

**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.153 OF 2007

1. Musst. Sarbanu Bibi
Wife of Late Rustam Ali
Resident of village Gudamghat
P.S. – Rangapara, District–Sonitpur

2. Musst. Sakina
Daughter of Late Rustam Ali
Resident of village Gudamghat
P.S. – Rangapara, District–Sonitpur **Claimants**

–Versus–

1. Sri Depankar Hazarika
[Owner of the vehicle No. AS-12 A - 9336 (407 Metro Truck)]

2. Sri Harilal Gaur
[Driver of the vehicle No. AS-12 A - 9336 (407 Metro Truck)]

3. The New India Assurance Co. Ltd.
[Insurer of the vehicle No. AS-12 A - 9336 (407 Metro Truck)]

... Opposite Parties

ADVOCATES WHO APPEARED IN THIS CASE

For the Claimant : Md. S. Khan,
Advocate

For the O.P.No. 3 : Sri P. Sarmah,
Advocate

Date of Argument : 05–10–2012

Date of Judgment : **30–11–2012**

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J U D G M E N T

This claim petition has been submitted under Section 166 of M.V. Act, by the claimants Musst. Sarbanu Bibi and Musst. Sakina claiming compensation on account of death of Rustam Ali in a Motor Vehicle Accident.

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

On 11-12-2006 at about 3-30 p.m. while Rustam Ali, a 45 years old man, was returning after completion of his business riding bicycle and when he reached at Towbhanga near Forest Gate, the offending vehicle bearing registration No. AS-12 A / 9336 coming from Tezpur side with a high speed and in a rash and negligent manner hit him and as a result, deceased Rustam Ali sustained grievous injury and immediately after the accident the deceased was first brought to Dhalaibeel Hospital and then as per advice of the doctor he was shifted to Kanaklata Civil Hospital but before reaching the hospital, the injured died.

A police case was lodged vide Jamuguri P.S. Case No. 86 of 2006 u/s 279 / 338 / 304 (A) of Indian Penal Code and Post Mortem examination was done on the dead body.

3. The O.P. No. 1 was the owner of the vehicle bearing Registration No. AS-12 A - 9336 (407 Metro Truck), which was driven by O.P. No. 2 and was insured with O.P. No. 3. The claimants preferred this claim petition u/s 166 of the M.V. Act seeking an amount of Rs.8,00,000/- (Rupees Eight Lakh) as compensation from the opposite parties.

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4. The O.P No. 1 has not submitted any written statement. The O.P. No. 3, the New India Assurance Co. Ltd. has filed a written statement denying cause of action and the maintainability of the case. The O.P. No. 3 by filing written statement, has also denied all the statements made in the claim petition and demanded strict proof thereof. The answering opposite party has denied the allegation of accident which was taken place on 26-12-2006 and demanded strictest proof thereof with cogent evidence. O.P. No. 3 has further demanded proof about having duly insured with this O.P.- insurance company by producing all the documents. The O.P. No. 3 has also contended that the vehicle bearing No. AS-12 A - 9336 was not driven as per legal requirements of the insurance policy and also with other relevant documents as per provisions of the Motor Vehicle Act and rules. The O.P. No. 3 has further submitted that the insurance company shall not be liable to pay any compensation and if the claimant be entitled for any compensation, such compensation should be paid by the O.P. Nos. 1 and 2. The said O.P. denied all the allegations and contested in all points by filing petition u/s 170, M.V. Act. Alleging that the amount of compensation claimed is highly exaggerated, baseless, unreasonable, the O.P. No. 3 has prayed for dismissal of the claim petition.

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 A - 9336 (407 Metro Truck) ?

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2. Whether the claimants are entitled to any compensation and if yes, what will be the quantum of compensation and by which of the respondents, this amount shall be paid ?

6. The claimants' side has examined one witness, i.e. the claimant Musst Sarbanu Bibi herself, in support of their case who have also produced certain documents. The opposite parties have neither adduced any evidence nor produced any documents in proof of their pleas.

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

DISCUSSION, DECISION AND REASONS THEREFOR

ISSUE NO. 1

10. 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 A - 9336 (Metro Truck)

As it is seen from the record that only the Claimant No. 1, Musst Sarbanu Bibi gave her evidence as CW-1. She had filed the case claiming compensation on account of death of her husband Rustam Ali who died in a motor accident on 11-12-2006. The said Rustam Ali was aged about 45 years at the time of the accident and was earning Rs. 8,000/-, per month, as he was a business man having wholesale shop of eggs. In her evidence before this Court she narrated the incident as to how the accident occurred as a result of which the deceased Rustam Ali sustained grievous injury and during treatment as he was being brought to Kanaklata Civil Hospital

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from Dhalaibeel Hospital, he succumbed to his injuries. The accident occurred due to the rash and negligent driving of the offending vehicle having registered No. AS-12 A – 9336, which was insured with O.P. – 3. O.P. Nos 1 and 2, the owner and the driver, did not contest the case. It is also on evidence that she had exhibited some documents as Ext – 1 is the certified copy of FIR, Ext – 2 is the Form 54, Ext – 3 is the Post Mortem Report, Ext – 4 is the Charge sheet and Ext – 5 is the certificate of shop owner.

In her cross-examination, she deposed that she did not see the accident with her own eyes. She also deposed in her cross-examination that the Claimant No. 2, Musstt. Sakina was aged 26 years at that time and the deceased was 46 years. She also admitted in cross-examination that no document proving the income of her husband was submitted by her and denied the suggestion that he did not earn Rs. 8,000/-, per month. During her cross-examination, she stated that her daughter-claimant No. 2 could not be given in marriage as her short of hearing and she has not given any document. She also denied that at the time of the accident, her husband's age was 60 years.

The O.P. No. 3 – Insurance Company, in cross-examination, has not brought out any materials to show that the offending vehicle was not insured with them and also was not involved in the accident. In their written statement also they have not denied the accident and it is simply stated that in the Claim Petition, the claimant has not mentioned the New India Assurance Co. Ltd. India Assurance Co. Ltd. but it is written as Oriental Insurance Co. Ltd. This wrong mentioning of the Insurance Company cannot be a bar to the claimant for obtaining compensation. So, the claimant has sufficiently proved that the alleged accident took place due to rash and

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negligent driving by the driver of vehicle No. No. AS-12 A – 9336 (407 Metro Truck).

This issue is, therefore, decided in favour of the claimant.

ISSUE NO. 2

13. This issue relates to the compensation and the quantum to be decided accordingly.

In this context, the learned counsel for the claimant has cited the following rulings :-

- 1. 2010 (2) T.A.C 385 (S.C.)**
- 2. 2011 (4) T.A.C 645 (P&H)**
- 3. 2011 (1) GLT 309**
- 4. 2001 (3) GLT 250**
- 5. 2011 (4) T.A.C 682 (Ori)**
- 6. SCC on Motor Accident 155**
- 7. 1991 (1) T.A.C 428**
- 8. 1998 (2) T.A.C 67 (Gau.)**
- 9. 2008 (2) T.A.C 394 (S.C.)**

Further more, in the written argument, the learned counsel for the claimant has submitted that when the rash and negligent driving of the offending vehicle is proved and charge sheet is filed against the driver, the same is sufficient proof for the claimant to obtain compensation. In the instant case, G.R. record shows that the charge sheet was submitted against the driver of the offending vehicle Sri Harilalm Gaur (O.P. No. 2), the Hon'ble High Court in 2011 GLT (1) has clearly decided that when the claimant sustained injuries or

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death due to the accident caused by the offending vehicle, the conclusion would be that the claimant had sustained injuries in that accident. In the present case, the driver has not contested the case denying the fact or proving that he was not driving that vehicle at the time of the accident. Also there is nothing on record and as stated earlier, the contesting O.P. No. 3 – New India Assurance Co. Ltd. Assurance Co. has neither adduced evidence nor has brought any evidence to come to conclusion that the said vehicle was not involved in the accident and was also not insured.

The claimants are, therefore, entitled to compensation._

14. The only point that remains to be decided is that what will be the quantum of compensation and by which of the opposite parties the amount shall be paid. As discussed earlier, the amount has to be paid by O.P. No. 3 – Insurance Company as the O.P. Nos. 1 and 2 did not contest the case.

The age of the deceased as stated by the learned counsel for the Insurance Company is different in different places. The claimant stated that the deceased was wholesaler of eggs and his monthly income was Rs. 8,000/-. No document in support of the income was given by the claimant. In this regard, the Hon'ble Supreme Court has stated that Notional income should be calculated at Rs. 15,000/-, per annum and if the same is

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taken into account, the monthly income would be Rs. 3,000/-. The procedure as provided in the M.V. Act is that the yearly income shall be calculated as monthly income X 12 months X 1/3rd deduction X Multiplier as per age of the deceased. The claimant has by following the above procedure calculated the amount comes to Rs. 8,32,000/-. Since, on record the age proof has not been given by the claimant side and at the time of the accident, the age of the daughter was 26 years in the year 2006. The age of the deceased is taken to be 50 years approximately. Further more, the Notional income, if taken into account and as there is no document showing income to be Rs. 8,000/-, per month, the amount is calculated as Rs. 3,000/-, per month, pertaining to the Notional income. So, in this case, I am of opinion that yearly income of the deceased should be calculated accordingly. So, the amount will be Rs. 3,000/- X 12 months = Rs. 36,000/- X 1/3rd = Rs. 12,000/- X 13 =Rs. 1,56,000/-. As regards loss of love and affection, an amount of Rs. 25,000/- will be sufficient in my opinion. For funeral expenses, an amount Rs. 4,000/- is awarded. For loss of consortium and loss of estate, a further amount of Rs. 15,000/- will be sufficient in my opinion.

The learned counsels for the claimant has stated that the decision given in 2008 (3) T.A.C. 250 and also Hon'ble Supreme Court in a number of decisions have given the guidelines for interest to be @ 9%, per annum. Hence, on the above amount, 9% interest is granted to be paid by the O.P. No. 3-New India Assurance Co. Ltd.

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19. Accordingly, the claimants are entitled to total amount of compensation of **Rs. 2,00,000/- (Rupees Two Lakhs)**, which I consider to be just and reasonable.

20. The O.P. No. 3, M/s New India Assurance 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 O.P.- Insurance Company.

Given under my hand and seal of this Court on this 30th day of November, 2012.

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

Dictated and corrected by me

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

Transcribed and Typed on dictation by me

(I. Goswami)
Stenographer