

BEFORE THE PRESIDING OFFICER \ MEMBER, M.A.C.T:.....:NALBARI.

M.A.C. No.260/2013.

1. Smti. Sayera Begum.
2. Md. Anowar Hussain.

- *Claimants.*

- V E R S U S -

1. Sri Pranjit Das.
2. Sri Dilip Thakuria.
3. The Oriental Insurance Company Ltd.

- *Opp. Parties.*

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

Presiding Officer / Member

MACT, Nalbari.

For the claimant:

Learned Advocate Mrs. G. Buzar Baruah.

For the Opp. Party No.1 and 2:

None has appeared.

For the Op. Party No.3:

Learned Advocate Mr. F. Rajbongshi.

Date of evidence:

25-09-2014 and 29-10-14.

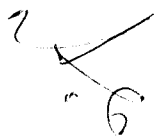
Date of Argument:

18-11-2014.

Date of Judgment:

09-12-2014.

J U D G M E N T


1. Smti. Sayera Begum W/O Md. Anowar Hussain who is in forties and Md. Anowar Hussain S/O: Lt. Karimuddin Ahmed who is in mid forties, both are the resident of village Khatabari under Nalbari police station (in short P.S.) in the District of Nalbari filed this application U/S 166 of the Motor Vehicles Act 1988 (in short M.V. Act) claiming compensation to the tune of Rs.10,00,000/- due to death of their beloved son on account of vehicular accident which occurred on 15-02-2013 at about 4:50 p.m., on the National Highway No.31 (in short NH-31) near Sonamati Chowk.

2. The factual matrix of the case as reflected in the claim petition can be stated as follows:-

On 15-02-2013 at about 4:50 while the son of the claimants was going from Nalbari towards Guwahati side on the NH-31 and when he reached near Sonamati Chowk, the

offending bus having registration No.AS-15/3612 driven by its driver in a rash and negligent manner hit him from front side. As a result of the accident, the son of the claimants succumbed to his injuries on the spot. Post mortem examination was done on the dead body of the son of the claimants at Nalbari civil hospital. For that accident, police was informed and a case was registered Vide Nalbari P.S. Case No.197/13 U/SS 279/338/304 (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 Oriental Insurance Company Ltd., and it had valid insurance coverage at the time of accident. The claimants for the above premises claimed Rs.10 lakhs as compensation due to death of their beloved son in the vehicular accident.

3. On receipt of the claim petition, notices were issued to the owner, driver as well as the Oriental Insurance Company Ltd., the insurer of the offending vehicle having registration No.AS-15/3612.

4. In spite of received of notices from this Tribunal, the opposite party No.1 and 2 i.e. the owner and driver respectively of the offending vehicle having registration No.AS-15/3612 did not appear before this Tribunal. Therefore, the case proceeded ex-parte against them.

5. However, the opposite party No.3 i.e. the Oriental Insurance Company Ltd., appeared before this Tribunal and submitted their written statement (in short WS).

6. The opposite party No.3 i.e. the Oriental Insurance Company Ltd., in its WS has denied the factum of accident. The opposite party No.3 further denied all the allegations made by the claimants in their claim petition and asked the claimants to prove their case by adducing cogent and reliable evidence. Hence, the opposite party No.3 prayed this Tribunal to exonerate it for praying any compensation to the claimants.

7. The claimants in support of their claim, examined claimant No.1 as CW 1. The claimants also examined one witness namely Md. Tayabur Rahman who claimed to be the eye witness to the occurrence as CW2. Both CW1 and CW2 were duly cross-examined by the Ld. Counsel of the opposite party No.3. However, the opposite party No.3 did not examine any witness in support of its WS. During the course of her evidence CW1 has exhibited and proved Exhibit 1 accident information report, Exhibit 2 certified copy of the post mortem examination report of her deceased son, Exhibit-3 certified copy of charge sheet and Exhibit-4 certified copy of the ejahar.

8. After hearing both sides and gone through the claim petition as well as WS filed by the opposite party No.3, 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?

9. Decision and reasons for decision:-

Road accidents are a human tragedy, which involve a high degree of human suffering. The ramification of road accidents can be colossal and their negative impact is felt not only on individuals, their health and family welfare, but also on the economy of the country.

10. 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 party No.3 and I also perused the evidence on record carefully. Now, let me first of all decide the issue No.1.

(ISSUE No.1)

11. The claimants in their claim petition stated that on 15-02-2013 while their son Marchiful Hussain @ Raj was going by his Bajaj Pulsar motor cycle from Nalbari towards Guwahati on the NH-31 and when he reached near Sonamati Chowk at 4:30 p.m., the offending bus having registration No.AS-15/3612 coming from Guwahati side driven by its driver in a rash and negligent manner hit him from front side. As a result of the accident, the son of the claimants succumbed to his injuries on the spot. The claimant No.1 in course of her evidence as CW1 categorically admitted the said fact. According to her, her son was riding a motor cycle having registration No.AS-14/D-0688 and when he reached near Sonamati Chowk the offending vehicle which was coming from opposite direction in a rash and negligent manner hit him from the front side at Sonamati chowk on the NH-31. According to her, due to the said accident her son succumbed to his injuries at the place of occurrence. Her witness CW2 in his evidence categorically admitted the said fact as stated by her.

According to CW2 the son of the claimant along with another boy was coming from Nalbari side and when they reached near Sonamati chowk the offending bus which was coming from opposite direction dashed against them. As a result of the accident, the son of the claimant who was riding his motor cycle having registration No.AS-14/D-0688 had died on the spot. He further testified that both the rider and the pillion rider of the motor cycle were not wearing helmet at the time of accident. It is not disputed that on the day of occurrence there was Saraswati Puja festival.

12. What ever it may be, from the evidence on record as well as from the the exhibited documents it is clear that the accident took place not only as a result of rash and negligent driving of the driver of the offending bus but also as a result of rash and negligent driving of the rider of the motor cycle i.e. the deceased son of the claimants as both the vehicles were involved in head on collusion and there is no reason to disbelieve the said fact.

13. 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 bus having registration No.AS-15/3612, therefore, the claimants are entitled to get compensation as per the provisions of M.V. Act.

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

The claimants in their claim petition claimed Rs.10 lakhs as compensation due to death of their beloved son. It is not disputed that at the time of death, the deceased son of the claimants was 22 years old. It is also not disputed that at the time of death the deceased was unmarried.

Therefore, the appropriate multiplier would be "17". Applying the principle laid by the

Yes

Hon'ble Supreme Court in Sarla Verma and Others –VS- Delhi Transport 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 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."

15. The claimants in their claim petition as well as CW1 and CW2 in their evidence stated that their deceased son used to work in a garage as mechanic at the time of accident and he was earning Rs.8000/- per month. CW1 in her cross-examination clearly stated that she cannot say the name of the garage where her deceased son was working though her son was living with them. CW2 also cannot say the name of the garage where the deceased used to work prior to his death. The claimants also failed to examine the garage owner to substantiate that the deceased used to work in his garage as a mechanic and deceased used to earn Rs.8000/- per month. But we know that a young boy like the son of the claimants can easily earn Rs.4000/- per month by doing any type of works.

16. 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.4000/-, it comes to Rs.2000/-.

17. As noted herein before, at the time of death the deceased was running 22 years old. Therefore, the appropriate multiplier would be "17". So, the compensation can be calculated as under:-

$$2000/- \times 12 = 24,000/ \times 17 = 4,08,000/-.$$

18. It is an admitted fact that two vehicles were involved in the accident that too head on collision between the two vehicles i.e. bus and motor cycle and the said motor cycle was driven by the deceased himself therefore, 50% of the awarded amount are entitled by the

claimants. Thus, 50% of Rs.4,08,000/- would be Rs.2,04,000/- and the said amount is entitled by the claimant No.1.(As per Law laid down by the Hon'ble Supreme Court in Sarla Verma and Others –VS- Delhi Transport Corporation and another reported in 2009 ACJ 1298).

19. As per evidence of CW2 who claimed to be the eye witness to the occurrence specifically stated that the rider and the pillion rider of the motor cycle did not wear helmet at the time of accident. Therefore, as the son of the claimants did not wear helmet at the time of accident. So, his contributory negligent for the accident can be assess as 10%. From the awarded amount 10% shall be deducted towards his contributory negligent.

Thus, for his contributory the amount comes to rupees as follows:

$$\text{Rs.2,04,000/-} \times 10/100 = 20,400/-$$

Therefore, from the amount of Rs.2,04,000/- (-) Rs.20,400/- = Rs.1,83,600/- is entitled by the claimant No.1 as compensation.

20. The claimants are also entitled to get Rs.10,000/- for funeral expenses. Rs.15,000/- 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.5,000/- is awarded towards it. Thus the total amount of compensation comes to rupees as follows:-

1. Loss of dependency Rs.1,83,600/.
2. For funeral expenses Rs.10,000/-.
3. For pain and suffering Rs.15,000/-.
4. For loss of love and affection Rs.5,000/-.

Total = 2,13,600/-

Thus the claimant No.1. is entitled to get Rs.2,13,600/- as compensation for the death of her son.

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

Neither the opposite party No.1 nor the opposite party No.2 inspite of received of notices appeared before this Tribunal to contest the case. Therefore, the case proceeded

against them ex- parte. However, the opposite party No.3 i.e. the insurer of the offending vehicle appeared before this Tribunal and contested the case. As noted here in before, the opposite party No.3 did not examine any witness to prove its WS. Therefore, it is clear that the offending vehicle was duly insured with the opposite party No.3 i.e. the Oriental Insurance Company Ltd., and it had valid insurance coverage at the time of accident. So to the opinion of this Tribunal the opposite party No.3 is liable to pay the said amount of compensation to the claimant No.1.

This issue is decided accordingly.

(Issue No.2)

22. As discuss in issue No.1 the claimant No.1 is entitled to get compensation as per order.

This issue is decided in the affirmative.


(O R D E R)

23. In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.2,13,600/- (Two lakhs thirteen thousand six hundred) is awarded to the claimant No.1. The Opposite party No.3 i.e. the Oriental Insurance Company Ltd., is directed to pay the said amount of compensation to the claimant No.1 within 60 days from today failing which an interest be calculated @ 6% per annum from today on the awarded amount until realization.

24. Let a copy of the judgment be furnished to the opposite party No.3 i.e. the Oriental Insurance Company Ltd within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act.

25. This MAC Case is disposed of accordingly, on contest.

26. Judgment prepared, signed and pronounced, today the 09th Day of December 2014 in the open court.


Presiding Officer/ Member,

MACT, Nalbari.