

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS
TRIBUNAL. NALBARI

MAC Case No. 48 (Death) / 2019

Present: Dr Manash Baruah

1. Sufia Begum @ Chufiya Begum
W/O Late Abbashuddin Ahmed
2. Safikul Rahman @ Chafikul Rahman
S/O of Late Abbashuddin Ahmed
3. Gulnihar Begum
W/O Md. Hamid Ali
4. Nuria Begum
W/O Md. Mukut Ali
5. Rabia Begum
3, 4 & 5 are D/O Late Abbashuddin Ahmed. Resident
of Vill-Kala Fakirtala. Nalbari Town. Ward No.4. PS-
Nalbari
6. Gulsanara Begum
W/O Sayed Sirajuddin Ahmed
D/O Late Abbashuddin Ahmed
Resident of Vill- Jargaon. PO- Pachim Jargaon. PS-
Tamulpur. BTAD.
7. Majani Ahmed
W/O Md. Shwahid Ali
D/O Late Abbashuddin Ahmed

Resident of Vill- Bangaon. PO- Banagram. PS- Belsor.
Dist- Nalbari.

.....Claimants

Vs

1. Oriental Insurance Company Ltd.

2. Dwijen Ch. Dev

S/O Late Balit Ch. Dev

R/O Srimantapur. Guwahati. PS- Bhangagarh.
Kamrup (M).

3, Sujit Baidya Kar

S/O Phani Baidya Kar

R/O Vill- Tulungia. PS- Abhayapuri. Dist.-
Bongaigaon.

.....Opposite Parties

Ld. Counsel appeared:

For the Claimant: Sri Manas Misra

For the OP No.1 : Smti P Choudhury.

Date of argument: 07/02/2022

Date of Judgment : 17/02/2022.

JUDGMENT

1. This case has arisen out of a petition u/s 166 & 140 of the Motor Vehicle Act, 1988 for grant of compensation on account of the death of Abbashuddin Ahmed arising out of a motor accident on 11/03/2019. The claimants have

sought for an amount of ₹ 50 lakhs as compensation from the opposite parties

2. The brief facts of the claimants is that on 11/03/2019 at about 3:10 PM while Abbashuddin Ahmed was returning home after attending marriage ceremony on a motorcycle bearing registration number AS-14/B-3368 as a pillion rider, near Police Reserve Nalbari, while crossing over the divider of 31 No. National highway, an Indica V2 vehicle bearing registration number AS-01/AW-9407 coming from the east side was driven in a rash and negligent manner and knocked down the motorcycle in which Abbashuddin Ahmed was travelling. As a result Abbashuddin Ahmed fell on the road and sustained severe injuries. He was taken to S.M.K. civil hospital Nalbari and the doctor immediately referred him to GMCH Guwahati for treatment. On 06/04/2019 Abbashuddin Ahmed succumbed to his injuries. On receiving the information Nalbari PS made a GD entry being numbered 287 dated 11/03/2019. And after receiving a formal FIR a case being Nalbari PS case No. 255/2019 U/S 279/304(A) IPC was registered and after investigation charge sheet was submitted before the Ld. Chief Judicial Magistrate, Nalbari.

3. On receive of the petition, notices were issued to the opposite parties. The opposite party No. 1(Insurance Company) and opposite party No.3 (driver) appeared and filed written statement. The case proceeded exparte against opposite party No.2. The opposite party No.3 denied committing the offence. He stated that the motorcycle in which the deceased was travelling was driven very rashly and dangerously. He further stated that he has a valid driving license and is a fit person to drive the vehicle. Further the vehicle is insured with the opposite party number one and the compensation if any granted by the court will be paid by the insurance company. The opposite party No.3 further stated that he has submitted

the pollution certificate, insurance policy, driving license, pan card, voter ID, Adhar Card and RC.

The opposite party No.1 in the written statement stating that the alleged accident occurred due to the negligence of the motor cycle bearing regd. No. AS-14B-3368 which is not made a party to this case. The element of contributory negligence is evident. The liability of the Opposite party is limited and the claimants have claimed exorbitant amount and is not entitled to the said amount.

4. On the basis of the pleadings and the documents submitted by the parties the following issues are framed for determination of the case.

ISSUES

(i) Whether Abbashuddin Ahmed died on 06/04/2019 due to road traffic accident occurred on 11/03/2019 at about 3:10 PM at NH 31 near police reserve crossing, Nalbari due to rash and negligent driving by the driver of the offending vehicle bearing registration number AS-01-AW-9407 (Indica V2)?

(ii) Whether the claimants are 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 claimants are entitled to?

Decision, Discussion and Reasons Thereof

5. I have heard arguments made by the learned counsel for the claimant as well as the learned counsel of OP. No.1. The learned counsel for the OP No.1 submitted that the

claimant has failed to prove that the deceased was earning ₹ 20,253/-per month as pension and ₹ 25,000 from his business. The P.W. 2 came and deposed without receiving any summon from the Tribunal and also without any authority from the bank. So the evidence of PW 2 cannot be relied upon. Further the learned counsel submitted that out of the seven claimants only two of them are dependents i.e. the wife of the deceased (claimant No.1) and the unmarried daughter (claimant No.5). The rest of the claimants are major and the daughters are married.

The learned counsel for the claimant submitted that there is no dispute regarding the occurrence of the incident and the evidence of P.W. 1 and PW 2 clearly proved income of the deceased. The witness PW 2 was issued summon from this court and he has appeared and proved the receipt of pension by the deceased through the state bank of India, Nalbari in the bank account number 11004721165. The deceased was also earning from a shoe shop in the market. The learned counsel for claimants submitted that all the claimants are the legal heirs of the deceased and therefore they will get the benefit of loss of dependency.

6. Issue No.1

The claimant Sufiya Begum deposed as PW 1 and on her evidence on affidavit, she stated that on 11/03/2019 at about 3:10 PM while her husband Abbashuddin Ahmed was returning home after attending marriage ceremony on a motorcycle bearing registration number AS-14/B-3368 as a pillion rider, near Police Reserve Nalbari, while crossing over the divider of 31 No. National highway, and Indica V2 vehicle bearing registration number AS-01/AW-9407 coming from the east side was driven in a rash and negligent manner and knocked down the motorcycle in which her husband was travelling from behind. As a result

Abbashuddin Ahmed fell on the road and sustained severe injuries. He was taken to S.M.K. civil hospital Nalbari and the doctor immediately referred him to GMCH Guwahati for treatment. On 06/04/2019 her husband succumbed to his injuries. Post mortem examination was conducted at the GMCH, Guwahati. One FIR was lodged at Nalbari police station which was registered as Nalbari PS case No. 255/2019 u/s 279/304 (A) IPC and after investigation charge sheet was filed against OP.3 (driver of the offending vehicle). She has exhibited the report of the police regarding the accident (Form No.54) as Exhibit 1 and Exhibit 2 is the extract of the GD entry. She also submitted death certificate of the deceased and marked it as Exhibit 3 (proved in original). She also submitted certified copies of the FIR, charge sheet, post-mortem report, MVI report, seizure list and the inquest report and marked the above documents as Exhibit 4(1) to 4(17). During cross examination, the counsel of the opposite party No.1 did not give any suggestion to the PW-1 denying the occurrence of the incident.

On perusal of the above Exhibit 4 to 4(13) by PW-1, I have found that Abbashuddin Ahmed was injured in a road traffic accident that occurred on 11/03/2019 at about 3:10 PM at NH 31 near police reserve crossing and he succumbed to injuries on 06/04/2019 at GMCH, Guwahati. The documents also show that the vehicle bearing registration number AS-01/AW-9407 was involved in the accident and the charge sheet was filed against the open driver of the said vehicle Sri Sujit Baidya Kar (OP No.3). As such the issue is decided in affirmative and in favour of the claimants.

7. Issue No.2 & 3

Both the issues are taken together for discussion and decision.

From the discussion made in Issue No.1 it is clear that Abbashuddin Ahmed sustained injury in a road traffic accident that occurred on 11/03/2019 at about 3:10 PM in which the offending vehicle Indica V2 bearing registration number AS-01/AW-9407 was involved and he expired on 06/04/2019 due to the injuries at GMCH, Guwahati. Therefore the legal representatives of the deceased are entitled to compensation as per the provision laid down in Section 166(1) (c) of The M V Act, 1988. In order to assess the compensation, the claimants need to prove three facts: (i) Age of the deceased, (ii) the number of dependents and (iii) income of the deceased.

(i) Age of the deceased.

The Ld. Counsel for the Opposite party submitted that the claimants failed to prove the age of the deceased as no valid document was produced to prove the age. The Ld. counsel for the claimant submitted that the medical certificate and post mortem report show the age of the deceased as 65 years. I have perused the evidences on record and the documents exhibited. The PW-1 in her evidence on affidavit mentioned that the age of the deceased was 65 years. During cross examination PW-1 could not say the age of her late husband at the time of death. She denied the suggestion of not furnishing any document to prove the age of the deceased.

On perusal of the claim petition the claimants have mentioned that the deceased was a retired person. The claimant could have produced better documents such as Pension book, service record and other documents to prove the age of the deceased. But such documents are

not found in the record. The Ext-4(9) (Post mortem) shows that the age of the deceased was 65 years.

Since the claim under M V Act, 1988 is a beneficial legislation, so I found it not necessary to have strictest proof of the age of the deceased. The Ext-4(9) is considered for ascertaining the age of the deceased. Therefore it is held that the age of the deceased was 65 years at the time of his death.

(ii) Number of dependants.

The Ld. Counsel for the Opposite party submitted that the Claimant No.1 is the wife of the deceased and Claimant No.5 is an unmarried daughter, so they can claim compensation. Ld Counsel of the claimant submitted that all the claimants are legal heirs and entitled to compensation. On perusal of the claim petition it is found that there are seven claimants. Claimant No.1 is the wife of the deceased and claimant No.2 is the son of the deceased. The other five claimants are daughters of the deceased of which the claimant No.5 is the unmarried. All of them are legal heirs / representative of the deceased. Provision laid down U/S166(1)(c) of M V Act, 1988 says that any legal representative can file a claim petition. Moreover the Hon'ble Supreme Court in **"National Insurance Company Ltd. Vs Birendra" (Civil Appeal Nos. 242-243 of 2020, arising out of SLP (Civil) Nos. 976-977 of 2020)** held that *"It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only....."* Therefore I hold that all the seven claimants are legal heirs

and dependant of the deceased and can file the case for compensation.

(iii) Income of the deceased.

The claimant Sufiya Begum (PW1) in her evidence on affidavit stated that the deceased was a retired sub-engineer in the office of the Executive Engineer, PWD. N.K. Division, Nalbari. He was drawing monthly pension amounting to rupees 20,253/-. She further stated that the deceased open a business of shoe store at Nalbari town, Ward No.4 and he was earning ₹ 25,000 per month. Therefore the deceased was earning in total ₹ 45,253 per month. She furnished the Pension statement of the deceased issued by the SBI, Nalbari Branch and marked it as Ext-5.

During cross examination PW-1 stated that she is drawing family pension.

The PW-2 Sri Ajoy Kr Boruah, Asstt. Manager of SBI, Nalbari Branch deposed that he was summoned by this Tribunal and has appeared on being authorised by the Chief Manager of the Bank to depose. Ext-10 is the authority letter. He stated that the Account Number 11004721165 is in the name of Abbashuddin Ahmed and it is a pension Account. He stated that Abbashuddin Ahmed drew Rs. 20253/- as pension in the month of February and March 2019. Ext. 11 and 11(1) are the pension statement of Abbashuddin Ahmed. He further stated that Ext-5 is the pension statement and Ext-5(1) is the signature of the Chief Manager Prasanta Kr. Das whom he knows.

The Ld. Counsel for the opposite party submitted that the claimants have failed to prove the income of the deceased. The PW-2 is not reliable as he was not authorised to depose in this case by the Chief Manager. Ext-10 does not show that PW-2 was authorised to depose

in this case. The Ld. Counsel further stated that the claimants failed to prove that the deceased was having a shoe shop and earning from it.

As regard the evidence of PW-2, I found that the Ext-10 does not specifically mention that he was authorised to depose in this case. It shows that he was authorised to depose in the court of Addl. CJM in an N. I. Act Case. The court of Addl. CJM is adjutant to this Tribunal. Moreover genuineness of the person (PW-2) as Asst. Manager of SBI, Nalbari Branch was not challenged. PW-2 has proved the pension statement of the account held by the deceased. He has only deposed on the official document issued by the SBI, Nalbari Branch. The opposite party has not challenged the genuineness of the documents and also that the deceased was not a pension holder. As such I found that evidence of PW-2 cannot be discarded just because the Ext-10 does not show that PW-2 was authorised to depose in this case. I found that Ext-5 and Ext-11 are genuine documents to hold that the deceased was a pensioner and was drawing **Rs. 20253/- per month** at the time of his death.

On perusal of the evidence and documents, I found that the claimant side did not furnish any documentary evidence to show that the deceased had a shoe shop in the market from which he was earning. No other witness was called to prove the above fact. Only mentioning that the deceased was having a shop is not enough. I found it not believable to hold that the deceased was earning from a shoe shop.

Therefore I hold that the deceased was earning Rs.20253/- per month as pension.

8. In order to compute the loss of income of the claimants, it is necessary to ascertain the annual income of the deceased by deducting his personal living expenses.

The annual income of the deceased would be **(Rs.20253/- X 12= Rs.2,43,036/-)**. So the annual income of the deceased was within the non- taxable limit of income tax.

For deduction for personal living expenses, I relied upon the decision of Hon'ble Supreme Court (**Sarla Verma Vs Delhi Transport Corporation**) reported in **(2009) 6 SCC 121**. As there are seven dependants, so the deduction towards personal and living expenses of the deceased would be 1/5th. Therefore, the contribution towards the family would be **Rs.20253 - Rs.4050 = Rs.16202.4/-** per month. The annual contribution to the family would be **(Rs.16202/- X 12= Rs. 194424/-)**

9. It was argued that the claimant No.1 was drawing family pension, so the amount received as family pension needs to be deducted. I have relied upon the decision of the Hon'ble Supreme Court in ***Sebastiani Lakra & ors vs National Insurance Company Ltd. & anr*** reported in **(2019) 17 SCC 465** where the Hon'ble Supreme Court observed that *"Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two"*.

The Hon'ble Gauhati High Court in **Lakhmi Baruah @ Lakhshi Baruah vs Suchil Kumar Thakuria & ors** reported in **2019 (5) GauLR 104** held that *"In the present case also the family pension to be earned by the appellant is not a benefit connected with the accidental death of her husband. Therefore, the law laid down in the case of Suwala Dutta (Supra) would be applicable to the facts of this case. As such, the question as to whether the amount of family pension can be deducted from the loss of dependency stands answered in negative and in favour of the appellant."*

Therefore I found that the family pension received by the claimant cannot be deducted from the annual income.

10. To compute the loss of dependency, the multiplier ratio as laid down in **Sarla Verma & Ors vs Delhi Transport Corporation & anr reported in (2009) 6 SCC 121** by the Hon'ble Supreme Court has been considered. In this case the age of the deceased was 65 years. Therefore the multiplier will be 7. Therefore the loss of dependency would be (**Rs. 194424/- X 7 = Rs.13,60,968/-**).

11. To ascertain the loss of estate, loss of consortium and funeral expenses, I relied on the decision of Hon'ble Supreme Court "**National Insurance Company Ltd. Vs Pranay Sethi and Ors**" reported in (2017) 16 SCC 680. Since three years have passed, I have considered an increase of 10% to the amount specified in the above decision of the Hon'ble Supreme Court.

Having considered the facts and circumstances of this case, the just and reasonable compensation is assessed as under:

For loss of dependency..... Rs. 194424/-X7 = Rs.13,60,968/-

For Loss of Estate.....Rs. 16500/-

Funeral expenses.....Rs. 16500/-

Loss of Consortium.....Rs. 44000/-

Total : Rs. 1437968/-

12. The PW-1 stated in her evidence on affidavit that her husband met with the accident on 11/03/2019. He was taken to S.M.K. civil hospital Nalbari and the doctor immediately referred him to GMCH Guwahati for treatment. On 06/04/2019 Abbashuddin Ahmed succumbed to his injuries. A sum of ₹ 266,342/-was spent for the treatment

of her husband. Regarding the expenditure incurred for treatment of the deceased, P.W. 1 has exhibited medical prescriptions investigating reports and exhibited those documents as Exhibit 7 to 7 (56). Exhibit 8 to 8(150) were the cash memos and medical vouchers to show the expenditure incurred for treatment.

Regarding the said fact, the opposite parties never challenged. So I hold that the claimants are entitled for recovery of the expenses they have incurred in the treatment of Abbashuddin Ahmed.

Therefore the total amount of compensation the claimants are entitled is Rs. 1437968/- + Rs. 266342/- = Rs.17,04,310/-.

13. Now the question is who is to pay the compensation amount to the claimants. The claimants have filed this case against the owner and driver of the offending vehicle bearing registration number AS-01-AW-9407 (Indica V2) and the Insurance Company. I have perused the Form No. 54 Exhibit 1 and Exhibit 2 (the extract of the GD entry). I have also perused the seizure list and the MVI report. It is found that the driver of the offending vehicle had a valid driving licence No.NT/As-25/10461/K/2016/AMG which is valid upto 28/08/2036. The offending vehicle was duly insured with the Opposite Party No.1 Oriental Insurance Company Ltd. Having the insurance Policy No. 322392/31/2019/1437, which was valid up to 22/10/2019. As such the liability of paying compensation would shift to the Opposite Party No.1 Oriental Insurance Company Ltd.

14.

ORDER

Considering the facts and circumstances of this case, it is hereby ordered that the Opposite party No.1 Oriental Insurance Company Ltd., the insurer of the offending vehicle shall pay the compensation amounting to

Rs. Rs.17,04,310/- (Rupees Seventeen Lakhs Four thousand Three hundred and Ten only) to the claimants within 60 days from the date of this order along with interest @7% per annum from the date of filing of the claim petition. Out of the compensation amount, **Rs.1,00,000/- (Rupees one lakhs)** each will be paid to the claimant No.2 i.e. the son of the deceased and claimant No.3, No.4, No.6 and No.7 who are the married daughters of the deceased. The balance amount will be shared equally by the Claimant No.1 (wife of deceased) and Claimant No.5 (unmarried daughter of the deceased).

15. Let a copy of the judgment and order be furnished to all the concerned parties within 15 days from today as per the provisions of Section 168(2) of the M.V.Act. 1988. Accordingly this MAC case is disposed of on contest.

16. The company may satisfy the award by depositing the compromised amount in the bank account of this Tribunal having no 1226104000022941(IDBI) IFSC Code; IBKL0001226 in the name of Presiding Officer/Member M.A.C.T Nalbari by RTGS or NEFT.

Given under my hand and seal of this Tribunal at Nalbari on this the 17th day of February, 2022.

This judgment is prepared and typed by me.

Presiding Officer/Member

M.A.C.T Nalbari.

APPENDIX

Witnesses for the Claimants: PW-1 Sufia Begum

PW-2 Sri Ajoy Kr Boruah

Witnesses for the Opposite party: Nill

Documents Exhibited by the Claimants:

Ext. 1 : Form 54

Ext. 2: Extract of GD Entry

Ext. 3: Certificate of death

Ext.4(1)-4(17): FIR, charge sheet, post-mortem report, MVI report, seizure list and the inquest report

Ext.5: Pension Statement issued by SBI

Ext.6: Death certificate issued by GMCH, Guwahati.

Ext.7 – 7(56): medical prescriptions investigating reports.

Ext.8-8(150): were the cash memos and medical vouchers.

Ext.9: Summon from Tribunal

Ext.10: Authority letter to depose.

Ext.11-11(1): Computer generated Account statement of deceased.

Presiding Officer/ Member

M.A.C.T Nalbari