

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

**PRESENT :** Sri B. Debnath  
Member, Motor Accident Claims Tribunal  
Sonitpur

**M.A.C. CASE NO. 120 OF 2009**

- 1.** Smt. Babita Nayak  
Wife of Late Nilkamal Nayak  
Resident of Village Dekorai Tea Estate  
P.S. –Sootea, District–Sonitpur **..... Claimant**

**–Versus–**

- 1.** Sri Rambahadur Gurung  
Son of Late Birbahadur Gurung  
Resident of village Khanamukh (N.K. Patgaon)  
P.S. –Rangapara, District–Sonitpur  
[Owner of the vehicle No. ASD– 6459 (T.D.V Truck)]
- 2.** Sri Dinesh Dolley  
Son of Birendra Dolley  
Resident of village Shilimpur  
P.S. –Gogamukh, District–Dhemaji  
[Driver of the vehicle No. ASD– 6459 (T.D.V Truck)]
- 3.** The New India Assurance Co. Ltd.  
(Insurer of the vehicle No. ASD–6459 (T.D.V Truck))

**..... Opposite Parties**

**ADVOCATES WHO APPEARED IN THIS CASE**

For the Claimant	:	Sri D.Hazarika, Advocate
For the O.P. Nos. 1 & 2	:	Sri T. Das, Advocate
For the Insurance Co.	:	Sri P. Sarmah
Date of Argument	:	29–11–2011
Date of Judgment	:	<b>07–01–2012</b>

## J U D G M E N T

The claim case has been instituted by the widow of Late Nilkamal Nayak under Section 166 of M.V. Act. To get compensation brought the following fact :

On 21-02-2009 the deceased being a labourer to the vehicle No. AS-25-7108 was unloaded bricks on the road side along with other persons at Bakula. It was National Highway No. 52. At that time a Truck bearing Registration No. ASD-6459 hit him. As a consequence he sustained injuries. He was brought to the Kanaklata Civil Hospital by one 108 Ambulance but before reaching to the hospital died on the path.

Accordingly the opposite parties submitted written statement. O.P. Nos. 1 and 2, being owner and driver respectively of the aforesaid Truck submitted their joint written statement. They stated in their joint written statement that the vehicle was under coverage of insurance. The O.P. No. 3 is the Insurer. O.P. No. 3 filed written statement separately and contested all points in view of petition u/s 170 M.V. Act. The O.P. No. 3 denied the liability for payment of compensation, if any.

**3.** Upon the above pleading my predecessor-in-chair framed following issues :

- 1.** Whether the alleged accident took place due to rash and negligent driving of the Vehicle No. ASD-6459?

2. Whether there was contributory negligence on the part of the deceased leading to the accident in question?

3. Whether the claimant is entitled to any compensation as sprayed for, and if yes, from whom and to what extent?

### **DECISIONS AND REASONS THEREOF**

4. To establish the claim the claimant examined herself as PW-1 and exhibited some documents. She also brought one independent witness to establish the fact that the accident occurred due to rash and negligent driving of the vehicle. Any how, all the issues are taken together to decide the claim case. It is to be mentioned here that the O.P. Nos. 1 and 2 did not participate during hearing except the O.P. No. 3. Of course, O.P. No. 3 cross-examined the PWs after obtaining permission u/s 170 of M.V. Act to contest in all points.

5. Let me see evidence on record.

It is undisputed fact that husband of the claimant was Nilkamal Nayak. Said Nilkamal Nayak was labourer of vehicle No. AS-25-7108. It is also uncontested fact that at the time of unloading the bricks from stationary Truck at road side the vehicle bearing Registration No. ASD-6459 hit him and in consequences he died at the time of being brought to the hospital. Moreover, the claimant exhibited Accident Information Report vide Ext - 1, Police Report vide Ext - 2, copy of Post Mortem examination Report vide Ext - 6. In addition, FIR and charge sheet are exhibited as Exts. 4 and 5 respectively. The contesting opposite party did not challenge the genuineness of the aforesaid documents. PW-2 also deposed that he was with

the deceased Nilkamal Nayak at the relevant time of accident. He also deposed that the deceased and himself were busy with unloading bricks from the vehicle bearing Registration No. AS-25-7108 but all on a sudden the vehicle No. ASD-6459 knocked down Nilkamal Nayak at the road side and in consequences Nilkamal sustained injuries and immediately brought him to the Kanaklata Civil Hospital by 108 Ambulance but died on the path before reaching to the hospital. The contesting opposite party did not challenge the aforesaid deposition. So, it is accepted as true fact. If this is the real fact it can be said without hesitation that the driver of the vehicle No. ASD-6459 lost control over the vehicle at the relevant time and in consequence the accident occurred. So, I find the driver was in rash and negligent driving of the vehicle. It is also made out by the claimant side in view of the oral evidence of PW-2 and medical document as well as the police papers that due to rash and negligent driving Nilkamal Nayak sustained injuries and subsequently succumbed to injury. So his widow is entitled compensation. As the vehicle involved was under insurance coverage with O.P. No. 3, the O.P. No. 3 is liable to pay compensation.

**6.** To determine just and proper compensation I may adopt the structural formula framed by the Supreme Court of India vide Civil Appeal No. 3483 / 2008 to eliminate subjective satisfaction. Accordingly determination of age and annual earning of the deceased at the time of death is required. The claimant stated that age of the deceased was 30 years at the time of deaths and monthly earning was Rs. 6,000/-. So far as age and monthly earning no documentary proof is submitted. The evidence which are available in the record are not sufficient to come to a proper conclusion regarding aforesaid true factors. Anyhow, age of the deceased has not been disputed by the contesting opposite party. So, it is taken into

consideration that age of the deceased was 30 years at the relevant time of occurrence. So far as monthly earning is concerned, I have applied my prudent mind and opined that a unskilled daily wage earner may earn maximum Rs. 100/- per day. So, monthly earning may be Rs. 100 X 30 = Rs. 3,000/-. Thus annual income will be Rs. 3,000/- X 12 = Rs. 36,000/-. Therefore, I have determined the age of the deceased was 30 years and his annual income from all sources was Rs. 36,000/-. As per aforesaid formula  $\frac{1}{4}$ th of the annual income to be deducted towards personal accident if he would alive. Thus, amount received after deduction is Rs. 36,000/- - Rs. 9,000/- = Rs. 27,000/-. In this case, the claimant stated that she has four minor children. So, there are 5 dependents. That is why  $\frac{1}{4}$ th of the of annual income has been deducted. Now, the aforesaid amount of Rs. 27,000/- to be multiplied by multiplier Number. The multiplier number is '17'. The said number is picked up from multiplier table framed by the Supreme Court in the above referred case. Therefore, compensation is Rs. 27,000/- X 17 = 4,59,000/-. The claimant including the other dependants is also entitled non-pecuniary damages of Rs. 5,000/- as loss of estate and Rs. 2,500/- as funeral expenditure. The widow of the deceased is also entitled an addition amount of Rs. 5,000/- as compensation for loss of consortium.

**7.** With the above, all the dependants are entitled Rs. 4,59,000/- + Rs. 5,000/- + Rs. 2,500/- = Rs. 4,66,500/- with 9% interest with effect from the date of filing of the claim petition and all the dependents are entitled equal share of the aforesaid amount including the interest.

The widow of the deceased also entitled  $\frac{1}{5}$ <sup>th</sup> share of the aforesaid amount and additional amount of Rs. 5,000/- (compensation for loss of consortium) with 9%

interest on that additional amount with effect from the date of filing of the claim petition.

**8.** The O.P. No. 3, the Insurer, is directed to pay the aforesaid amount of compensation of Rs. 4,66,500/- + Rs. 5,000/- = Rs. 4,71,500/- with up to date interest within 60 (Sixty) days from today to the claims Tribunal

With the above this claim case is disposed of on contest.

The judgment is pronounced and delivered in the open Court.

**( B. DEBNATH )  
MEMBER  
MOTOR ACCIDENT CLAIMS TRIBUNAL  
SONITPUR : : TEZPUR**

Dictated and corrected by me  
And every page bears my signature.

**( B. DEBNATH )  
MEMBER  
MOTOR ACCIDENT CLAIMS TRIBUNAL  
SONITPUR : : TEZPUR**

Typed and transcribed on dictation by me –

( I. Goswami )  
Stenographer