

**BEFORE THE PRESIDING OFFICER \ MEMBER, M.A.C.T:.....:NALBARI.****M.A.C. No.388/2012.**

1. Smti. Sunita Munda.

*- Claimant.***-V E R S U S-**

1. The Royal Sundaram Alliance Insurance Company Ltd.

2. Mr. Subu Tachang.

3. Sri Prokanto Milil @ Prasanta.

*- Opp. Parties.***Present: Mr. A.K. Sarmah. LLM, AJS.****Presiding Officer / Member****MACT, Nalbari.**

For the claimant:

Learned Advocate Mr. R. K. Sarma.

For the Opp. Party No.1:

Learned Advocate Mr. S. Basu.

For the Opp. Party No.2:

Learned Advocate Mr. Xavier Gyati.

For the Op. Party No.3:

None has appeared.

Date of evidence:

13-02-14, 11-09-14, and 13-11-14.

Date of Argument:

13-11-14.

Date of Judgment:

01-12-14.

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

1. Smti. Sunita Munda who is in forties W/O:- Sri Bhaska Munda resident of village Bharalua (Ka) Raja Dipa under North Lakhimpur police station (in short P.S.) in the District of Lakhimpur, temporarily residing at village: Charia under Mukalmua P.S. in the District of Nalbari filed this application U/S 163 (A) of the Motor Vehicles Act 1988 (in short M.V. Act) claiming compensation to the tune of Rs.12,00,000/- due to death of her beloved son Lt. Lada Munda on account of vehicular accident which occurred on 03-12-2012 at about 10:20 a.m., over Harmoti Railway Over bridge on the National Highway No.52 (in short NH-52).

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

On 03-12-2012 at about 10:20 a.m., while Lada Munda the son of the claimant was going towards Laluk from Bandardowa by means of the offending vehicle having registration No.AS-07/C-4941 (Tata mobile, pick up van) as a hendiman of the said pick up van and

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**M.A.C.**



7. The opposite party No.2 Mr. Subu Tachang i.e. owner of the offending vehicle did not deny the factum of accident. Further, he stated that at the time of accident, the driver of the offending vehicle had valid driving license and the vehicle was duly insured with the opposite party No.1. Therefore, he prayed this Tribunal to exonerate him to pay any compensation to the claimant.

8. The claimant in support of her claim examined herself as CW 1. She was duly cross-examined by the Ld. Counsel of the opposite party No.1. She also examined one Abdul Aziz who claimed to be the eye witness to the occurrence. The CW2 was not cross-examined by the Ld. Counsel of the opposite party No.1 and 2.

The opposite party No.2 Mr. Subu Tachang examined himself as DW1. The opposite party No.1 also examined one Dulal Ch. Sarma as DW2. The DW1 was not cross-examined by the Ld. Counsel of the claimant but the DW2 was duly cross-examined by the Ld. Counsel of the claimant.

9. After hearing both sides and gone through the claim petition as well as WS filed by the opposite party No.1 and 2, this Tribunal framed the following issues for just and proper adjudication of the case. The issues are:-

- (i) Whether the claimant is 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 claimant is entitled to?

**10. Decision and reasons for decision:-**

11. I have heard argument from both sides.

12. The Ld. Counsel appearing on behalf of the opposite party No.1 vehemently submitted that the driver of the offending vehicle did not have valid driving license at the time of accident, therefore, the opposite party No.1 Royal Sundaram Alliance Insurance Company Ltd., is not liable to pay any compensation to the claimant.

On the other hand the Ld. Counsel of the claimant taking this Court to the evidence of DW1 and DW2 as well as relying the Law laid down by the Hon'ble Supreme Court in the case of *the National Insurance Company Ltd.,-VS- Annappa Trappa Nesaria and others reported in 2008 (1) TAC 812 (SC)* vehemently submitted that a driver who had valid driving license to drive a light motor vehicle was authorized to drive light goods vehicle


as well. Therefore, he contended that the driver of the offending vehicle at the time of accident had valid driving license. So, according to him, the claimant is entitled to get compensation as prayed for.

**13.** I have given my thoughtful consideration on the argumentation put forwarded by the Ld. Counsel for the claimant as well as the Ld. Counsel for the opposite party No.1 and 2 and I also perused the evidence on record carefully. Let me first of all decide the issue No.1.

**(ISSUE No.1)**

The claimant in her claim petition as well as in her evidence as CW1 clearly stated that on 03-12-2012 at about 10:20 a.m., while her son Lada Munda was going towards Laluk from Bandardowa by the offending vehicle having registration No.AS-07/C-4941 (Tata mobile, pick up van) as a handman of the said vehicle and when the said vehicle reached at Harmoti Railway Over bridge on the NH-52 the said vehicle loss its control due to rash and negligent driving of the driver and fell down over the said bridge as a result of which the her son got serious injuries on his head and he was immediately shifted to R.K. Mission hospital. Thereafter, he was shifted to GMCH but her son lost his life at about 7 p.m., on that very day. In support of her case, the claimant had exhibited and proved several documents including Exhibit 1 police report, Exhibit-2 post mortem examination report of her deceased son. Her witness CW2, who claimed to be the eye witness to the occurrence has supported her version. According to him, on 03-12-2012 at about 10:20 a.m., while he was standing near the Harmoti Railway Over Bridge on the NH-52, he saw in front of him one Tata Magic Pick Up Van having registration No.AS-07/C-4941 coming from Bandardowa side met with an accident due to loss of control of the vehicle by its driver. Then, he ran towards the said ill-feted vehicle and saw the handman of the offending vehicle sustained fatal injuries on his head and he was immediately taken to Mission hospital but he succumbed to his injuries in the evening. Though CW1 was duly cross-examined by the Ld. Counsel of the opposite party No.1 but failed to dis-credit her evidence.

The owner of the offending vehicle i.e. the opposite party No.2 Mr. Subu Tachang has examined himself as DW1. In course of his evidence, he admitted the factum of accident and the death of the deceased. DW1 was not cross- examined by the Ld. Counsel for the claimant. Therefore, the evidence tendered by the DW1 remains un challenged. The opposite party No.1 has also examined one Dulal Ch. Sarma as DW2 the investigator of the insurance company. In course of the evidence the DW2 stated that the driver of the offending vehicle

  
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has authorized to drive only LMV. At the time of accident, he was driving a Tata Mobile Pick up Van.

**14.** From the oral evidence of CW1, CW2 and DW1 together with documentary evidence of Exhibit-1 and Exhibit-2 make the position clear that on the relevant date, time and place there had been an accident as a result of rash and negligent driving of the driver of the offending vehicle having registration No.AS-07/C-4941 and in the said accident the son of the claimant lost his life therefore, 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 claimant died due to vehicular accident on the public road as a result of using/ working in the said vehicle No.AS-07/C-4941. Therefore, the claimant is entitled to get compensation as per the provisions of M.V. Act.

**16.** Now the point to be decided what amount of compensation the claimant is entitled to?

The Ld. Counsel of the opposite party No.1 vehemently submitted that as the driver i.e., the opposite party No.3 had not valid driving license, therefore, the claimant is not entitled to get any compensation. In due course of his evidence the opposite party No.2 clearly stated that his driver i.e. the opposite party No.3 has valid driving license and his vehicle was also duly insured with the opposite party No.1 i.e. the Royal Sundaram Alliance Insurance Company Ltd. It is true, at that time of accident, the driver of the offending vehicle had a driving license authorized to drive light motor vehicle but as per the Law laid down by the Hon'ble Supreme Court in the case of National Insurance Company Ltd., (Supra) it is clear that light motor vehicle including light goods vehicles also. Therefore, the Tata Pick up Van which is light goods vehicle can be driven by the driver who has authorized to drive light motor vehicles.

*A.S.*  
 Presiding Officer / Member  
 M. S. Sathar


The claimant in her claim petition stated that at the time of death her son was 20 years old. Post mortem examination report i.e. the Exhibit-2 clearly proved her said version. There is no evidence on record to show that the deceased was a married person at the time of accident. As per the evidence of the owner i.e. the DW1 it is clear that the deceased was earning Rs.3000/- per month at the time of accident. Considering the age of the deceased

mentioned in the post mortem examination report at the time of his the appropriate multiplier would be "17".

Applying the principle laid by *the 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 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.** As the owner of the offending vehicle i.e. the opposite party No.2 in his evidence stated that deceased was employed by him as a cleaner of the vehicle and he used to pay Rs.3000/- per month as salary to the deceased. He further testified that after the accident he went to the hospital and paid Rs.10,000/- to Sri Komol Bunish the attendant cum brother of the deceased in presence of Sri Mania Munda who has acknowledged the payment of the said money on 03-12-2012. He exhibited and proved Exhibit-4 the receipt of the said money. From the evidence of DW 1 and from Exhibit 4 it is clear that at the time of death the deceased was earning Rs.3000/- per month and DW 1 has paid Rs.10,000/- to his near relative.

  
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18. Had the deceased would have been alive 1/2<sup>nd</sup> of the said income would have expended for his personal and living expenses. Therefore, after deduction of 1/2<sup>nd</sup> of Rs.3000/- per month, it comes to Rs.1500/- per month.

19. As noted herein before at the time of death the deceased was running 20 years old, therefore, the appropriate multiplier would be "17". So, the compensation can be calculated as under:-

$$1500/- \times 12 = 18,000/ \quad \times 17 = 3,06,000/-$$

20. The claimant is also entitled to get Rs.10,000/- for funeral expenses. Rs.20,000/- is also awarded to the claimant for pain and suffering for the death of her beloved son. The claimant is also entitled to get compensation for loss of love and affection of the deceased. Therefore, a lum sum amount of Rs.10,000/- is awarded towards it. The claimant is 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.3,06,000/.
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/-.

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Total = 3,56,000/-

Thus the claimant is entitled to get Rs.3,56,000/-.

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

It is an admitted fact that as the offending vehicle having registration No.AS-07/C-4941 was duly insured with the opposite party No.1 i.e., the Royal Sundaram Alliance Insurance Company Ltd., and it had valid insurance coverage at the date of accident hence, the opposite party No.1 is liable to pay the said amount of compensation to the claimant.

This issue is decided accordingly.

**(Issue No.2)**

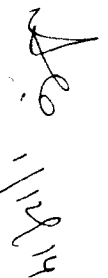
22. As discuss in issue No.1 the claimant is entitled to get compensation as per order.

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 M.A.C.

This issue is decided in the affirmative.

**ORDER**

- 23.** In the result, the claim petition is allowed. The total amount of compensation to the tune of Rs.3,56,000/- (Three lakhs fifty six thousand only) is awarded to the claimant. As noted herein before, the relative of the deceased received Rs.10,000/- from the opposite party No.2 i.e. the owner of the offending vehicle at the time of death of the deceased. The said amount has to be deducted from the total awarded amount of Rs.3,56,000/-. Therefore, the claimant is entitled to get Rs.3,56,000/- (-) Rs.10,000/- = Rs.3,46,000/- (Rupees three lakhs forty six thousand) as compensation. The Opposite party No.1 i.e., the Royal Sundaram Alliance Insurance Company Ltd., is directed to pay the said amount of compensation to the claimant 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.1 i.e. the Royal Sundaram Alliance 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 01<sup>th</sup> Day of December 2014 in the open court.

  
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T. Vaidyan  
M.A.C., Nalbari.