

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

**Present: A.S.B. Laskar,
MAC Case No.18 (Death) / 2018**

1. Sri Pramod Kalita

S/O: Late Late payodhar Kalita

P.S. :Ghograpar

Dist: Nalbari (Assam)-----Claimant

-V E R S U S-

1. The Future Generali India Insurance Co. Ltd.

2. Late Somoram Talukdar

Owner cum driver of the offending vehicle

Represented by Smt. Ami Kalita(daughter)

P.S: Nalbari

**Dist: Nalbari (Assam)----- opposite
party**

The Ld. Counsels Appeared:-

For the claimant:-----Sri Ramesh Kr. Sarmah

For the Opp. No.1:----Sri Rajibeswar Bhattacharyya.

Date of Argument:----05.02.2020.

Date of Judgment:----19.02.2020.

(J U D G M E N T)

1. This case has been instituted by the claimant on the death of his wife, Rumi Kalita. The facts leading to the institution of this case in brief is that on 16.12.2017 at about 7.15 p.m, Rumi Kalita along with her parents, sisters and her daughter was going towards Sonkani in a car driven by her father Somoram Talukdar. The car was allegedly driven rashly and

negligently due to which it fell into a ditch and all its occupants including Rumi Kalita the wife of the claimant died. After the accident an entry was made in the G.D. of Nalbari P.S. Vide No. 458/17, but no police case was registered.

2. Narrating the above stated facts in detail, the claimant filed a claim petition u/s 166 & 140 of the MV Act impleading the insurer and the owner cum driver of the offending vehicle with a prayer for compensation amounting to Rs.37,00,000/- .The owner cum driver of the offending vehicle the O.P. no.2 is represented by his daughter who had succeeded him and inherited the vehicle.

3. On receipt of the claim petition, same was admitted and notices were issued upon the opposite parties who also made appearance and submitted their respective written statement. In its written statement, the opposite party No.1, the Future Generali India Insurance Co. Ltd. challenged the maintainability of the claim petition. The company denied all the averments made by the claimant in the claim petition. The company further contended that it shall not be held liable in case of violation of the terms of the policy.

4. In her written statement **Ami Kalita** who had succeeded the O.P.no. 2 the owner cum driver of the offending vehicle contended that as per the wish of her father she had inherited the ill fated vehicle and has become its owner. She further contended that the vehicle was duly insured vide Policy No.2017-V5342968-FPV which was valid from 02.11.2017 to 10.11.2018 and the driver, the opposite party No.2 had a valid driving license which was valid till 23.10.2018.

5. Thereafter, going through the pleadings and hearing the parties, the following issues were framed by my Id. Predecessor-in-office:

Issues

(i) Whether Rumi Kalita died in an accident occurred on 16.12.2017 at about 7.15 p.m. due to rash and negligent driving by the driver of the offending vehicle No.AS-01-MB/8863 ?

(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

6. In this particular case, the claimant, his witnesses Sri Pankaj Sarma and Sri Bipul Goswami adduced their evidence and also exhibited some documents. But the contesting opposite party abstained from adducing evidence. Let me see how far the claimant is successful in establishing the claims made in the claim petition.

Issue No.1 :

7. In his evidence the CW-1, Sri Pramod Kalita, the claimant narrated about the accident in detail and as in his claim petition during his evidence also he reiterated that on 16.12.2017 at about 7.15 p.m his wife met with a vehicular accident while she was going towards Sonkani in a car bearing registration No.AS-01-MB/8863. He narrated that the offending vehicle was driven rashly and negligently by the opposite party No.2, his father-in-law and in the accident, the vehicle fell into a ditch resulting the death of all it's six occupants. He also narrated that his wife had a master's degree in English and completed certificate course in Archived Management. He added that his wife was 37 years old at the time of her death. He further narrated that he is the Secretary of Prakashan Parishad, Assam and at the time of the death of his wife, his salary was Rs.60,000/-. The claimant also exhibited the accident information report, extract of the G.D, P.M. Report, documents relating to educational qualification of the deceased and his salary certificate along with other documents. During his cross-examination he reiterated the date and time of the accident and also stated that the offending vehicle belonged to his father-in-law who was driving it. He admitted that he has not exhibited any document to prove the employment of his wife.

8. In his evidence, Sri Pankaj Sarma, the witness for the claimant also narrated about the accident in detail. He narrated that it was a foggy evening on 16.12.2017 and at about 7.15 p.m, the deceased along with her parents, daughter and sisters was going towards Sonkani in a car driven by her father Somoram Talukdar. He also narrated that Sonoram Talukdar drove the vehicle rashly and negligently due to which it went off the road and fell into a ditch resulting the death of it's six occupants. He added that

he along with others had rushed to the place of occurrence, but was of no help. During his cross-examination, he admitted that on receipt of the information, he rushed to the place of occurrence, but failed to rescue the victims.

9. In his evidence, Sri Bipul Goswami, the Accountant of the Office of the Publication Board, Guwahati, the CW-3 narrated that Sri Pramod Kalita is the present Secretary of the Board and he also exhibited the salary certificate issued by the Vice Chairman of the Board in the name of Sri Pramod Kalita which has been marked as Ext.4. He added that the salary of Sri Pramod Kalita was Rs.60,000/- in the month of December, 2017. He also exhibited the Acquaintance Roll maintained by the Office of the Publication Board which has been marked as Ext.8. During his cross-examination he stated that at the time of the accident, Sri Pramod Kalita was drawing Rs.60,000/- as salary.

10. I have very carefully perused the case record and heard both sides. The Id. Counsel for the claimant argued that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. The Id. Counsel tried to draw attention of this tribunal towards the documents exhibited by the claimant. But opposing his submission the Id. Counsel for the Insurance Company argued that the claimant is not entitled to any relief.

11. I have very carefully considered the rival submission advanced by the Id. Counsels representing both the parties and it appears that similar to his claim petition during his evidence also the claimant deposed implicating the driver of the offending vehicle. The witness for the claimant also corroborated with him and stated about the rash and negligent driving by the driver of the offending vehicle. The fact of the case reveals that the vehicle had fallen into a ditch and it is my considered view that if the driver had driven the vehicle carefully; the accident and the death of it's occupants could have been averted. Apart from that the opposite party also abstained from adducing rebuttal evidence regarding rash and negligent driving. As such, it appears that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. Accordingly, issue No.1 is decided in favour of the claimants.

Issue Nos.2 & 3:

12. While deciding the Issue No.1, it is already seen that the accident had occurred due to rash and negligent driving by the driver of the offending vehicle. Now the question is whether the claimant is entitled to the amount claimed by him as compensation.

13. In determining the compensation in case of death of a person in a vehicular accident, the relevant factors which require due consideration are the age, income of the deceased, future prospects and the dependency of claimants etc. **So far age of the deceased** is concerned for deciding the multiplier to be used; the claimant in his claim petition stated that at the time of accident the deceased was about **35** years old and during his evidence he stated that the deceased was of 37 years at the time of the accident. During his evidence the claimant also exhibited the Admit Card issued by the Board of Secondary Education Assam vide Exht.5 and as per the Admit Card the date of birth of deceased is 01.09.1980. The accident occurred on 16.12.2017. Hence, it appears that the deceased was **37** years old at the time the accident. It appears from the evidence that the claimant was not dependent upon the deceased. But it is now settled position of law that the law recognizes claim for compensation on the basis of dependency as well as on the basis of loss of estate. As such I hold that though the claimant has not stated anything about the loss of dependency he is entitled to compensation on the basis of loss of estate. The principle of determining compensation for loss of dependency and loss of estate are same.

14. Now the vital question is what the income of the deceased was. In his claim petition the claimant in column number 6 mentioned that the monthly income of the deceased was 1/3 of the income of her husband. The Id. Counsel for the Insurance Company vehemently opposed and submitted that the income of the wife of the claimant should not be considered as claimed by the claimant. But the Id. Counsel for the claimant argued that in the absence of any definite criteria for determination of compensation to the dependence of a house wife, it would be reasonable to hold the income as 1/3rd of her spouse. I have very carefully considered the submission advance by the Id. Counsels and hold that to ascertain compensation u/s 166 of The M.V Act there is no specific criteria for

assessing the income of a non-earning house wife. But, I get no hesitation to consider the income of a deceased house wife to be 1/3rd of her living spouse. In this particular case, it is already seen from the evidence of the CW-3 that at the time of the accident, the salary of the claimant was **Rs.60,000/-**. As such, the monthly income of the deceased is assessed to **Rs.20,000/-** and for the purpose of calculating the compensation the annual income of the deceased is calculated to **Rs.20,000 X 12 = Rs.2,40,000/-**. 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 deceased who was self employed or on a fixed pay and was aged below 40 years an addition of 40% of the established income to be made towards future prospects. In this case the deceased is found to be below 40 years of age. As such if 40% is added to the income of the deceased her monthly income stands at **Rs. 20,000 + 8000= 28,000/-** and her annual income is calculated to **Rs. 28,000 x 12 = 3,36,000/-**. It is already found that the claimant was not dependent on the income of his wife, the deceased. As such **1/3rd** of the income of the deceased is to be deducted for personal and living expenses. The **1/3rd of Rs. 28,000/- is Rs.9,333.33 which is rounded to Rs.9,333/-**. Thus monthly income of the deceased after deduction is calculated to **Rs.28,000-9,333= Rs. 18,667/-** and her annual income is calculated to **Rs. 18,667 x 12= Rs.2,24,004/-** 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 **37** years old and as per the table in the case of Sarla Varma the multiplier applicable in this case shall be **15**. Thus by applying the multiplier of 15, the total loss of estate is calculated to **Rs.2,24,004 x 15= Rs. 33,60,060/-**. The claimant prayed for compensation under different heads and I hold that he is entitled to funeral expenses and compensation 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 funeral expenses and Rs.

40,000/ for the loss of consortium.

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

For loss of estate-----Rs. 33,60,060/-

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

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

Total -----Rs.34,15,060/-

16. Now, the question is who is to pay the amount? From the Exht. 1 it appears that the offending vehicle was insured with the Future Generali India Insurance Co. Ltd. and policy was valid till 22.11.2018. The accident Information Report reveals that the driver had a valid driving license which was valid till 01.11.2018. As such, in my view, the opposite party No.1, the Future Generali India Insurance Co. Ltd. is to pay the amount of compensation.

ORDER

17. Considering every facts and circumstances, it is hereby ordered that the opposite party No.1, the Future Generali India Insurance Co. Ltd.. shall make the payment of Rs. **34,15,060/ rounded to Rs.34,15,000/- (thirty four Lakh fifteen thousand) Only** 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 27.02.2018. 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 19th Day of February 2020.

Dictated & corrected by me.
/Member

Presiding Officer

Presiding Officer/ Member

M.A.C.T, Nalbari

M.A.C.T, Nalbari

APPENDIX

Witness for the claimant:-

- 1.Sri. Pramod Kalita --- claimant
2. Sri Pankaj Sarma

Witness for the opposite party

Nil

Documents exhibited by the claimant

- Ext. 1 : Form no. 54
- 2: Extract of G.D. Certified copy of FIR/Ejahaar
- Ext.3: P.M. Report
- Ext.4 : Educational documents
- Ext.5 : Dearth Certificate of the deceased
- Ext.6: paper cuttings

Documents exhibited by the opposite party

Nil

**Presiding Officer/ Member,
MACT, Nalbari**