

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

PRESENT: **SMTI. M.R. SHARMA**
Member, Motor Accident Claims Tribunal
Addl. District Judge
Sonitpur, Tezpur

JUDGMENT IN MAC CASE NO. 182 OF 2008

Smti. Dulu Dutta
W/O- Late Anil Dutta
Vill: Rubber Bagan, Ward No. 15
P.O.: Mahabhairab, P.S: Tezpur
Dist: Sonitpur, Assam **Claimant**



Versus

1. Mustt. Lalmai Begam
[Owner of the vehicle No. AS-01-G/8715.....Truck]
2. Sri Padip Borah
[Driver of the vehicle No. AS-01-G/8715.....Truck]
3. The Oriental Insurance Co. Ltd.
[Insurer of the vehicle No. AS-01-G/8715.....Truck]

ADVOCATES WHO APPEARED

For the claimant : Sri Mahendra Borah
Advocates

For the OP No 3 : Sri Ashim Choudhry
Advocate

Date of argument : 20.09.13

Date of judgment : 01.11.13

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Motor Accident Claims Tribunal
Additional District Judge
Sonitpur, Tezpur

J U D G M E N T

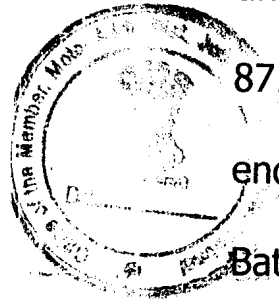
1. This claim petition has been filed by the claimant Smti. Dulu Dutta, mother of the deceased claiming compensation for the death of her son Sri Ashit Dutta, who died in a motor accident on 23.10.07.

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

On 23.10.07 at about 10.30 PM, while the Claimant's son Ashit Dutta was proceeding from Tezpur towards Bhumuraguri by driving his Honda Eterno Scooter in a moderate speed in his own side of the road, the driver of the offending vehicle bearing Registration No. AS-01-G-8715(Truck) coming from opposite side in a rash and negligent manner endangering human life knocked down the Scooter from his front side at Batamari on N.H. 37 (A). As a result of the accident, the deceased Ashit Dutta died on the spot and his Scooter was crushed under the offending vehicle. The accident took place due to sole negligence of Truck Driver.

At the relevant time of the accident the deceased Scooter was duly insured with Bajaj Allianz Insurance Company and deceased plying his scooter with valid driving licence.

That at the time of the accident the deceased was doing business and used to earn Rs. 9,000/ only per month, his mother the claimant was look after by the deceased and on the death of her son, she suffers a lot as she has no other income source and was a dependent on the income of the deceased, besides suffering from mental pain, agony and lost of future amenities. At the relevant time of accident, the offending



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vehicle was duly registered in the name of the owner Mustt. Lalmai Begum and duly insured with oriental Insurance Co. and the said accident took place only due to ash and negligent driving of the drive and they are jointly and severally liable to pay compensation. Hence, under the above facts and circumstances, the claimant preferred this claim petition claiming an amount of Rs. 15,50,000/ - as compensation from the opposite parties.

3. The O.P. No.1 was the owner of the offending vehicle bearing Registration No. AS-01-G-8715 (Truck), which was driven by O.P. No. 2 and was insured O.P. No. 3 ,the Oriental Insurance Co. Ltd.

4. The OP No. 1, the owner of the (offending vehicle) did not contest the claim and as such, the case proceeded ex-parte against her.

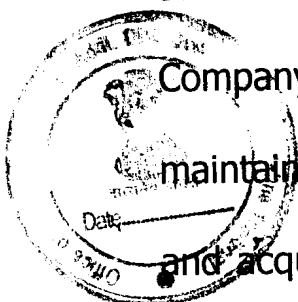
5. In the written statement filed by O.P. No. 3, Oriental Insurance Company Ltd. It is averred that it has denied the cause of action and maintainability of the case and stated that the claim is barred by estoppels and acquiescence. The OP No 3 has also stated in the written statement

that the claim the OP No. 1 and 2 i.e the owner and driver respectively of the vehicle bearing Reg. No. AS-01-G/8715 (Truck) does not appear then it will be assumed that there is collusion between the claimant and the owner. It is also stated that the claimant has not filed any relevant

document in support of the claim including insurance certificate. The OP also begs to state that regarding place, date and time of the accident, name of Police station and involvement of vehicle in the alleged accident.,

the same has to be maintained by FIR, police report and other necessary document and liability is cast upon the claimant to make strict proof. They

have also stated that the claim is imaginary without any basis at all and in



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any view of the matter the claimant is not legally entitled to get any compensation. They also stated that the claimant has not produce age certificate of the deceased and also not submitted any income certificate. The OP also averred that as per the provision of the M.V. Act, 1988 the driver of the vehicle involved in the accident should produce the effective driving licence and there is no prima facie material to fasten the liability to the insurer u/s 140 of M.V Act, 1988. The OP also stated that the claimant should produce the document to prove that the death of the deceased is out of vehicular accident. The OP also stated that no such accident occurred on 13.10.2007 involving vehicle No. AS-01-G-8715(Truck). The OP also stated that the claimant is not entitled to get compensation from OP No. 3 in absence of the strictest proof of the following documents:



- a) Accident Information report.
- b) Post Mortem Report.
- c) Registration Certificate, fitness certificate of the alleged offending vehicle.
- d) Valid and effective driving license of the driver.
- e) effective policy of insurance on the date of accident.

On the basis of the pleadings of the parties, the following issues were framed.

ISSUES

1. Whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle No. AS-01-G/8715.(Truck) ?

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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 ?

7. The claimant has submitted his evidence-on-affidavit in support of his case who has also produced certain documents and he was cross-examined by the O.P 3 Oriental insurance Co. Ltd. The documents are:

1. Ext. 1 Form No 54 (Original)
2. Ext. 2 Post Mortem Report(Original)
3. Ext. 3 Income Tax SARAL (Original)
4. Ext. 4 Trade Licence(Original)
5. Ext. 5 Insurance Policy of the scooter of the deceased .
6. Ext. 6 Driving Licence of the deceased (Original)



8. The learned counsel for the Insurance Company has submitted his written argument. I have also gone through the evidence and other materials on record.

DISCUSSION DECISION & REASONS THEREOF

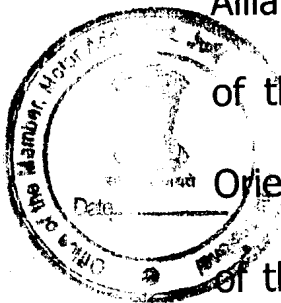
ISSUE NO. 1

9. This issue is whether the accident took place due to rash and negligent driving of the driver of the vehicle No AS-01-G-8715. The evidence of the claimant as well as her supported witnesses have adduced that on that day the claimant's son, on 23.10.07 at about 10.30 PM, while the Claimant's son Ashit Dutta was proceeding from Tezpur towards Bhumuraguri by driving his Honda Eterno Scooter in a moderate speed in

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his own side of the road, the driver of the offending vehicle bearing Registration No. AS-01-G-8715(Truck) coming from opposite side in a rash and negligent manner endangering human life knocked down the Scooter from his front side at Batamari on N.H. 37 (A). As a result of the accident, the deceased Ashit Dutta died on the spot and his Scooter was crushed under the offending vehicle. The accident took place due to sole negligence of Truck Driver.

The claimant Smti Dulu Dutta mother of the deceased in her evidence has narrated the manner in which the accident took place and also stated that the scooter of the deceased as duly insured with Bajaj Allianz and the accident took place due to the rash and negligence driving of the driver of the Truck. The said Truck was insured with OP No 3 Oriental Insurance Company, while the insurance company cross examined of this witness has suggested that the accident did not take place due to the negligence of the offending truck, to which the claimant totally denied. The evidence of CW 2 Sri Sanjib Das who also supported the claimant who was also cross-examined by the insurance. In the cross-examination this witness deposed that the accident took place at Batamari and he was going at the back of the truck and he is an eye witness. He deposed that he saw the truck had directly dashed against the scooter of the deceased and the deceased along with his scooter had gone inside below the truck under the wheels. He also deposed that the truck was going at a speed and the deceased died on the spot. The insurance has not given any evidence from which it can be inferred that the offending truck was not at fault. Rather the evidence of CW 1 and CW 2 has fully proved that the offending truck

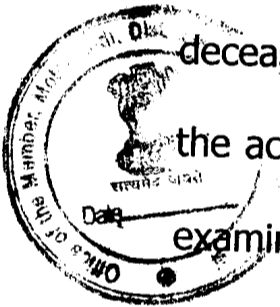


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had caused the accident due to rash and negligent driving of the driver. Hence this issue is decided in favour of the claimant.

ISSUE NO 2

10. This issue relates to whether there was contributory negligence on the part of the deceased leading to the accident. The evidence on CW 1 and CW 2 who are claimant Smti. Dulu Dutta and Sri Sanjib Das shows that the accident was had on collusion and the offending truck had dashed directly against scooter of the deceased, as a result of which the accident occurred. In the cross-examination of the claimant, insurance had stated that only as to whether the deceased was driving the vehicle alone whether the scooter was registered or not and what was the income of the deceased at the time of the accident. How the deceased had contributed to the accident has not come on record. Also the insurance had, while cross-examined CW 2, had asked about the fact as to who was at fault. The witness had stated that he cannot say whose fault it was and this witness rather sated that the truck was at the speed. Hence there being no evidence on record of contribution of the deceased to the accident, the issue is decided in favour of the claimant. There was not contributory negligence on the part of the deceased.



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ISSUE NO 3

11. In view of the discussion made in Issue no 1 and 2 the claimant is entitled to get compensation. OP No 1 the owner of the vehicle did not contest the case. Also the claimant by petition on 07.01.09 had prayed for striking out the name of OP No 2 driver of the offending vehicle Sri Pradip Borah which was allowed by the Court. The offending vehicle i.e. the truck

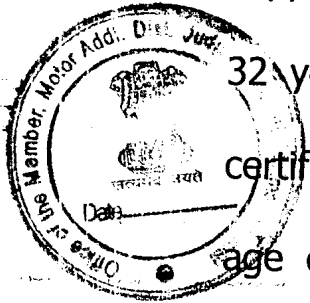
was duly insured at the time of the accident and the claimant has also proved that the accident occurred due to the fault of the said truck. So, the claimant is entitled to get compensation from OP No 3 Oriental Insurance Company with whom the offending vehicle bearing registration AS-01-G-8715 (Truck) was insured.

Now remains the amount of compensation to be decided for the claimant. The claimant has stated that at the time of the accident i.e. on 23.10.07 the deceased was aged about 32 years and at that time he was earning Rs. 9,000/ per month. She also stated that at that time deceased was unmarried and she was totally dependent on the income of the deceased as her husband died long back. The documents enclosed in support of the claim petition shows that the age of the deceased was

32 years on the post-mortem report (Ext. 2), as there is no separate certificate, the said age is accepted. The mother is aged 54 years, so, the age of the mother is taken for multiplier. The Ext. 3 shows that the deceased was an income tax Assesse and also Ext. 4 is the trade license of the Tezpur Municipality showing that the deceased had a Grocery shop.

There is no income certificate authenticating the statement of the claimant that the deceased was earning 9,000/ 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.

Annual dependency	36,000/-
<u>Multiplier</u>	<u>x11</u>
	Rs. 3,96,000/
<u>And after deduction of 1/2 thRs.</u>	<u>1,98,000/</u>
	Rs. 1,98,000/



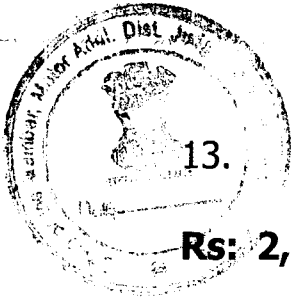
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Hence, the total amount of compensation will be:

Annual expenditure	Rs	1,98,000
Funeral expenses	Rs.	2000
Loss of Consortium	Rs.	2000
<u>Loss of love & affection</u>	Rs.	<u>10,000</u>
Total	Rs:	2,12,000/

12. Accordingly, the claimant is entitled to get compensation of **Rs: 2,12,000/-** (Rs Two Lakhs Twelve Thousand) only.

ORDER



13. The claim petition is allowed awarding an amount of **Rs: 2,12,000/-** (Rs Two Lakhs Twelve 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. 3 i.e. the Oriental Insurance Company Ltd. is hereby directed to pay the compensation amount of **Rs: 2,12,000/-** (Rs Two Lakhs Twelve 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.

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15. Send a copy of this judgment to the OP No. 3 i.e. the Oriental Insurance Co. Ltd free of cost.

16. Given under my hand and seal of this Court on this 01th day of November, 2013 at Tezpur.

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

