

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL:
NALBARI**

Present: A.S.B. Laskar,

MAC Case No. 40 (Death) / 2018

1. Sri Madan Pathak

S/O Late Manohari Pathak

(Husband of deceased)

2. Gitumani Pathak

D/O Sri Madan Pathak

Both are of village Chantapara

P.S.: Mushalpur

District: Baska (Assam)----- Claimants

-V E R S U S-

1 . Sri Mohendra Rajbonghsi

S/O Sri Boloram Rajbonghsi

Village: Uzirbari

P.S.: Mushalpur

District: Baska (Assam)-Owner

2. Sri Khargeswar Rajbongsi

S/O - Mohendra Rajbonghsi

Village: Uzirbari

P.S.: Mushalpur

District: Baska (Assam)- Rider

3. Sri Labanya Pathak

4. Sri Paban Pathak

Both are sons of Sri Madan Pathak----- Opp. Parties

The Ld. Counsels Appeared:-

For the claimant:-----Sri Ramen Das.

For the Opp. party :----- Sri N.K. Dutta.

Date of Argument :----- --24.01.2020

Date of Judgment :-----07.02.2020.

(J U D G M E N T)

1. The facts leading to the institution of this case in brief is that on 15.01.2017 at about 10.40 a.m., Ranjita Pathak, the wife of the claimant No. 1, Madan Pathak met with a vehicular accident while she was going towards the village temple for offering prayers. While she was on her way, the offending vehicle, a motorcycle which was allegedly driven rashly and negligently knocked her from behind. In the accident, Ranjita Pathak sustained injuries and soon after the accident she was taken to the SMK Civil Hospital, Nalbari where she was declared dead. After the accident an FIR was lodged in the Mushalpur Police Station and a case vide Mushalpur P.S. case No. 3/17 was registered.

2. Narrating the above stated facts in detail, the claimant the husband of the deceased filed a claim petition representing his minor daughter U/S 166/140 of the M.V. Act impleading the owner and rider of the offending vehicle as opposite parties with a prayer for compensation amounting to Rs.10,00,000/- under different heads. The claimant also impleaded his sons as opposite parties.

3. On receipt of the claim petition, same was admitted and notices were issued upon the opposite parties who also made their appearance and submitted their respective written statement. In their written statement, the opposite party No.1 and 2, the owner and the rider of the offending vehicle challenged the maintainability of the case. They contended that the alleged offending vehicle was not involved in the accident. They further contended that the deceased did not sustain injury in any vehicular accident involving the offending vehicle. The opposite parties no.3 and 4 stated that they have no objection in the claim petition.

4. Thereafter, going through the pleadings and hearing the parties, the following issues were framed by my Id. Predecessor:

Issues

(i) Whether Ranjita Pathak died in a Road Traffic Accident on 15.01.2017 at

about 10.40 a.m due to rash and negligent driving by the rider of the offending vehicle bearing Engine No. JC 58-E-T-4122742?

(ii) Whether the claimant is entitled to get any compensation as prayed for, and if so, to what extent and from whom?

(iii) To what other relief or reliefs the claimant is entitled to?

Decision & Reasons Thereof

5. In this case to achieve his goal the claimant no 1, Sri Madan Pathak adduced his evidence and exhibited some documents. Sri Karuna Das also deposed supporting the claimant, but the contesting opposite party abstained from adducing any evidence. Let me see how far the claimant is successful in establishing his claim made in the claim petition.

Issue No.1:

6. It is already stated that in his claim petition, the claimant alleged that the accident occurred due to rash and negligent driving of the offending vehicle and it appears that during his evidence also the claimant reiterated the same. In his evidence the claimant, Sri Madan Pathak narrated that on 15.01.2017 at about 10.40 a.m, his wife, Ranjita Pathak met with the accident while she was going towards the village Temple. He also narrated that his wife was knocked from the opposite direction by the offending vehicle which was driven rashly and negligently. He further narrated about the injury sustained by his wife and stated that his wife was declared dead while she was taken to the hospital. He further narrated that his wife was a home maker and her monthly income was Rs.7000/-. The claimant also exhibited the FIR, Charge-sheet, Seizure-list, Voter card of the deceased along with other documents. During his cross-examination, he admitted that he has not submitted any document regarding the income of his late wife. He denied the suggestion that his wife did not die due to vehicular accident.

7. In his evidence, the PW-2, Sri Karuna Das, the witness for the claimant also narrated that on 15.01.2017 at about 10.40 a.m, Ranjita Pathak was knocked by the offending vehicle from opposite direction. This witness further stated that the monthly income of the deceased was Rs.6,000/-. During his cross-examination, he stated that at the time of the

accident, he was present there. He also stated that the offending vehicle had hit the deceased from opposite direction.

8. I have very carefully perused the case record and heard the Id. Counsel for the claimant as the opposite party remained unrepresented at the time of the argument. The Id. Counsel for the claimant argued that the accident occurred due to rash and negligent driving by the rider of the offending vehicle. The Id. Counsel also tried to draw attention of this tribunal towards the documents exhibited by the claimant.

9. I have very carefully considered the rival submission and also considered every aspect before me. In this particular case, the death of Ranjita Pathak in a vehicular accident has been challenged by the opposite party in their written statement. But the claimant and his witness specifically stated about the death of Ranjita in the vehicular accident involving the offending vehicle and it appears that their evidence remained un-rebutted during cross examination. During his evidence the claimant also exhibited the charge sheet which has been marked as Exht.3. But the question is whether the accident occurred due to rash or negligent driving by the rider of the offending vehicle. The material available in the record reveals that the offending vehicle had hit the deceased while she was going towards the village Temple. The rider and the owner of the offending vehicle though submitted their written statement; they have not adduced their evidence to prove that there was no rashness or negligence in driving the offending vehicle. In their written statement, the owner and rider has not also specifically denied the rashness or negligence in driving the offending vehicle. The witness for the claimant also specifically stated that the offending vehicle was driven rashly and negligently. Above all, the Ext.3, the Charge-sheet reveals that it was submitted against the opposite party No.2, the rider of the offending vehicle. Apart from that, the Form No.54, the Ext.1 also reveals the involvement of the offending vehicle and the parties in the accident. As such, it appears that the accident occurred due to rash and negligent driving by the rider of the offending vehicle. Hence this issue is decided in favour of the claimant.

Issue Nos.2 & 3:

10. While deciding the earlier Issue, it is already seen that the accident occurred due to rash and negligent driving by the rider of the offending vehicle. Now, the question is whether the claimant is entitled to the amount claimed by him as compensation. In determining the compensation on the death of a person in a vehicular accident, the relevant factors which require due consideration are the age, income of the deceased, future prospects of income and the dependency of claimants etc. **So far the age of the deceased** is concerned for deciding the multiplier to be used; the claimant in column No.3 of his claim petition stated that the age of the deceased at the time of her death was **44** years and to prove the age the claimant exhibited her voter identification card. It appears from the voter I/D that the deceased was 47 years old on 01.10.2013. The accident occurred on 15.01.2017. As such it appears that the deceased was aged above **50** years at the time of her death.

11. Now the vital question is what the income of the deceased was. In his claim petition, the claimant stated that the monthly income of the deceased was Rs.7000/- but, his witness stated that the monthly income of the deceased was Rs 6000/-. During evidence the claimant has not exhibited any document to prove the income of his late wife. It appears that the claimant and his witness contradicted regarding the income of the deceased. However it is already seen that the deceased was aged above 50 Years at the time of the accident and it is my considered opinion that an woman of the age of 50 years can easily earn Rs. 4,000/- in a month. Hence I find it reasonable to hold that the monthly income of the deceased was **Rs.4,000/-**. Thus for the purpose of calculating the compensation the **annual income of the deceased is calculated to Rs. 4,000X12= Rs.48,000/-**. But in the case of National Insurance Company Limited versus Pranay Sethi and others reported in the (2017)16 SCC 680 it has been held that in case of a person who was self employed or on a fixed pay and was aged between 50 to 60 years an addition of 10% of the established income to be made towards future prospect. In this case the age of the deceased is found to be above 50 years. As such after adding 10% to the established income the monthly income of the deceased is calculated to **Rs.4000+400=4400/-** and her annual income is calculated to **Rs. 4400 x 12=52,800/-**. It appears from the claim

petition that four persons were dependent upon the deceased and as per the ratio laid down in the case of **Sarla Verma & others Vs Delhi Transport Corporation & Another** 1/4th of the income is to be deducted for personal and living expenses. After deduction of the 1/4th the monthly income of the deceased is calculated to **Rs.4400-1100= 3300/-**. Thus the annual income of the deceased after deduction is calculated to be **Rs. 3300x 12= Rs.39,600/-**. So far the multiplier to be applied as per the ratio laid down in the case of Sarla Verma it will be based on the age of the deceased and in case of National Insurance Company Limited versus Pranay Sethi and others (supra) it has been held by the Hon'ble Supreme Court in Para no. 59.6 of the judgment that the selection of multiplier shall be as indicated in the table in Sarla Verma read with paragraph 42 of the judgment and the age of the deceased should be the basis for applying the multiplier. The deceased was aged above 50 years and as per the table in the case of Sarla Varma the multiplier applicable in this case shall be **11**. The claimant prayed for compensation under different heads and I hold that he is entitled to funeral expenses and compensation for the loss of estate and for the loss of consortium. As per the judgment in the case of National Insurance Company Ltd versus Pranay Sethi the claimant is entitled to Rs. **15,000/-** for loss of estate and Rs. **15,000/-** for funeral expenses and Rs. **40,000/-** for the loss of consortium.

12. Thus having considered the facts and circumstances the just and reasonable compensation is assessed as under:-

For loss of dependency----- -Rs. 39600 x 11 = Rs.4,35,600/-

Funeral expenses -----Rs.15,000/-

Loss of estate -----Rs.15,000/-

Loss of consortium -----Rs. 40,000/-

Total -----Rs.5,05,600/-

13. Now the question is who is to pay the amount. In their written statement the opposite party the owner and driver remained silent about the insurance coverage of the offending vehicle. From the documents exhibited by the claimant it appears that during investigation police did

not seize any document relating to insurance coverage of the vehicle. As such it appears that the offending vehicle was not insured at the time of the accident. Hence there is no doubt that the opposite party No.1, Sri Mahendra Rajbongshi, the owner of the offending vehicle is to pay the compensation.

O R D E R

14. Considering every facts and circumstances, it is hereby ordered that the opposite party No.1, Sri Mohendra Rajbomngshi, the owner of the offending vehicle shall pay **Rs.5,05,600/-(Rs. five Lakh fiveThousand and six hundred)** only as compensation in favour of the claimant within 60 days from today with interest @ 6% per annum from the date of filing of the claim petition on 22.03.2018

Let a copy of the judgment be furnished to all the concerned parties within 15 (fifteen) days from today as per Provisions of Section 168 (2) of the M.V. Act. This MAC Case is disposed of on contest.

Given under my hand and seal of this Tribunal at Nalbari on this the 7th Day of February , 2020.

Dictated & corrected by me.
/Member

Presiding Officer

Presiding Officer/ Member
Nalbari

M.A.C.T,

M.A.C.T, Nalbari

APPENDIX

Witness for the claimant:-

1. Sri Madan Pathak
2. Sri Karuna Das

Witness for the opposite party

Nil :-

Documents exhibited by the claimant

- Ext.1 & 2 - FIR
- Ext.3: Charge-sheet.
- Ext.4 : Seizure-list
- Ext.5 : MVI Report
- Ext.6. - P.M. Report
- Ext.7- - Voter, Pan Card of the claimants
- Ext.8 : Voter I/D of the deceased.

Documents exhibited by the opposite party

Nil

Presiding Officer/ Member,

MACT, Nalbari