

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

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

Member, MACT, Sonitpur

Tezpur

**MAC No. (D) Case No: 65/ 2019**

1. Smti Sarala Devi  
W/o : Late Uttam Nath  
R/o Village : Bamunobari  
PS : Jamuguri  
Dist.: Sonitpur, Assam

----- Claimant

-Vs-

1. Sri Madan Ch. Das  
S/o : Late Dhan Kr. Das  
Village : Pub Dharapur  
PS : Azara  
Dist.: Kamrup, Assam  
--- Owner of the offending vehicle AS-01/BG-6088
2. Md. Mojamil Raj  
S/o : Md. Abdul Hakim  
Vill. : No. 1 Dearing Pathar  
P.S.: Biswanath Charali  
Dist. : Biswanath, Assam  
--- Driver of the offending vehicle AS-01/BG-6088

3. The Oriental Insurance Company Ltd.  
--- Insurer of the offending vehicle AS-01/BG-6088
  
4. Sri Ananta Nath  
S/o : Late Dandi Nath  
Village : Bamunobari  
PS : Jamuguri  
Dist.: Sonitpur, Assam  
--- Owner of the offending vehicle AS-12/T-5356
  
5. Sri Junmoni Nath  
S/o : Late Uttam Nath  
Village : Bamunobari  
PS : Jamuguri  
Dist.: Sonitpur, Assam  
--- Driver of the offending vehicle AS-12/T-5356
  
6. HDFC ERGO General Insurance Company Ltd.  
--- Insurer of the offending vehicle AS-12/T-5356  
----Opposite parties.

Date of argument: 11-10-2022

Date of Judgment: 31-10-2022

**APPEARANCE:**

Advocate for the claimant : Mr. Sanjoy Kr. Nath

Advocate for the opposite party No.1 : Ex-parte

Advocate for the opposite party No.2 : Ex-parte

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

Advocate for the opposite party No.4 : Ex-parte

Advocate for the opposite party No.5 : Deceased

Advocate for the opposite party No.6 : Mr. B. K. Sharma

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

**1.** The claimant – Smti Sarala Devi has filed an application u/s 166 of the M.V. Act 1988, seeking compensation to the tune of Rs. 27,00,000/- ( Rupees Twenty seven Lakh only) along with interest @12% from the date of filing the application for the death of her son in road traffic accident .

**2.** The claimant's case in brief is that on 17-10-2018 at about 4.30 p.m. her son, namely, Janmoni Nath, (since deceased) was riding a Motor Cycle bearing registration No. AS-12/T-5356 (Bajaj Pulsar) from Bamunobari to Tupia Centre. It is alleged that due to rash and negligent driving of the offending vehicle bearing registration No. AS -01/BG 6088 (Eon car) without caution and care for public, it collided with the motor cycle ridden by deceased Janmoni Nath

It is further stated that the deceased was a young and healthy man aged about 21 years and he was working as a daily wage labor, earning about Rs. 9,000/- (Rupees nine Thousand) per month by which he maintained the family.

**3.** Notices were issued on the Opposite Party No. 1, 2, 3, 4, & 6. The Opposite party No. 5 Janmoni Nath, (since deceased) is rider of the motor cycle (involved in the accident). The case proceeded ex-parte against Opposite Party No. 2 & 4. i.e. the respective driver of the offending vehicle bearing registration

No.AS-01/BG-6088 (Eon car) and owner of the motor cycle bearing registration No. AS-12/T-5356 (Bajaj Pulsar). The case also proceeded ex-parte against Opposite Party No. 1 & 6. i.e. the respective owner of the offending vehicle bearing registration No. AS-01/BG-6088 (Eon car) and insurer of the motor cycle bearing registration No. AS-12-T-5356 (Bajaj Pulsar) (involved in the accident) as per order dated 09/01/2020 of this Tribunal. But, vide order dated 25/02/2020, the ex-parte order dated 09/01/2020 passed against the OP No. 6 was vacated and written statement has been accepted. The OP No.3 contested the case by filing separate written statement.

**4.** In the written statement, Op No.3 denied the claims and allegations made by the claimant in the claim petition. It is stated that the driver of the alleged offending vehicle was not holding valid and effective driving licence at the time of the accident. It is further stated that the deceased was riding the motor cycle bearing registration No. AS-12T-5356(Bajaj Pulsar) at the time of alleged occurrence. It is also stated that the owner/driver must have driven the Eon car bearing registration No. AS-01BG- 6088 in the rash and negligent manner, as a result accident took place. Hence, prayed to dismiss the claim against OP-No. 3.

**5.** The OP No.6 stated in the written statement that the claim petition is not maintainable. It is stated that the driver of the Eon car was not duly authorized to ply the vehicle. It is further stated that there was no such rash and negligent driving on the

part of the alleged vehicle bearing registration No. AS-01/BG-6088 (Eon car). The alleged accident took place due to mechanical defect. Hence, prayed to dismiss the claim against OP No.6.

**6.** 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 on 17-10-2018 at about 04:30 pm due to rash and negligent driving by the driver of the vehicle No. AS -1-BG-6088(Eon Car) and driver of the vehicle No. AS-12-T-5356 (Bajaj Pulsar) and whether the victim Janmoni Nath died due to the alleged accident?

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

**7.** During the course of hearing, the claimant side examined 2 (two) numbers of witnesses including the claimant herself. The Opposite Parties did not adduce any evidence.

**8.** Heard arguments of Learned counsels for both the parties. Perused the case record as well as the documents.

**Discussion, Decision and Reason thereof:**

**9.** 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 :**

**10.** The claimant Smti Sarala Devi adduced evidence as CW-1 and reiterated the same facts as narrated in the claim petition. In her cross examination, CW-1 stated that the accident took place on 17-10-2018 at about 4.30 p.m. on NH 15 at Dhalaibil. Her son – Janmoni Nath (since deceased) was riding the motor cycle owned by her elder brother, namely, Mintu Nath and was proceeding from Jamuguri to Balipara. At the relevant time of accident, her son was riding the motorcycle properly, but, the offending vehicle bearing Registration No. AS-01BG-6088(Eon Car) which was coming from the opposite direction dashed against the motor cycle ridden by her son from the front side. She confirmed that there was no any fault on the part of her son and she claimed the compensation from the insurer of the offending vehicle (Eon car).

CW-1 further stated that the deceased was a young and healthy man of about 21 years and he was the sole bread earner of the family, earning almost Rs. 9,000/- per month by working as a daily labour.

**11.** CW-1 disclosed that she had not enclosed the Birth certificate/any age related document of her son in this case. She did not enclose any salary certificate from the authority concerned to prove the monthly earning of her son. Her elder brother had lodged an FIR (Ext-2) in connection with the accident.

**12.** CW-2 Mahendra Nath claimed to be the eye witness to the accident. He fully supported the claimant with regards to the accident.

**13.** In his cross examination, CW.2 revealed that the accident was caused due to the fault of the driver of the Eon Car and the offending vehicle was driven by the driver in a rash and negligent manner.

**14.** Perused the documents submitted by the claimant Ext.-1 is the Accident Information Report (Form-54), which reveals that the accident occurred on 17/10/2018 at about 4.30 pm in which Janmoni Nath died due to alleged accident. Ext. 2 is the certified copy of the FIR lodged by the claimant Smti Sarala Devi alleging the involvement of vehicle bearing Regd. AS-01BG-6088(Eon Car) causing death of her son due to rash and negligent driving by the driver of the said vehicle. On the basis of the FIR, a case was registered vide Jamuguri PS Case no. 193/2018 U/S 279/338/304(A)/427 of IPC. The vehicle bearing registration No. AS-01BG-6088(Eon Car) has been shown to be the offending vehicle. Exhibit- 3 is the Certified copy of Charge Sheet. Exhibits- 4(1) to 4(2) are the Certified Copies of Seizure List, Exhibit- 5 is the Certified Copy of Inquest Report, Exhibit- 6 is the Certified Copy of the Postmortem Report of deceased Janmoni Nath.

**15.** 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.

**16.** *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."*

**17.** Therefore, from the above discussion it is held that the deceased – Janmoni Nath died in RTA on 17-10-2018 and that the accident had taken place due to rash and negligent driving by the driver of vehicle bearing Registration No. AS-01BG-6088(Eon Car). Hence, the issue is decided in favour of the claimant.



**Issue No. 2:**

**18.** It is admitted fact that the offending vehicle bearing Registration No. AS-01BG-6088(Eon Car) was duly insured with the Oriental Insurance Company Ltd. Vide policy No. 321290/31/2018/1821 valid upto 09/03/2019. The accident occurred on 17/10/2018, which is during the subsistence of the policy of the vehicle . Hence, OP No. 3 i.e. the Oriental Insurance Company Ltd. is liable to pay compensation to the claimant. The deceased- Janmoni Nath was the driving the vehicle bearing registration No. AS-12-T-5356 (Bajaj Pulsar) which was duly insured with the HDFC ERGO General Insurance Company Ltd. Vide policy No. 2312/2020/6747/0600000 valid upto 18/01/2019.

**19.** Regarding age of the deceased, the claimant stated in the claim petition that the deceased was about 21 years at the time of accident and he was the sole bread earner of the family. It is found that the claimant being a widow was dependent on his income. The claimant has not adduced any relevant documents to prove the age of the deceased. Hence, on the basis of the post mortem report it is held that at the time of accident, the deceased was 20 years old.

**20.** With regard to the income of the deceased , it is claimed by the Learned Counsel for the claimant that the deceased was working as a daily labor and earned Rs. 9000/- per month. Learned Counsel of the Insurance Company submitted that the income of the deceased has not been proved, Therefore, notional income is

to be taken as his monthly income. In the absence of any convincing evidence regarding income, the number of the dependent, his age and source of income/ earning potentiality and existing price rise, an amount of Rs. 6000/- can be taken as notional income while calculating the compensation.

**21.** *Hon'ble Apex Court in National Insurance Company Limited – versus- Pranay Sethi & others, Special Leave Petition [Civil] No. 25590 of 2014 decided on 31/10/2017, has held in Para No-61 as follows:*

*" PARA NO-61: In view of the aforesaid analysis, we proceed to record our conclusions:*

i) *The two - Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate bench of the same strength cannot take a contrary view than what has been held by another coordinate bench,*

ii) *As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*

iii) *While determining the income and 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 ages of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

*iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the establish income should be warranted 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 computation. The establish income means the income minus the tax component.*

*v) For determination of multiplicand, the deduction for personal and living expenses the Tribunals and the Courts shall be guided by paragraph 30 to 32 of Sarla Verma which we have reproduced herein before.*

*vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.*

*vii) The age of the deceased should be the basis for applying the multiplier.*

*viii) 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years.*

**22.** In the spirit of the aforesaid judgment passed by the Hon'ble Apex Court, as the age of the deceased was 20 years at the time of death, 40 % of the income for future prospects should be assessed, then the monthly income would come to Rs. 8,400/- (Eight thousand four hundred) [40% of the 6000/- = Rs. 2400/- + 6000/- = 8400/-] Accordingly, annual income of the deceased is assessed at Rs. 8400/- x 12 = Rs. 1,00,800/- (Rupees One lakh eight hundred) only.

**23.** The deceased at the time of death was unmarried having his mother (claimant) as dependent. Hence as per the guideline in Sarla Verma case, one half of the annual income of the deceased has to be deducted as personal and living expenses of the deceased, then an amount of Rs. 50,400/- only ( Rs. 1,00,800/- x  $\frac{1}{2}$  = Rs. 50,400/-) comes to be personal and living expenses of the deceased. Then the annual loss of dependency is found to be Rs. 50,400/- [Rs. 1,00,800/- - Rs. 50,400/-].

**24.** As the deceased died at the age of 20, hence as per guidelines give by the Hon'be Apex Court in the land mark case of Sarla Verma and another - Vs- Delhi Transport Corporation & ors. [2009(2) TAC 677SC] the appropriate multiplier for ascertaining the total loss of dependency is 18.

**25.** Now, the annual loss of dependency is Rs. 50,400/- x 18 = Rs. 9,07,200/- (Rupees Nine Lakhs seven thousand two hundred) only.

**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, loss of consortium and Funeral expenses should be Rs. 15,000/- Rs.40,000/- and Rs.15,000/-respectively. Accordingly, the claimant is found entitled to get the following amount as compensation:-

Pecuniary less of the claimant

A) Loss of dependency	= Rs.9,07,200/-
B) Loss of estate	= Rs. 15,000/-
C) loss of consortium	= Rs. 40,000/-
D) Funeral expenses	= Rs. 15,000/-

**TOTAL = Rs. 9,77,200/-**

**(Rupees Nine lakhs seventy seven thousand two hundred only.)**

Hence, issue No. 2 is decided accordingly.

**ORDER**

**27.** In the result, the claim petition is allowed, As the offending vehicle having Registration No. AS-01BG-6088(Eon Car) is insured with The Oriental Insurance Company Ltd, hence, they are liable to pay the compensation amount to the claimant. Accordingly,

Opposite party No. 3 i.e. the Oriental Insurance Company Ltd. is directed to made the payment of **Rs. 9,77,200/- (Rupees Nine lakhs seventy seven thousand two hundred only)** to the claimant with interest thereon @ 6% per annum from the date of filing of the claim petition i.e. 03.09.2019 till the date of payment.

**28.** The Opposite party No. 3 i.e. the Oriental Insurance Company Ltd. is directed to deposit the aforesaid amount in the Bank Account of the MACT, Sonitpur, Tezpur, through RTGS or NEFT for transfer of the same to the claimant in her account within one month from the date of receipt of the order of this Tribunal.

**29.** An amount of Rs. 3,00,000/- (Three lakhs) only be kept as fixed deposit in the name of the claimant, Smti Sarala Devi (Mother of the deceased) for a period of three years in any Nationalized Bank and rest of the amount be released to the claimant.

**30.** To meet any urgent need for money, the claimant has the liberty to make application to the Tribunal for withdrawal of fixed deposit amount. The Tribunal shall consider the application and pass appropriate order.

**31.** 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.

**32.** Accordingly, this instant case is disposed of an contest.

Given under my hand and seal of this Tribunal on this 31th day of October, 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:

Smt. Sarala Devi.

2. Witness of the Defence:

None.

3. Claimant's Exhibits:

Ext. 1 Accident information report (Form 54).

Ext. 2 Certified Copy of FIR.

Ext. 3 Certified Copy of Charge Sheet.

Ext. 4 Certified Copy of Seizure List.

Ext. 5 Certified Copy of Inquest report.

Ext. 6 Certified Copy of Postmortem Report.

4. Exhibits of the Defence:

NIL.

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