

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

PRESENT:

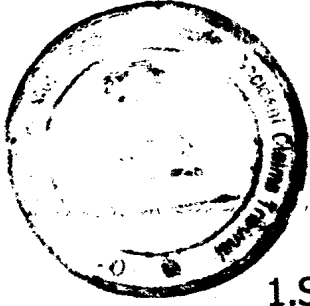
**Smti. M.R. Sharma
Member, Motor Accident Claims Tribunal
Addl. District Judge**

JUDGMENT IN MAC CASE NO. 05 OF 2007

**Smti Bolan Shil Sharmah
W/O Sri Dulal Shil Sharmah,
Vill: Bhitorsuti, Gotlong
P.O/P.S: Tezpur
Dist: Sonitpur, Assam**

..... **Claimant**

Versus



1. Sri Biswanath Gorai
(Owner of the vehicle No. AS-01J-4908..... Truck)
2. Sri Tarun Ch. Roy.
(Driver of the vehicle No. AS-01J-4908..... Truck)
3. The Oriental Insurance Co. Ltd
(Insurer of the vehicle No. AS-01J-4908..... Truck)
4. Mrs. Manju Das
(Owner of the vehicle No. AR-04-2465..... ... Tata Indica)
5. Sri Sonti Sarmah
(Driver of the vehicle No. AR-04-2465..... ... Tata Indica)

Manju

**Member
Motor Accident Claims Tribunal
Additional District Judge
Sonitpur, Tezpur**

ADVOCATES WHO APPEARED

- | | |
|--------------------|---|
| For the claimant | : Sri P.P. Hazarika, M. Bharali,
Advocates |
| For the O.P. No. 5 | : Rajesh Kumar Dutta
Advocate |
| Date of argument | : 21.09.13 |
| Date of judgment | : 03.12.13 |

J U D G M E N T

1. This claim petition has been submitted under Section 166 of M.V. Act, 1988 by the claimant Smti Bolan Shil Sharmah claiming compensation for the death of her son Sumit Sharmah @ Kanai who died in a Motor Vehicle Accident on 06.10.2006.

2. The facts of the above mentioned case, may, in brief, be stated as follows:

On 06.10.2006, at about 5.45 am, the deceased Sumit Shil Sarmah @ Kanai was proceeding from Tezpur towards Dhekiajuli on a vehicle bearing Registration No. AR-04-2465(Tata Indica) which was driven by its driver Sri Sonti Sarmah and suddenly the right tire of the front wheel of the said vehicle was punctured near Kawaimari and its driver was compelled to stop and park the vehicle No. AR-04-2465 in the extreme left side the National highway-52 and took all necessary precautionary steps to alert the ~~clipping~~ vehicles and after that the driver brought out the punctured tire for repairing. But while the claimant's son Sumit Shil Sarmah @ Kanai, who was travelling in the said vehicle No. AR-04-2465 being an employee of part time of the Agradut Press, Tezpur, was waiting near the said stationary vehicle No. AR-04-2465, the offending vehicle bearing Registration No. AS-01/J/4908 being driven by its driver Sri Tarun Ch. Roy rashly and negligently with high speed without due care and caution endangering human lives by not complying with the driving rules of the Motor Vehicles Act, 1988 dashed the claimant's son Sumit Shil Sarmah @ Kanai along with the said stationary vehicle No. AR-04-2465.

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As a result of the accident, the claimant's son Sumit Shil Sarmah @ Kanai sustained grievous head injuries and succumbed to his injuries on the spot. Thereafter, the claimant's son Sumit Shil Sarmah @ Kanai was immediately taken to Kanaklata Civil Hospital, Tezpur and his injury was in a very serious condition, so the doctors of KCH did not get any chance to provide treatment to the victim and declared dead and accordingly post-mortem examination was conducted at KCH, Tezpur. The accident took place due to rash and negligent driving of the offending vehicle No. AS.01/J 4908 (Truck) of the diver.

At the time of the accident, the deceased the claimant's son Sumit Shil Sarmah @ Kanai was working at Agradut Press, Tezpur as a Binder (part time) drawing Rs. 1500/ only per month as salary and also having a grocery shop earning Rs. 2500/ to 3500/- only per month and he was earning Rs. 4,000/- to 5,000/- per month and his family consisting of his aged mother, father, one minor brother and his grand-mother were fully dependant on the income of the deceased as her husband is not in a position to do any hard work owing to his illness and due to the premature death of the sole earning member of the family, the family members are completely in distress and has been facing acute financial hardship and uncertainty. Hence, under the above facts and circumstances, the claimant preferred this claim petition claiming an amount of Rs. 16,12,000/- as compensation from the Opposite Parties and the OPs are either jointly or severally liable to pay compensation to the claimant.

3. The O.P. No 1 and OP No. 2 are the owners of the offending vehicle bearing Registration No. AS-01-J/4908 (Truck) and

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AR-04-2465 (Tata Indica) which was driven by O.P. No. 3 and OP No. 4 and was insured with OP No. 5 Oriental Insurance Co. Ltd. and other insurer of the vehicle is not known.

4. The OP No. 4 i.e the driver of the vehicle No. AR-04-2465 (Tata Indica) did not contest the claim and as such, the case preceded ex-parte against him.

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Accident Claims Tribunal
Additional District Judge
Madurai, Tamil Nadu

5. In the written statement filed by OP No. 5 i.e. the Oriental Insurance Co. Ltd, it is averred that has denied the cause of action and the maintainability of the case and also stated that the claim petition is hit by the principles of waiver, estoppels and also collusive. It is also contended in the written statement that the claim petition is bad for want of valid and proper notice. The answering OP also stated that the claim is bad for non disclosure or the suppression of the material facts. The claimant has not disclosed the true nature of the alleged accident in which her son was sustained injuries and ultimately died, the alleged accident took place due to sole negligence, carelessness and fault of the deceased himself. The answering OP shall not be liable in case of violation of various mandatory terms and conditions. The OP also stated that the alleged accident took place due to sole negligence and careless driving by the driver of the vehicle no. AR-04/2465 (Tata Indica), on the date and time of accident, the driver of the yehicle was drove his vehicle in excessive speed by endangering human lives for which he had lost his control over the vehicle. Due to high speed and as well as front right tire punctured, the driver was lost his control over the vehicle and at that time collided with the vehicle which was in fare and normal speed. The driver of the vehicle i.e the truck

was proceeding with his vehicle by driving in fairly normal speed with maintaining all traffic rules but the alleged accident was the consequences of rash, negligent and illegal driving of the driver of the vehicle. So, the OP shall not be liable in any way to compensate the claimant. Alleging that the amounts claimed by the claimant are too imaginary, baseless, highly exorbitant and fanciful. The OP i.e the driver of the vehicle No. S-01/J-4908 (Truck) was not holding any valid driving licence in his name in the mean time of the alleged accident. The OP also denied that the deceased i.e the claimant's son was 19 years of age at the time of his death. So, it is unbelievable that the claimant of this case i.e the mother of the deceased was only 35 years at the time of filling the case. So, the OP No 4 has

prayed to dismiss the claim.

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Additional District Judge
Tezpur, Tezpur

6. The OP No 2 i.e the owner of the vehicle bearing registration No. AR-04-2465 (Tata Indica) filed written statement denying the maintainability of the case and also stated that the claim petition is hit by the principles of waiver, acquiescence and estoppels. The OP also stated that the claim petition are vague and incomplete and also the amount of compensation being excessively high is not recoverable as there is no any evidence in connection with alleged accident for which the claimant can claim the huge sum of compensation against the OP. The OP also disputed about the occupation monthly income age of the deceased. The OP also stated that the claim petition is not properly verified as per provision of law. The OP also averred that the vehicle No. AR-04/2465 car was insured with the New India Assurance Company Limited, Tezpur Branch and the policy was valid upto 10.03.07 from 28.06.06 and the driver had effective

and valid driving licence at the time of the alleged accident and this OP has not violated any terms and conditions of the insurance policy. This Op has valid registration certificate of his vehicle being No. AR-04/2465 so, if any liability arises then whole liability shall be borne by New India Assurance Co. Ltd. The OP denied all allegations because the above claimant has no locus-standi to file this claim for not filing any papers and the documents relating to the death in the alleged accident. Further, the answering OP denied each and every statement made in the claimant. So, the O.P. No. 2

Memo has prayed for dismissal of the claim petition.

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Additional District Judge
Sondipur, Tampar

The OP No. 1 and OP No. 3 i.e the owner and the driver of the vehicle No. AS-01/J-4908 have jointly filed the written statement stating that the claimant has no locus-standi to file this claim petition against these answering opposite parties and also denied the cause of action and also maintainability of the case. It was also contended in the written statement that the claim petition is claim for dad for want of due notice. The answering opposite parties denies all or any liability of the case. The opposite parties also admitted that the OP No 1 was the owner and OP No 3 was the driver of the vehicle No. AS-01/J-4908 at the relevant time of the alleged accident and the answering OP do not have personal knowledge that the deceased Sumit Shil Sarmah was 19 years old at the relevant time of the alleged accident and the accident took place due to the rash and negligent driving of the said vehicle by its driver i.e the OP No. 3. Alleging that the amounts claimed was too high, excessive and is not entitled to get. The opposite parties also stated that at the relevant time of the alleged accident , the vehicle No. AS-01/J-4908 was duly registered in the

name of its owner Sri Biswanath Gorai and also insured with the Oriental Insurance Co. Ltd. with a valid policy of insurance which is valid from 11.09.06 to 10.09.07. At the relevant time of the accident, vehicle No. AS-01/J-4908 , the drive of the vehicle with due care and caution at a normal speed having driving licence. So, the opposite parties are not liable to pay the compensation and have prayed to dismiss the claim.

8. Upon the pleadings of the parties, the following issues were framed.

ISSUES

1. Whether the accident took place due to rash and negligent driving by the drivers of the vehicle No. vehicle No. AS-01/J-4908 (Truck) or the driver of AR-04-2465 (Tata Indica) or whether both the drivers are equally responsible for the accident?
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 prayer for, and if yes, from whom and to what extent ?

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Additional District Judge
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9. The claimant has submitted her evidence-on-affidavit in support of her case and has also produced certain documents and she was cross-examined by the O.P No 5 i.e Oriental Insurance Co. Ltd. The documents are: 1. Ext 1 Accident Information Report –Form No. 54

2. Ext. 2 Post Mortem Report

10. The learned counsel for the Insurance Company has submitted his written argument. 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 & REASONS THEREOF

ISSUE NO. 1

Mohana
 Member
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 District Judge 1.
 Tezpur, Tezpur

This issue relates to the fact that as to whether the accident took place due to rash and negligent driving of the driver. The evidence of the claimant as well as her supported witnesses have adduced that On 06.10.2006, at about 5.45 am, the deceased Sumit Shil Sarmah @ Kanai went to Guwahati from Tezpur in the vehicle No. AR-04-2465(Tata Indica) along with Sri Prasanta Nath, Staff Reporter of Agradut Press, Tezpur and the said vehicle was driven by its driver Sri Sonti Sarmah with due care and caution at a very normal speed and on the way to Guwahati and suddenly the right tire of the front wheel of the said vehicle was punctured near Kawaimari and its driver was compelled to stop and park the vehicle No. AR-04-2465 in the extreme left side the National highway-52 and took all necessary precautionary steps to alert the running vehicles and after that the driver brought out the punctured tire for repairing. But unfortunately while the claimant's son Sumit Shil Sarmah @ Kanai, who was travelling in the said vehicle No. AR-04-2465 being an employee of part time of the Agradut Press, Tezpur, was waiting near the said stationary vehicle No. AR-04-2465, the offending vehicle bearing Registration No. AS-01/J/4908 being driven by its driver Sri Tarun Ch. Roy rashly and negligently with

high speed without due care and caution endangering human lives by not complying with the driving rules of the Motor Vehicles Act, 1988 dashed the claimant's son Sumit Shil Sarmah @ Kanai along with the said stationary vehicle No. AR-04-2465 and at the relevant time of the said accident the other occupant of the vehicle No. AR-04-2465 Sri Prasanta Nath was standing few meter away from the said stationary vehicle No. AR-04-2465. It is also alleged in the evidence that the accident took place due to rash and negligent driving of the driver of the vehicle.

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CHIEF JUSTICE
 DISTRICT COURT
 DISTRICT JUDGE
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The Insurance Co. in their cross-examination the claimant witnesses and made certain suggestions and failed to prove that the driver of the vehicle had no rash and negligent driving at the relevant time of the accident and made no rebuttable evidence to prove that the accident took place due to ignorance of the since deceased at the relevant time of the said accident and the Insurance Company putting mere suggestions that the death of the son of the claimant occurred on 06.10.06 due to the injuries sustained by him in the said accident due to the rash and negligent driving of the driver and the death of Sumit Shil Sharma occurred due to the direct and proximate cause of the accident caused by the OP No 1 i.e the driver of the vehicle No. AS0-01/J/4908 (Truck). Mere suggestions were put forward that opposite parties failed to prove their own case by keeping conformity with the pleadings made in their written argument and hence the OPs failed to prove that the accident occurred due to the fault of the since deceased.

The evidence of the claimant and her independent witness is very much clear and support witnesses without any contradiction. The opposite parties during their cross-examination put mere suggestions to the CW 1 and CW 2, but no evidence has been given by the Opposite Parties to that effect, hence the opposite parties failed to prove their plea. The claimant to substantiate and to prove that the age of her son Sumit Shil was 19 years at the time of his death has exhibited the Post Mortem Report as Ext 2, hence the claimant by exhibiting the Ext 1 has clearly and substantially proved that the son of the claimant grievous injuries caused by the offending vehicle AS-01/J/4908 (Truck). Hence, this issue has been proved by the claimant and is decided in favour of the claimant.

ISSUE NO 2

12. As regards this issue whether there was contributory negligence on the part of the deceased leading to the accident, the opposite parties have not brought forward any evidence in this regard except the written statement in which there was simple denial. Furthermore, the facts of the case is that the accident took place by the driver OP No. 3 due to rashly and negligently with high speed without due care and caution endangering human lives but not complying with the driving rules of Motor Vehicle Act as has been proved by the claimant's witnesses. So, the probability of contributory negligence of any other vehicle does not arise at all. Mere stating that there was contributory negligence is not sufficient. The form No 54 submitted by the police which is Ext 1 as the First in formation Report also reveals that accident was caused by the vehicle No AS-01/J/4908. As regards contributory negligence on the part of the deceased

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how and in what manner she had contributed is not proved by the opposite parties. Hence, the claimant's have proved their case, this issue is also decided in favour of the claimant.

ISSUE NO 3

13. In view of the above discussions made in Issue No. 1 and 2, the claimant is entitled to compensation. The OP No 5 the Insurance Company in their written has stated that their liability is subject to the terms and conditions and limitations as specified in the Policy of Insurance and M.V. Act and Rules. Ext 1 is the form No. 54 has given the details of the Insurance Policy relating to the vehicle involved in this case. This Ext.1 has not been challenged by the Insurance Co. and it is also not brought out in any manner that at that time of the accident, the said vehicle did not have valid licence. Also, the Ext. 1 the form no. 54 has given the details of the driving licence and the driving licence was valid upto 22.06.08. The Insurance Company i.e. the O.P. No 5 is liable to pay the compensation to the claimant.

The son of the claimant when he was died, was 19 years. At the time of the accident he was earning of Rs. 4,000/-to 5,000 per month and his family members were consisting of claimant herself, father, brother and his grandmother. There is no income certificate authenticating the statement of the claimant that the deceased was earning 4,000/ - 5,000/ per month at that time. So, the notional income is taken into consideration and the amount of compensation to which the claimant is entitled to get is calculated as follows.

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 Bangalore, Karnataka

Annual dependency	36,000/-
<u>Multiplier</u>	<u>x16</u>
	Rs. 5,76,000/
<u>And after deduction of 1/4th</u>	<u>Rs. 1,44,000/</u>
	Rs. 4,32,000/

Hence, the total amount of compensation will be:

Annual expenditure	Rs	4,32,000/
Funeral expenses	Rs.	5000
Loss of Consortium	Rs.	5000
<u>Loss of love & affection</u>	<u>Rs.</u>	<u>10,000</u>
Total	Rs:	4,52,000/

14. Accordingly, the claimant is entitled to get compensation of

Rs: 4,52,000/(Rs. Four Lakhs Fifty Two Thousand) only.

ORDER

15. The claim petition is allowed awarding an amount of **Rs: 4,52,000/**(Rs. Four Lakhs Fifty Two Thousand) only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and the Insurance Co. will pay the said amount within one month from the date of receipt of the copy of the Judgment.

14. The OP. No. 5 i.e. the Oriental Insurance Company Ltd. is hereby directed to pay the compensation amount of **Rs: 4,52,000/**(Rs. Four Lakhs Fifty Two Thousand) only to the claimant with an interest at the rate of 9% per annum from the date of the filing of the claim petition till

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realization and the Insurance Co. will pay the said amount within one month from the date of receipt of the copy of the Judgment.

15. Send a copy of this judgment to the OP No. 5 i.e. the Oriental Insurance Co. Ltd free of cost.

16. Given under my hand and seal of this Court on this 03rd day of December, 2013 at Tezpur.

M Sharma
(Smti.M.R.Sharma)
Member, M.A.C.T (Addl. Dist. Judge)
Sonitpur, Tezpur