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**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. 311 OF 2008

1. **Smti. Nima Lama**
W/O Late Mingmar Lama
R/O Chariduar
P.O. Chariduar P.S.
District: Sonitpur, Assam

2. **Sri Nono Lama**
3. **Sri Dolma Lama**
4. **Sri Pema Lama**

All of are the son of
Late Mingmar Lama
R/O Chariduar
P.O. Chariduar P.S.
District: Sonitpur, Assam

..... **Claimants**

Versus

1. Chief Engineer of Greif (Vartak, Morathetai)
2. Commandant of GREF, C/O-90 R.C.C GREF Jung
(Owner of the vehicle No Tata Tipper 06E-66746)
3. Mingmar Lama (since deceased)
(Driver of the vehicle No. Tata Tipper 06E-66746)
4. Union of India
(Insurer of the vehicle No. Tata Tipper 06E-66746)

ADVOCATES WHO APPEARED

For the claimant : Salim Khan, Advocate



Handwritten notes:
1. 12/11/14
2. 13/11/14
3. 14/11/14
4. 15/11/14

J U D G M E N T

1. This claim petition has been filed by the claimants Smti. Nima Lama, wife of the deceased, and on behalf of her three minor children, claiming compensation for the death of her husband Mingmar Lama, who died in a motor vehicle accident on 08.01.08.

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

On 08.01.08 at about 1.30 pm, the deceased was proceeding with Tipper vehicle having Regd No. 06E-66746 as a driver of the vehicle, but suddenly due to break failed and fell down 100 meters down as a result Mingmar Lama died in accident and the deceased was sole earning member of his family.

The deceased was the only earning member of his family and his family members consisting of her, three children. Hence, under the above facts and circumstances, the claimants preferred this claim petition claiming an amount of Rs. 8,00,000/- (Rs Eight Lakhs) as compensation from the opposite parties.

3. In the written statement filed by O.P. No. 1 and 2 the owner of the vehicle has denied that there is no cause of action and the maintainability of the case and the claim petition is hit by the principles of waiver, estoppels and also collusive. The claim petition is bad for non-joinder

The OP has no

amount claimed by the claimant is highly excessive, exorbitant and exaggerated. The OP also stated that the deceased was 29 years old at the time of the accident as falsely stated in the claim petition by the claimant, but as per records the deceased was 37 years old at the time of accident. The OP also submitted that the compensation amounting to Rs. 2,35,627/ on account of death has already paid so the OP stated that the claim petition is not sustainable and tenable. The OP denies that the accident took place due to brake failure. The OP also stated that on 08.01.08 when the vehicle was returning back to, the offending vehicle skid on ice and it as capsized fell about 100 meter down into the valley as a result Mingmar Lama died on the spot due to head injury and that the accident took place due to foggy bad weather during the relevant time. The OP also admitted that on account of death of code No. B-1020/B-258 MRW (CPL) Mingmar Lama compensation already paid to his family. Therefore, the OP No 1 and 2 have prayed for dismiss the claim petition.

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

ISSUES

1. Whether the victim Mingmar Lama died as result of vehicular accident of the vehicle bearing Regd No. Tata Tipper 06E-66746 as alleged ?
2. Whether the claimant is entitled to compensation as prayed for?

6. I have also gone through the evidence and other materials on record.

DISCUSSION DECISION & REASONS THEREOF

ISSUE NO. 1

7. This issue is whether the accident took place due to rash and negligent driving of the driver of the vehicle. The claimant has adduced in support of her case affidavit of herself only and in her statement she has stated that her husband on that day was carrying labours in the vehicle and when reached at Jano Rammaspur road and the offending vehicle skid on ice and it as capsized and fell about 100 meters down in valley at about 1.30 pm as a result deceased Mingmar Lama died. The deceased was sole earning member of his family. She was cross-examined by the OP Union of India and stated that she has two sons and two daughter and at that time her husband earning Rs 3,300/ per month. The learned counsel for the Union of India had stated that she had got 2,35,627/ from the Commissioner Workman Compensation Bomdila, which she has admitted. The learned counsel has suggested that in view of the receipt, she is not entitled. But they had not cross-examined on any point regarding the fact that the accident did not occurred on that day. Ext 1 is the FIR Copy which is given by Officer Commanding of GREF, Ext 2 is the PM report and Ext 3 is the Police Report of Officer in Charge of Police, Tawang. The police report also shows that the husband of the claimant Mingmar Lama died as

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OP Union of India

ice and fell about meter down in the valley for which he received head injury and died. So, the accident is not denied by the OP and hence the Issue No. 1 is decided in favor of the claimant.

ISSUE NO 2

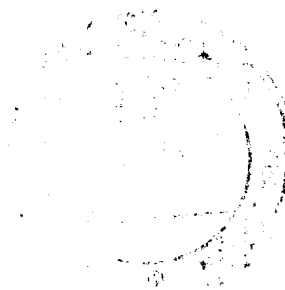
8. This issue relates to whether the claimant is entitled to pay any compensation and to what extent. The claimant has proved that her husband died as a result of the accident of the vehicle no. Tata Tipper 06E-66746 and this fact is admitted by the OP. The OP has stated that since they have already paid an amount of Rs. 2,35,627/-so they are not entitled to any claim under the MV Act. The Union Of India has also submitted a document being a showing that the Commissioner Workmen's Compensation, West Kameng Bomdila had given a money receipt of Rs 2,35,627/- on 03.11.08 this fact has been admitted by the claimant. They have submitted documents being exhibit Ext. A, Ext. B, and Ext. C. However the claimant of the OP that the claimant is not entitled to further compensation under the MV Act is not tenable in law. The claimant has not filed any petition before the Commissioner Workmen Compensation for any amount of compensation and the amount stated above received by her has been given voluntarily given by the Commanding Officer. Under the provision of law even if a person has received compensation under the Workmen Compensation Act, the person is entitled to compensation under the provisions of MV Act. Hence the claimant is entitled to compensation.

The husband of the claimant when he was died was 32 years. At the time of the accident he was earning of Rs. 3,300/- per month. There is no income certificate authenticating the statement of the claimant that the

11. The Union of India is hereby directed to pay the compensation amount of **Rs: 5,67,000/- (Rs Five Lakhs Sixty Seven 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.

12. Send a copy of this judgment to the Insurance Co. Union of India free of cost.

13. Given under my hand and seal of this Court on this **10th** day of April, 2014 at Tezpur.



M Sharma
10/4/14
(Smti.M.R.Sharma)
Member, M.A.C.T (Addl. Dist. Judge)
Sonitpur, Tezpur
Member
Motor Accident Claims Tribunal
Additional District Judge
Sonitpur, Tezpur