any compensation, as prayed for, and if so, from whom and to what extent?

6. During the course of hearing, the claimant examined herself as CW-1. Evidence of CW-2 has been expunged as he failed to appear before this Tribunal to face the cross examination. The Opposite Party has adduced evidences of 2(two) numbers of witnesses as DW-1 and DW-2.

7. Heard arguments of Learned Counsels for both the parties. Also perused the case record as well as the documents submitted by the claimant side.

Discussion, Decision and Reason there of:

Issue No. (1) :

8. The Claimant No.1 Smti Alaka Deka in the claim petition and also in her evidence on affidavit as CW-1 deposed that on 05-08-2014, at about 9.20AM, while her husband was proceeding from Tezpur towards her residence at Napam by riding his motor cycle bearing registration No.AS-12-F-8521 with due care and caution through the extreme left side of the road at a normal speed, then the unregistered offending vehicle vide Engine No.H00025189 & Chassis No.1414123(JCB) which was proceeding from Punioni, being driven by its driver without due care and caution, in a very rash and negligent manner endangering human lives knocked down the Motor cycle along with her husband near Punioni. She claimed that the offending vehicle was in high speed. As a result of the said accident, her husband sustained grievous multiple injuries and he was immediately taken to KCH, Tezpur. But considering his critical condition, he was taken to Guwahati Medical College & Hospital for better treatment. Her husband succumbed to his injuries on the way to Guwahati on that day itself. Thereafter the body of her deceased husband was brought back to Tezpur and accordingly his post-mortem examination was conducted at Kanaklata Civil Hospital, where it was revealed that the death of her husband was due to the grievous head injury in the said

accident which took place on 05-08-2014. CW-1 further stated that at the time of the accident, the Motorcycle bearing registration No. AS 12F8521 was ridden by her deceased husband with due care and caution with a valid driving licence vide D/L No. 76518/S/NT. The said motor cycle was duly registered in the name of her deceased husband and was also duly insured with New India Assurance Co. Ltd. vide Insurance Policy No. 53070431130100012291 valid upto 16.01.2015. In support of her case. CW-1 exhibited the Accident Information Report(Form-54) as Ext.-1, Ext.-3 is the Charge Sheet, Ext.-4 is the Post Mortem Report, Ext.-5 and Ext.-6 are the certified copies of the MVI Report and seizure list of the offending vehicle. Ext.-7 and Ext.-8 are the certified copies of the seizure list and MVI Report of the Motor Cycle No. AS 12F8521.

9. In her Cross examination, CW-1 stated that she was in her residence at Napam at the time of accident. She did not remember the registered number of the Motorcycle. CW-1 has clearly admitted that in her claim petition, it is written that the driving licence of her husband is valid upto 03.07.2014. She is not aware as to whether on the date of accident, her deceased husband had possessed any valid driving licence and she has not submitted the driving licence of her husband in this case.

10. In this instant case Ext.1 is the Accident Information Report wherein it has been recorded that one JCB vehicle (Excavator) has been involved in the accident on 05-08-2014, in which the claimant's husband expired. Ext.-1 further shows that a Tezpur PS case No. 916/2014 u/s 279/304(A) IPC has been registered in respect of the accident. Ext.2 (i) to 2(iv) are the certified copy of the FIR, Ext.-3 is the Charge Sheet. Ext.4 is the Post Mortem Report which reveals that the Jogesh Deka, claimant's husband died due to shock and hemorrhage as a result of multiple injuries sustained by him. The fact that the deceased- Jogesh Deka, succumbed to the injuries sustained by him in a Road Traffic Accident that occurred on 05-08-2014 is not in dispute.

11. To determine the negligence of the driver of the offending vehicle, the case of Basant Kaur & others Vs Chattar Pal Singh & others reported in 2003 ACJ 369 MP (DB) is referred to 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.

12. It is the settled principle that the evidence of the claimants ought to be examined by Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied.

13. Thus, in view of the discussion of the evidence of CW-1 and the certified copies of documents relating to the criminal case produced by CW-1 , the claimant has been able to establish that the RTA in which the claimant's husband died has been caused due to rash and negligent driving by the driver of the offending Vehicle bearing temporary Registration No. AS01/AR/TEMP/2274 (JCB-Excavator loader).

The issue is decided accordingly in favour of the claimant.

Issue No. (2) :

14. Learned Counsel for the Insurance Company argued that the deceased rode the Motorcycle on the date of accident. With a valid driving licence. He pointed out that Ext.-A which is the book recording issuing of two wheeler driving licence clearly establish is the fact that as on the accident, deceased possessed the driving licence which was valid from 04-07-2009 to 03-07-2014 . This fact is admitted by the claimant herself in her cross examination by the Insurance Company.

15. DW-1 Indu Bhushan Sarmah is the Senior Asstt. DTO, Tezpur. He has produced the book of recording issuing of two wheeler(Motor cycle) of Driving Licence No. 76518/8/NP in the name of Late Jogesh Ch. Deka and the book is marked as Ext.-A. DW-1 has stated clearly that the validity period of Driving Licence No. 76518/8/NP is from 04-07-2009 to 03-07-2014 Ext.-A(1) is the said page, which bears the signature of the DTO, Tezpur.

16. Now, on going through the evidence of DW-1 and Ext.-A, it is clear that this is not a case of non-possession of licence but only a case of non renewal of licence. This is a case where the authorization to drive the vehicle had expired on 03-07-2014 but on the date of accident i.e. 05-08-2014 the claimant deceased husband had not got his licence renewed. A non renewal of licence is totally different from the case of non-possession of the licence on driving a vehicle are being disqualified. Merely because of expiry of the period of licence and the omission of the driver to get the licence renewed, it cannot be said that there is breach of condition of policy for which insurance company can be exonerated from the liability.

17. Another point raised by the Learned Counsel by the Insurance company is that the offending vehicle driven by OP No.-2 was not insured with them. It is submitted that at the time of accident, there was no policy in force. The policy relied on by the OP Nos.1 and 2 was valid from 05-08-2014, 12.19.41pm to 04-08-2015, 11.59.59pm. The accident occurred on 05-08-2014 at about 9.30am. It is argued that since there was no policy which covered or put the insurer in liability for any accident involving the vehicle, so, the Insurance Company may be exonerated from compensating the claimant.

18. DW-2 Sri Bitumoni Phukan is the Administrative Officer, New India Assurance Co. He produced the Policy Scheduled Cum

certificate of Insurance, commercial vehicle package policy of owner. Md. Jiabul Islam. DW-2 stated that the said policy number is 530704311401000004563 and the period of coverage was valid from 05.08.2014, 12.19.41 P.M. to 04/08/2015, 11.59.59 P.M. Ext.-B is the Policy Schedule Cum Certificate of Insurance.

19. Now, Even assuming that the premium has been received, effectiveness of the policy commences from the specific time and date mentioned in the policy of insurance.

20. The decision of the Hon'ble Apex Court in New India Assurance Co. Ltd. –Vs- Bhagwati Devi and others. [1999 ACJ 534SC] is that “when the time of commencement is mentioned in the insurance policy, it shall become effective for the liability of payment of compensation from the time onwards, as mentioned in the policy and therefore, the Insurance Company is exonerated from compensating the claimants.”

21. So, the ratio laid down in the aforesaid judgment is quite clear. It has affirmed the position of law that the policy coverage would operate only from the date and time mentioned in the policy and if the accident had occurred earlier, then the Insurance Company would not be liable to pay the compensation granted towards such accident.

22. In this instant case, the Schedule Cum Certificate of Insurance Policy (Ext.-B) clearly shows that the Insurance Policy commenced from 05-08-2014, 12.19.41pm to 04-08-2015, 11.59.59pm while the incident had occurred on 05-08-2014 at 9.30am. There was no insurance policy of the offending vehicle (JCB Excavator Loader) at that particular time, as has come out clearly from the evidences on record.

23. It is held that liability of the Insurance Company for payment of compensation arising out of Motor Accident starts after the time mentioned in the Policy and not before it. The policy coverage would be operative from the time mentioned in the policy.

24. Once a specific time and date is mentioned, then the Insurance policy becomes effective from that point of time. The premium was paid only on 05-08-2014 for a period of one year and on the payment of premium, the policy was issued. Therefore, the policy covers the risk arising after the date and time specified in the policy.

25. In this case, it is found that the policy was taken subsequent to the accident and therefore, the Insurance Company is exonerated from compensating the claimant.

26. As the offending vehicle bearing temporary Registration No. AS01/AR/TEMP/2274 (JCB-Excavator loader) was not in Insurance coverage at the relevant time of accident, so OP No.1, owner of the

said vehicle (JCB-Excavator loader) is liable to pay the compensation to the claimant.

27. As per claim petition, deceased was a businessman and he was earning Rs. 8000/- per month till his death. He was doing supply business and the claimant was fully dependent on his income. But, the claimant has not furnished any document to prove the income of her deceased husband. However, national income of Rs. 5000/- be considered as monthly income of the deceased.

28. Regarding age of the deceased, the claimant has stated that her husband was 65 years at the time of accident and P.M. report also said so. The accident took place on 05.08.2014. It transpires that the deceased was 65 years of age when the accident took place.

29. As per the case of Sarla Verma –vs- DTC [AIR 2009(6) SC121], the multiplier would be 7.

30. Dealing with the issue of deduction towards personal and leaving expenses of the deceased, paragraph 30 of Sarala Verma and ors. –vs- Delhi Transport Corporation and another reported in (2009)6SCC 121 is resorted to which reads as under-

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chondro [(1996) 4 SCC 362] , the general practice is to apply standardised deductions. Having considered

several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 5, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six.

31. So, Sarla Verma is silent if then is only one dependent. Since there is no guideline in case there is only one dependent of the deceased, it should be calculated in the manner as in case of a bachelor.

32. In this instant case, the deceased left behind his wife (claimant). Therefore, $1/2$ (50%) of his income is to be deducted with a presumption that had the deceased been alive, he could have spent $1/2$ (50%) for his personal and living expenses.

33. 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, Consortium and Funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

34. So, in view of the aforesaid discussion, in the instant case, the computation of compensation is awarded as follows :-

A) Annual income of the deceased Rs.5000/-X 12=Rs.60000 /-

B) After deducting 1/2th of the annual income of the deceased , amount comes to = Rs. 30000/-

C) After multiplied with multiplier, amount comes to Rs.30000/- X 7 = Rs.2,10,000/-

D) Loss of estate = Rs. 15000/-

E) Loss of Consortium = Rs. 40000/-

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

Total= Rs. 2,80,000/-

TOTAL = Rs. 2,80,000/- (Rupees Two Lakhs Eighty thousand) only.

Hence, issue No. 2 is decided accordingly.

ORDER

In the result, the claim petition is allowed, awarding **Rs. 2,80,000/- (Rupees Two Lakhs Eighty thousand)** only with interest thereon @ 6% per annum from the date of filing of the case i.e. 01-07-2015 till realization. The OP No.-1 i.e. Md. Jiabul Islam owner of the offending vehicle bearing temporary Registration No. AS01/AR/TEMP/2274 (JCB-Excavator loader) 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 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 30th day of November, 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:

Smti Alaka Deka

2. Witness of the Defence:

i) Sri Indu Bhushan Sarmah

ii) Sri Bitumoni Phukan

3. Claimant's Exhibits:

Ext. 1 Accident information report (Form 54).

Ext. 2(i) to (iv) Certified copy of First Information Report.

Ext. 3 Certified copy of Charge Sheet.

Ext. 4 Certified copy of Post-Mortem Report.

Ext. 5 Certified copy of MVI Report.

(Unregistered offending vehicle)

Ext. 6 Certified copy of Seizure List.

(Unregistered offending vehicle)

Ext. 7 Certified copy of Seizure List.

Ext. 8 Certified copy of MVI Report.

4. Exhibits of the Defence:

Ext. A & A(2) Copy of Book of recording issuing Driving Licence.

Ext. B Copy of Insurance Policy.

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