

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
SONITPUR: TEZPUR

**MAC Case No. 301 of 2010**

1.Smt Mousumi Devi  
Wife of Late Tapan Kumar Nath

2. Smt Golapi Devi  
W/o Lt Pitam Ch Nath

3. Ms Tina Devi  
D/o Late Tapan Kumar Nath  
Represented by claimant No.1

All (1) to (3) are permanent residents of  
Vill: Bhalukekhowa  
PO: Pithakhua  
PS: Tezpur  
District: Sonitpur, Assam.

Presently residing at:  
Vill: Dihingia, Kalita gaon  
PO: Balipukhuri Tiniali  
PS: Tezpur  
District: Sonitpur, Assam.

... Claimants

-Versus-

1) Assam State Transport Corporation  
Represented by Managing Director, ASTC  
Paltan Bazar, Guwahati-8.

2. Sri Brojen Saikia  
S/o Sri Kanak Saikia  
Vill: Charing Baruwati Gaon  
PS: Gaurisagar  
District: Sibsagar  
Assam

. .Opposite Parties

Advocate for the claimant : Sri A.K.Paul, Sri S.K.Singh  
Advocate for OP No. 1 : Sri J Sundi  
Advocate for OP No. 2 : None appeared

PRESENT  
Ms. A. AJITSARIA, AJS,  
Member, Motor Accidents Claim Tribunal  
/Addl District Judge No.2, Sonitpur, Tezpur

Date of Argument : 1.03.2014  
Date of Judgment : 29.4.2014

### **J U D G M E N T**

The instant claim petition has been filed by the claimant u/s 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Tapan Kumar Nath (hereinafter referred to as the "deceased") who was the husband of the Claimant No.1, son of the claimant No.2 and father of the claimant No.3.

The case of the claimants, in brief, is that on 23.5.2010 Tapan Kumar Nath, posted as Home Guard in the bungalow of the Deputy Commissioner, Sonitpur, Tezpur, was hit by the ASTC Bus No. AS-20-0780 while on his bicycle, resulting in greivous injuries to his person. The claimants have stated that the injured was immediately rushed to Kanaklata Civil Hospital in a 108 Ambulance, where he succumbed to his injuries. It has been stated that the accident occurred because of the rash and negligent driving by the OP No.2.

The claimants have stated that the deceased had a total income of Rs.10,000/- per month, that is, Rs.3000/- per month as an Home Guard and Rs.7000/- per month as a part time instructor of martial arts and business of watch repairing shop situated at Bebejia Tiniali.

The Opposite party No.1, Assam State Transport Corporation filed its written statement through its Managing Director denying all the material averments of the claim petition and pleaded, inter-alia, that the accident occurred because of the deceased himself.

The Opposite party No.2, the driver of the ASTC Bus, not having entered appearance inspite of service of notice, the instant case proceeded exparte against the opposite party No.2

On the basis of pleadings my Ld predecessor-in-office framed the following issues for adjudication :-

1. Whether the accident took place due to rash and negligent driving of the driver of the offending vehicle. ?
2. Whether the claimant is entitled to compensation as prayed for ?

During enquiry, the claimant Nos. 1 and 2 examined themselves and one other witness. All the witnesses were extensively cross examined by the O.P. No.2. The OP No.1 has not examined any witness in support of its plea.

I have carefully perused the entire materials brought on record, heard both sides and my decisions on the issues are as follows :-

Both the issues are taken up together for discussion and decision, for the sake of convenience and brevity.

Evidence of the claimant No.1 and claimant No.2 is that, Tapan Kumar Nath died due to the rash and negligence of the OP No.2 in the road accident on 23.5.2010. It has been stated that at the time of accident, the deceased was the sole earning member of the family and used to earn Rs.10,000/- per month.

The claimant No. 2 exhibited the certified copy of the FIR as Ext 1, Accident Information Report as Exbt 2, Post Mortem Report as Exbt 3, Death Certificate as Ext 4, Salary Certificate as Ext 5, Trade License as Ext 6, Certificate from Yaatosae Martial Arts Academy of India as Ext 7, Certificate from North East India Kick Boxing Championship as Ext 8 and Admit Card of the deceased as Ext 9.

CW- 3, Sri Sourav Neog, deposed that on 24.5.2010 he had seen Tapan Kumar Nath who was riding a bicycle being hit by the ASTC Bus No. AS-20-0787. He stated that the ASTC Bus was driven in a rash and negligent manner at the relevant time. He corroborated OP No.1 and OP No.2 with regard to the earnings of the deceased. He stated that the deceased used to earn as a Taekwondo Instructor and had a watch shop. This witness in his cross examination has confirmed that the deceased was a home guard and used to earn as a taekwondo instructor as well.

Ext - 2 is the Accident Information Report wherein it has been recorded that the ASTC Bus No. AS-20-0787 was involved in an accident on 23.5.2010 in which Tapan Nath died. It has been further recorded in the said form that the ASTC being a State Transport Undertaking, its vehicles are exempted from the provisions of the Insurance Act vide Government Order No. TMV 272/73/10 dated 11.7.1973. Ext -1 is the FIR lodged after the accident, on the basis of which Tezpur PS Case No. 542/10 was registered.

Thus, the oral evidence of the claimant, coupled with the documentary evidence, establishes that Tapan Kumar Nath died in the motor vehicle accident, due to rash and negligent driving of the offending vehicle, ASTC Bus No. AS-20-0787.

In view of the discussion made hereinbefore, claimant is held to be entitled to compensation. This Tribunal therefore proceeds to compute the compensation as per the ratio laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **(2009) 6 SCC 121**.

As per the said judgment of the Hon'ble Supreme Court, the multiplier to be applied for computing the compensation would depend on the age of the deceased. Ext 9 is the Admit Card issued by the Board of Secondary Education, Assam in respect of the deceased wherein his date of birth has been recorded as 4.8.1984. The age of the deceased therefore

was 26 years at the time of accident. Therefore the relevant multiplier as per Sarla Verma (Supra) will be 17 (seventeen).

Ext- 5 is the certificate issued by the Superintendent of Police, Sonitpur, Tezpur certifying that the deceased was working as a Home Guard and at the relevant time posted at DC's Bungalow and that he was paid Rs.100/- per day. Ext 6 is a Trade License dated 1.7.2008 for a watch repairing shop issued by the Besseria Village Panchayat in the name of the deceased whereby yearly tax for operating the shop was received by the Panchayat from the deceased. Thus it is proved that the deceased had a watch repairing shop. The deceased must have been earning a reasonable amount from the said shop. Since no cogent proof has been placed before this Tribunal in respect of his monthly earnings from the shop, this Tribunal deems it appropriate to take the amount of Rs. 2000/- per month as his earnings from the said shop. Each of the claimant witnesses have stated that the deceased was a martial arts instructor. Ext 6 and Ext 7 are the certificates of laurels in martial arts issued in favour of the deceased. However in absence of any cogent proof that the deceased was earning as an instructor in martial arts, this Tribunal is not inclined to accept the same only on the basis of the certificates exhibited by the claimants. Hence the total monthly earnings of the deceased is taken to be Rs.5000/- per month.

The Hon'ble Supreme Court in **Santosh Devi Vs. National Insurance Company Ltd.[ (2012) 6 SCC 421]** in paragraph 18 has held that :

*"... 18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."*

Thus relying on the ratio of the aforesaid judgment of the Hon'ble Supreme Court, the claimant, in the instant case, is entitled to get 30%

increase towards future prospect. The annual income of the deceased is thus computed to be [Rs.5000/- + 30% of Rs.5000/- x 12 = Rs.78,000/-].

Since the deceased left behind three dependents, one third is to be deducted towards the personal expenses of the deceased. Thus so deducting [Rs. 78,000/- (-) Rs.26,000/-], the annual income of the deceased is assessed as Rs. 52,000/- .

Besides loss of dependency, the claimants are entitled to some amount, on account of funeral expenses, loss of consortium and loss of love and affection. The Hon'ble Supreme Court in **Rajesh and Ors. Vs. Rajbir Singh and Ors. reported in MANU/SC/0480/2013** has held in paragraph 24 and 25 that an amount of Rupees One Lakh ought to be granted for loss of consortium, love and affection and an amount of Rupees twenty five thousand should be granted for funeral expenses unless there is proof of higher expenditure on the said count. Thus, just and reasonable compensation to which the claimants are entitled, is assessed as under:-

Loss of dependency (52,400/- x 17)	:	Rs. 8,90,000.00
Loss of consortium for the claimant No.1	:	Rs. 1,00,000.00
Loss of love & affection for the minor daughter	:	Rs. 1,00,000.00
Funeral expenses	:	Rs. 25,000.00
Total	:	Rs. 11,15,800.00

Having held the ASTC Bus No. AS-20-0787 to be responsible for the accident, the Opposite Party No. 1, Assam State Transport Corporation is to pay the award.

#### A W A R D

Rs. 11,15,800/- (Eleven lakh fifteen thousand eight hundred only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 27.9.2010 till payment to the claimants.

Out of the total amount so awarded an amount of Rs. 2,00,000/- is to invested in fixed deposit in any nationalized bank in the name of the minor daughter of the deceased namely, Tina Devi and an amount of Rs. 2,00,000/- is to be disbursed in favour of the claimant No.2, the mother of the deceased.

The OP No. 1, Assam State Transport Corporation, is directed to pay/deposit the entire awarded amount in this Tribunal at Sonitpur within one month from the date of this order.

Let a copy of this order be forwarded to the **(1)** The Managing Director, Assam State Transport Corporation, Paltan Bazar, Guwahati-781008, Assam **(2)** The Principal Secretary, Department of Public Enterprises, 'A' Block, 3<sup>rd</sup> Floor, Assam Secretariat, Dispur, Assam and the **(3)** The Secretary, Department of Transport, Government of Assam, Dispur Secretariat, Dispur, Guwahati, Assam for enabling the Assam State Transport Corporation to satisfy the award.

Given under my hand & seal of this Court on this 29<sup>th</sup> day of April, 2014.

Member  
Motor Accident Claims Tribunal/  
Additional District Judge No.2  
Sonitpur, Tezpur