

BEFORE THE PRESIDING OFFICER \ MEMBER, M.A.C.T.....:NALBARI.**M.A.C. No.173/2012.**

1. Sri Aster Surin.
2. Sri Milka Surin.

- Claimants.

- V E R S U S -

1. Sri Nagen Saikia.
2. Sri Pulak Goswami.
3. The United India Insurance Company Ltd.
4. Miss Rani Kangari.
5. The National Insurance Company Ltd.

- Opp. Parties.

Present: Mr. A.K. Sarmah. LLM, AJS.

Presiding Officer / Member

MACT, Nalbari.

For the claimant:	Learned Advocate Mr. J. Islam.
For the Opp. Party No.1 and 2:	None has appeared.
For the Op. Party No.3:	Learned Advocate Mr. M. Das.
For the Op. party No.4:	Learned Advocate Mr. S. Nath.
For the Op. party No.5:	Learned Advocate Mr. M. Das.

Date of evidence:	08-03-13 and 19-09-13.
Date of Argument:	11-11-2014
Date of Judgment:	28-11-2014.

(J U D G M E N T)

1. Smti. Aster Surin who is in mid forty and Sri Milka Surin who is in fifty, both are the resident of village Ghorjuli Pathar (Ghogra) under Dhekiajuli police station (in short P.S.) in the District of Sonitpur, temporarily residing at village: Nagrijuli under Tamulpur P.S. in the District of Baksa filed this application U/S 166 of the Motor Vehicles Act 1988 (in short M.V. Act) claiming compensation to the tune of Rs.15,00,000/- due to death of their son on account of vehicular accident which occurred on 31-01-2011 at about 1 a.m., at Nizbihoguri on the National Highway No.52. (in short NH-52).

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2. The brief facts leading to filing of this application by the claimants can be stated as follows:-

On 31-01-2011 the deceased Sushil Kr. Surin was driving his Maruti Van having registration No.AS-12/D-3917 from Dhekajuli to Tazpur on the NH-52 at about 1 a.m., in the mid night. At that time, another vehicle having registration No.AS-01/Y-9561 (Tourist bus) coming from opposite direction which was driven by its driver in a rash and negligent manner hit the vehicle of the son of the claimants at Nizbihoguri. It is also the case of the claimants that there was head on collusion between the two vehicles. As a result of the accident, the driver of the Maruti Van having registration No.AS-12/D-3917 i.e. the son of the claimants Susil Kr. Surin succumbed to his injuries on the spot. Police was informed and a case was registered Vide Tazpur P.S. Case No.104/11 U/SS 279/304 (A)/ 427 IPC. It is also the case of the claimants that the offending vehicle was duly insured with the opposite party No.3 i.e. the United India Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimants for the above premises claimed Rs.15 lakhs as compensation due to death of their son.

3. On receipt of the claim petition, notices were issued to the owner, driver as well as the United India Insurance Company Ltd, the insurer of the offending vehicle having registration No.AS-01/Y-9561. Notices were also issued to Miss Rani Kangari the opposite party No.4 the owner of the Maruti Van having registration No.AS-12/D-3917 and also to opposite party No.5 i.e. the National Insurance Company Ltd., the insurer of the vehicle No.AS-12/D-3917.

4. Inspite of received of notices from this Tribunal, the opposite party No.1 and 2 i.e. the driver and owner respectively of the offending vehicle having registration No.AS-01/Y-9561 did not appear before this Tribunal. Therefore, the case proceeded ex-parte against them.


5. However, the opposite party No.3 i.e. the United India Insurance Company Ltd, the opposite party No.4 Miss Rani Kangari the owner of the Maruti Van having registration No.AS-12/D-3917 and the opposite party No.5 i.e. the National Insurance Company Ltd, the insurer of the Maruti Van having registration No.AS-12/D-3917 appeared before this Tribunal and submitted their respective written statement (in short WS).


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6. The opposite party No.3 i.e. the United India Insurance Company Ltd., in its WS denied the factum of accident as well as involvement of the offending vehicle having registration No.AS-01/Y-9561 in the said accident. Further, the opposite party No.3 in its WS asked the claimants to prove their case by giving cogent and reliable evidence.

7. The opposite party No.4 Miss Rani Kangari the owner of the Maruti Van having registration No.AS-12/D-3917 in her WS clearly and categorically stated that she was not the owner of the Maruti Van. According to her, she sold her Maruti Van to one Sushil Kumar Surin (deceased) in an amount of Rs.85,000/- by making a formal sale agreement where Lt. Sushil Kumar Surin put his signature along with two attesting witnesses. According to her, Lt. Sushil Kumar Surin was her near relative and during his lifetime the deceased promised that he will got transfer the registration of the vehicle in his name as soon as possible but he has not done so. Therefore, she contended that she was not the real owner of the Maruti Van. In Para 18 of her WS she stated that the deceased plying the Maruti Van at his own responsibility as he did not possess the ownership of the Maruti Van. Further, she stated that her vehicle was duly insured with the opposite party No.5 i.e. the National Insurance Company Ltd., and it had valid insurance coverage at the time of accident. She further stated that the accident took place due to rash and negligent driving of the tourist bus having registration No.AS-01/Y-9561 by its driver. Therefore, they prayed this Tribunal to exonerate her to pay any compensation to the claimants.

8. The opposite party No.5 in its WS denied the factum of accident as well as the involvement of the Maruti Van in the said accident. According to opposite party No.5 only the driver of the offending vehicle having registration No.AS-01/Y-9561 was negligent of his driving as a result of which the accident took place. In its additional WS the opposite party No.5 stated that Lt. Sushil Kumar Surin holding a learner license and he was authorized to drive motor cycle only but not to drive LMV. According to opposite party No.5 Lt. Sushil Kumar Surin drove the Maruti Van on the strength of a learner license at the time of accident which was un authorized and illegal in the eye of law. Further, the opposite party No.5 stated that the opposite party No.1 drove the offending vehicle having registration No.AS-01/Y-9561 which was a tourist bus by holding a fake driving license. Hence, the opposite party No.5 prayed this Tribunal to exonerate them for praying compensation to the claimants.


Opposite Party No.5
Date: 10/01/2012

9. The claimants in support of their claim, examined claimant No.2 as CW 1. He also examined one witness namely Willim Surin who claimed to be eye witness to the occurrence. CW1 was duly cross- examined by the Ld. Counsel of the opposite party No.3 and 5. CW2 was not cross- examined by any of the opposite parties. Therefore, the evidence tendered by CW2 is remain un challenged. During the course of his evidence CW1 exhibited and proved certain documents including Exhibit 1 police report, Exhibit 2 copy of the ejahar, Exhibit 3 post mortem examination report and Exhibit 4 copy of the charge sheet. Neither the opposite party No.3 and 5 nor the opposite party No.4 examine any witness in support of their respective WS.

10. After hearing both sides and gone through the claim petition as well as WS filed by the opposite party No.3,4 and 5, this Tribunal framed the following issues for just and proper adjudication of the case. The issues are:-

- (i) Whether the claimants are entitled to get any compensation as prayed for and if so, to what extent and from whom?
- (ii) To what other relief or reliefs, the claimants are entitled to?

11. Decision and reasons for decision:-

12. I have heard argument from both sides. I also given my thoughtful consideration on the argumentation put forwarded by the Ld. Counsel for the claimants as well as the Ld. Counsel for the opposite parties and I also perused the evidence on record carefully. Let me first of all decide the issue No.1.


(ISSUE No.1)

13. The Ld. Counsel of the opposite party No.3 vehemently submitted that the offending vehicle having registration No.AS-01/Y-9561 was driven by the opposite party No.1 who has valid driving license at the time of occurrence. According to opposite party No.3 due to negligence of the driver of the Maruti Van having registration No.AS-12/D-3917 the accident took place. He further contended that it was a head on collusion between the two vehicles. According to him the driver of the Maruti Van having registration No.AS-12/D-3917 Lt. Sushil Kumar Surin was not possessing driving license to drive Maruti Van and due to his fault the accident took place and he lost his life. Therefore, he contended that the opposite party No.1, 2 and 3 under no circumstances are liable to pay any compensation to the claimants.

Further, he contended that if this Tribunal decide to give compensation to the claimants then 50% of the awarded amount are liable to be paid by the opposite party No.3 as both the vehicles were involved in the accident as a result of head on collusion between the two vehicles. On the other hand, the opposite party No.4 Miss Rani Kangari in her WS though admitted that she was the register owner of the Maruti Van having registration No.AS-12/D-3917 but she sold the said vehicle at Rs.85,000/- to the deceased who himself drove the Maruti Van at the time of accident. It is interesting to note that the Op. No.4 neither produced any witness in support of her claim nor exhibited any document in support of it. Though she produced a photo copy of the agreement to sale her vehicle to Lt. Sushil Kumar Surin but she did not examine any witness to prove the document. Moreover, a photocopy of a document is not admissible evidence as per Indian Evidence Act. Therefore, her version that she sold the vehicle to the deceased at an amount of Rs.85,000/- is not a believable story. PW 5 i.e. the National Insurance Company Ltd., also failed to examine any witness to prove the case that in fact the Maruti Van having registration No.AS-12/D-3917 was driven by the deceased by processing a learner license.

On the other hand, the CW1 Mika Surin and CW 2 Willim Surin in their respective evidence clearly stated that on the relevant date at about 1 a.m., in the mid night while the son of the claimants was driving a Muriti Van having registration No.AS-12/D-3917 from Dhekiajuli to Tazpur and when he reached at Nizb hoguri a tourist bus having registration No.AS-01/Y-9561 driven by its driver in a very rash and negligent manner with high speed hit the vehicle of the deceased from the front side. As a result of head on collusion between both the vehicles Sushil Kumar Surin lost his life at the spot. CW2 in his evidence clearly admitted the said fact. According to him, he was eye witness to the occurrence.

14. From the oral evidence of CW2 together with documentary evidence of Exhibit-1 to Exhibit 4 make the position clear that on the relevant date, time and place there had been an accident as a result of head on collusion between both the vehicles having registration No.AS-01/Y-9561 and the vehicle having registration No.AS-12/D-3917 and in the said accident the son of the claimants Sushil Kumar Surin who had drove the vehicle having registration No.AS-12/D-3917 lost his life on the spot and there is no reason to disbelieve the said fact. It is also clear from the evidence that the accident took place due to rash and negligent driving not only the driver of the vehicle having registration No.AS-01/Y-9561 but


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also negligent driving of the driver of the vehicle having registration No.AS-12/D-3917 and there is no reason to disbelieve the said fact.


15. We know that when a person died in a vehicular accident due to rash and negligent driving of the driver of the offending vehicle on a public road, the dependents of the death person is entitled to get compensation as per the M.V. Act. In the present case, the son of the claimants died as a result of rash and negligent driving by himself as well as by the driver of the offending tourist bus having registration No.AS-01/Y-9561. Therefore, the claimants are entitled to get compensation as per the provisions of M.V. Act.

16. Now the point to be decided what amount of compensation the claimants are entitled to?

The claimants in their claim petition claimed Rs.15 lakhs as compensation due to death of their beloved son. The claimant No.2 in his evidence as CW1 stated the said fact. According to them at the time of death their son was 26 years old. But from the claim petition, it appears that the son of the claimants was 28 years old at the time of his death. It is an admitted fact that the son of the claimant was an un married person at the time of his death. So it clear that the son of the claimant at the time of death was 28 years old. It is not disputed that at the time of death the son of the claimants was driving a Maruti Van having registration No.AS-12/D-3917. It is also not disputed that the accident took place due to head on collusion between the two vehicles i.e. the tourist bus having registration No.AS-01/Y-9561 and a Maruti Van having registration No.AS-12/D-3917. It is well settled that when there was head on collusion between two vehicles the driver of both the vehicles are equally liable for their negligent driving. Though, the opposite party No.4 and 5 stated in their WS that only the offending vehicle having registration No.AS-01/Y-9561 was negligently driven by its driver but they failed to prove the said fact.. The claimants also failed to prove the fact that only the offending vehicle having registration No.AS-01/Y-9561 was negligent in driving and causing the accident. Sketch map of the place of occurrence neither produced not exhibited by the claimants to show that actually offending vehicle having registration No.AS-01/Y-9561 was negligent, therefore, this Tribunal hold that both the vehicles were equally negligent for causing the accident.

As noted herein before at the time of death the deceased son of the claimants was 28 years old. Therefore, the appropriate multiplier would be "18". Applying the principle laid

by the **Hon'ble Supreme Court in Sarla Verma and Others –VS- Delhi Transport**


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Corporation and another reported in 2009 ACJ 1298 it is clear that " Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50 per cent is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent (s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he had a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one- third and contribution to the family will be taken as two- third."

17. The claimants in their claim petition stated that their deceased son used to earn Rs.6000/- per month by working as a driver but no income certificate has been produced to substantiate the said fact. As it is not disputed that the son of the claimants was a driver by profession, so, a driver at the age of 28 years can easily earn Rs.5000/- per month.

18. Had the deceased would have been alive 1/2nd of the said income would have expended for his personal and living expenses. Therefore, after deduction of 1/2nd of Rs.5000/-, it comes to Rs.2500/-.

19. As noted herein before at the time of death the deceased was running 28 years old. Therefore, the appropriate multiplier would be "18". So, the compensation can be calculated as under:-

$$2500/- \times 12 = 30,000 / \times 18 = 5,40,000/-.$$

20. It is an admitted fact that two vehicles were involved in the accident that too head on collision between the two vehicles and the Maruti Van having registration No.AS-12/D-3912

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was driven by the deceased himself therefore, 50% of the awarded amount are entitled by the claimants. Thus, 50% of Rs.5,40,000/- would be Rs.2,70,000/- and the said amount are entitled by the claimants.

21. The claimants are also entitled to get Rs.10,000/- for funeral expenses. Rs.20,000/- is also awarded to the claimants for pain and suffering for the death of their beloved son. The claimants are also entitled to get compensation for loss of love and affection of the deceased. Therefore, a lump sum amount of Rs.10,000/- is awarded towards it. The claimants are also entitled to get Rs.10,000/- towards loss of estate. Thus the total amount of compensation comes to rupees as follows:-

1. Loss of dependency Rs.2,70,000/.
2. For funeral expenses Rs.10,000/-.
3. For pain and suffering Rs.20,000/-.
4. For loss of love and affection Rs.10,000/-.
5. For loss of estate Rs.10,000/-.

Total = 3,20,000/-

Thus the claimants are entitled to get Rs.3,20,000/-.

22. Now, another point to be decided by whom the said amount of compensation is liable to be paid to the claimants?


It is an admitted fact that as the offending vehicle having registration No.AS-01/Y-9561 was duly insured with the opposite party No.3 i.e. the United India Insurance Company Ltd., and it had valid insurance coverage at the date of accident and the offending vehicle having registration No.AS-12/D-3917 was duly insured with the opposite party No.5 i.e. the National Insurance Company Ltd., and it had valid insurance coverage at the time of accident hence, both the opposite party No.3 and 5 are equally liable to pay the said amount of compensation to the claimants.

This issue is decided accordingly.

(Issue No.2)

23. As discuss in issue No.1 the claimants are entitled to get compensation as per order.

This issue is decided in the affirmative.


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ORDER

- 24.** In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.3,20,000/- (Three lakhs twenty thousand only) is awarded to the claimants. The Opposite party No.3 i.e. the United India Insurance Company Ltd., and the opposite party No.5 i.e. the National Insurance Company Ltd., is directed to pay Rs.3,20,000/- in equal share i.e. Rs.1,60,000/- each to the claimants as compensation within 60 days failing which an interest be calculated @ 6% per annum from today on the awarded amount until realization.
- 25.** Let a copy of the judgment be furnished to the opposite party No.3 i.e. the United India Company Ltd., and the opposite party No.5 i.e. the National Insurance Company Ltd., within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act.
- 26.** This MAC Case is disposed of accordingly, on contest.
- 27.** Judgment prepared, signed and pronounced, today the 28th Day of November 2014 in the open court.



Presiding Officer/Member
Presiding Officer/Member

MACT, Nalbari.