

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

PRESENT : Smt. M.R. Sharma  
Member, Motor Accident Claims Tribunal  
Additional District Judge  
Sonitpur, Tezpur

**JUDGMENT IN M.A.C. CASE NO. 306 OF 2007**

1. Sri Khargeswar Mahanta
2. Sri Soneswr Mahanta
3. Sri Amulya Mahanta

All are sons of –

Late Sarat Ch. Mahanta  
Resident of vill – Barua Chuburi  
P.S. Tezpur, Dist – Sonitpur.

4. Smt. Anita Kalita  
Wife of Sri Kulen Kalita  
Vill – Sirajuli Moila Ali  
P.S. Dhekiajuli, Dist – Sonitpur. **..... Claimants**

**–Versus–**

1. Sri Sanjib Paul  
[Owner of the vehicle No. AS-12 C / 5846 (Tata Indica)]
2. The Oriental Insurance Co. Ltd.  
[Insurer of the vehicle No. AS-12 C / 5846 (Tata Indica)]

**... Opposite Parties**

**ADVOCATES WHO APPEARED IN THIS CASE**

For the Claimant	:	Sri A. Das, Advocate
For the O.P.No. 3	:	Sri S. K. Acharjee, Advocate
Date of Argument	:	01-02-2013
<b>Date of Judgment</b>	:	<b>16-02-2013</b>

M.A.C. CASE NO. 306 OF 2007

## J U D G M E N T

This claim petition has been submitted under Section 166 of M.V. Act, by the claimants claiming compensation on account of death of their nephew due to Motor Vehicle Accident.

**2.** The claimant brought the following fact in order to get the compensation :

On 25-08-2006, the deceased Anupam Mahanta along with his father Late Ramen Mahanta, mother Late Bebi Mahanta, and the famous T.V. Serial director and producer Dilip Mishra and other two persons were going to Guwahati from Tezpur for conducting the Editing work of a T.V. Serial. While they reached near Dipota Bridge on the National High Way 52 at about 6-45 a.m., the vehicle lost its control and tremendously knocked down on a road side tree and thus the accident occurred.

As a result of the accident, deceased Ramen Mahanta sustained multiple grievous injuries on his head, and other parts of the body and died on the spot.

It is alleged in the Claim petition that the accident took place due to rash and negligent driving of the driver of the offending vehicle and as such, the owner and the Insurer of the said vehicle are jointly and severally liable to pay compensation to the claimants, as prayed for. It is also mentioned in the Claim Petition that

M.A.C. CASE NO. 306 OF 2007

the deceased was a young boy of about 12 years of age and was a sound health having brilliant carrier in his studies and he possessed good name in the cultural field and Drama. The deceased was the anclore and main actor of the famous T.V. Serial (DD-1) "Safura" and on that ill-fated day also he was going to Guwahati for accompanying in the editing works of another T.V. Serial named "Anjali" where he was conducted a major role. Hence, under the above facts and circumstances, the claimants have preferred this claim petition claiming an amount of Rs.4,65,000/-, as compensation from the Opposite Parties on different heads.

**3.** The O.P. No. 1 was the owner of the offending vehicle bearing Registration No. AS-12 C / 5846 (Tata Indica) which was driven by Late Rana Borman who was also died in the said accident and was insured with O.P. No. 2.

**4.** The O.P. No. 2, Oriental Insurance Company Ltd. has filed a written statement denying cause of action and also maintainability of the case. The O.P. No. 2 also averred in his written statement that the mother of the deceased Bhogeswari Mahanta died on 03-01-2008 during the pendency of the instant claim case who initially filed the claim petition seeking compensation on account of death of her grand-son Anupam Mahanta and also the father and mother of the deceased also died in the alleged accident on 25-08-2006, leaving no 1st class legal heirs as the dependent of the deceased. Hence the claim petition is liable to be dismissed. It is also alleged

**M.A.C. CASE NO. 306 OF 2007**

in the written statement that the claimants are not the legal representatives and the dependents of the deceased Anupam Mahanta, as such they are not entitled to implead themselves as the claimants in the instant case and so, the claim petition is liable to be dismissed. Therefore, alleging that the claimants having no dependency, O.P. No. 2 has prayed for dismissal of the claim petition with costs absolving from all liabilities arising out of the alleged claim.

**5.** Upon the pleadings of the parties, the following issues were framed :

**I S S U E S**

- 1.** Whether the alleged accident took place due to rash and negligent driving by the driver of the Vehicle No. AS-12 C / 5846 (Tata Indica) ?
- 2.** Whether there was contributory negligence on the part of the deceased leading to the accident in question ?
- 3.** Whether the claimant is / are entitled to any compensation as prayed for, and if yes, from whom and to what extent ?
- 6.** The claimants side have submitted evidence-on-affidavit of one witness and also produced certain documents. The O.P. No. 2, Insurance Company did not cross-examine the witness.

**M.A.C. CASE NO. 306 OF 2007**

**7.** I have heard the submissions of the learned counsel appearing for the claimants and I have also gone through the evidence and other materials on record.

A discussion on materials on record is required to come to a conclusion on the claim in this case.

**DISCUSSION, DECISION AND REASONS THEREFOR****ISSUE NO. 1**

**8.** This issue relates to whether the alleged accident took place due to rash and negligent driving by the driver of the Vehicle No. AS-12 C / 5846 (Tata Indica).

The O.P. No. 2 – Oriental Insurance Co. Ltd. had filed the written statement where the occurrence of the accident was not denied. So, as the accident has not been denied by the opposite parties, no discussion on this issue is required and this issue is, therefore, decided in favour of the claimant.

**ISSUE NO. 2**

**9.** This issue relates to whether there was contributory negligence on the part of the deceased leading to the accident in question.

This issue also need not be discussed in detail as O.P.-Oriental Insurance Company in its written statement while admitting the occurrence of the accident

**M.A.C. CASE NO. 306 OF 2007**

has stated that the original claimant seeking the compensation died leaving no 1st class legal heir as dependent of the deceased. The O.P. has rather stated that there being no dependents, as legal heir surviving to be entitled to compensation for the death of Anupam Mahanta, the question of contributory negligence which is required to be proved to put liability as to the vehicle which had caused the accident is not required. When the claimants themselves are not entitled to any compensation / award as per law, this point needs no further elaborate discussion. This issue is decided accordingly.

**ISSUE NO. 3**

**10.** This issue relates to whether the claimants are entitled to any compensation and from whom and to what extent.

Going through the materials on record, it is seen that the original claimant was Bhogneswary Mahanta @ Bhogeswary Mahanta who had claimed compensation on account of death of her grand-son Anupam Mahanta. But thereafter an amended petition for claim was filed on 2-12-2008 as Bhogeswary Mahanta died. There is a pendency of this case. In the said amended Claim Petition, the claimants are Sri Khargeswar Mahanta, Sri Soneswar Mahanta, Sri Amulya Mahanta and Smt. Anita Kalita. They have claimed compensation for loss of life, mental shock and sufferings, for loss of love and affection and consortium, cremation and funeral ceremony. The O.P. No. 2-Oriental

M.A.C. CASE NO. 306 OF 2007

Insurance Company thereafter in the written statement stated that there was no cause of action as the claimants are not the legal representatives and dependents of the deceased Anupam Mahanta. Under the provisions of M.V. Act, 1988, no compensation can be granted as the Oriental Insurance Company is not liable to pay compensation when there is no surviving legal heir of the deceased. It is also stated in the Additional Written Statement that the claimants have no dependency as the claimants are the uncle and aunt of deceased Anupam Mahanta, who are not legal heirs entitled to compensation.

Out of the claimants, affidavit evidence was given only by Claimant No. 3, Sri Amulya Mahanta and he, in his deposition stated that the other claimants i.e. Sri Khargeswar Mahanta and Sri Soneswar Mahanta are his elder brothers and Smt. Anita Kalita is his sister. The deceased Anupam Mahanta was his nephew and at the time of the accident, he was aged 12 years. It is stated further that due to the negligent driving of the vehicle, the owner and the insurer are jointly and severally liable to pay compensation for the death of Anupam Mahanta and she has claimed Rs. 4,65,000/- as compensation. The said witness was also not cross-examined by the opposite parties.

For obtaining compensation by the claimants, it is required to be proved that he / she was dependent on the deceased or the injured prior to the accident. The claimants of this case, who have subsequently impleaded themselves on the death of Bhogeswary Mahanta have in

M.A.C. CASE NO. 306 OF 2007

no way stated or proved before this Court that they were dependents on the deceased or that the deceased was maintaining them from his income. It is, of course true that strict proof is not required, but the law also required that the claimant must prove that he / she was dependent on the deceased. In the instant case, admittedly the claimants are uncles and aunt of the deceased. Also the deceased was young boy of 12 years. So, the plea taken by the O.P.- Insurance Company requires consideration and the principle and spirit of the Motor Vehicles Act does not come into play in the grant of compensation to the claimants in any manner whatsoever.

The only consideration that can be taken into account to compute the compensation is for the mental shock and sufferings, loss of love and affection and consortium and for cremation and funeral ceremony which are matters affecting all relatives, even if not legal heirs. So, in my opinion, the claimants are not entitled to any compensation except for the factors mentioned above.

I am, therefore, inclined to grant compensation as follows :-

- |       |   |                |
|-------|---|----------------|
| (i)   | For mental shock and sufferings -             | Rs. 2,000.00   |
| (ii)  | For loss of life                              | - Rs. 2,000.00 |
| (ii)  | For loss of love and affection and consortium | - Rs. 6,000.00 |
| (iii) | For cremation and funeral ceremony            | - Rs. 2,000.00 |

**TOTAL - Rs. 12,000.00**



M.A.C. CASE NO. 306 OF 2007

**11.** Accordingly, the claimants are entitled to total amount of compensation of **Rs. 12,000.00 ( Rupees Twelve Thousand)**, which I consider to be just and reasonable.

**12.** The O.P. No. 2, Oriental Insurance Co. Ltd. is directed to pay the aforesaid amount of compensation to the claimants within a period of one month from today with interest @ 9% per annum with effect from the date of filing the claim petition, till realization.

Copy of the judgment be sent to the Insurance Company.

Given under my hand and seal of this Court on this **16th day of February, 2013.**

**( M.R. SHARMA )  
MEMBER  
MOTOR ACCIDENT CLAIMS TRIBUNAL  
ADDITIONAL DISTRICT JUDGE  
SONITPUR : : TEZPUR**

Dictated and corrected by me and every page bears my signature

**( M.R. SHARMA )  
MEMBER  
MOTOR ACCIDENT CLAIMS TRIBUNAL  
ADDITIONAL DISTRICT JUDGE  
SONITPUR : : TEZPUR**

Transcribed and Typed on dictation by me

(I. Goswami)  
Stenographer