

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

**MAC Case No.24/2019(Death)**

**P R E S E N T** :- Mrs. M. Deb  
Member, M.A.C.T,  
Nalbari.

1.Fulban Bibi ..... claimant

- Vs -

New India Assurance Co. Ltd. & Others  
..... Opp. Parties.

**Advocates Appeared :-**

For the claimants : Sri K. Ahmed.

For the Opp. No.3 : Sri P.K. Sarma

Date of Argument : 31-08-2022.

Date of Judgment : 26-09-2022.

**J U D G M E N T A N D O R D E R**

**1.** This instant case has been filed u/s 166 and 140 of the Motor Vehicle Act, 1988 by the claimant namely, Fulban Bibi, W/O Late Makib Ali of Village Allia, P.S. Barbari, District : Baksa, Assam for grant of compensation to the tune of Rs.15,00,000/- on account of death of her husband in a motor vehicular accident on 08-11-2018.

**2.** The facts as unfolded in the claim petition leading to the filing of this application stated as under :-

That on 08-11-2018 at about 8.40 am, when the husband of the claimant, namely, Makib Ali i.e. the

deceased, who was aged about 65 years was going towards reserve land for taking his cows through Barama-Nikashi High Way, at that time, the alleged motorcycle bearing registration No.AS-14H-9941 which was going towards Barama in a violent speed as well as in a rash and negligent manner, knocked down her husband and as a result, her husband was seriously injured and died on the spot. In connection with the accident, Barbari P.S. Case No.83/2018 U/S/279/304(A) IPC was registered against the driver of the offending vehicle.

**3.** On filing of this application, notices were issued to the owner, rider and insurer of the offending vehicle. The O.P. Nos .1,2 & 3 contested the case by filing written statement challenging the claim of the claimant.

**4.** The claimant, Fulban Bibi in support of her claim petition adduced her evidence on affidavit as PW1 and Anowar Hussain as PW-2. The O.Ps did not examine any witness in support of their claim so made in the written statement.

**5.** Upon pleadings of both the parties, the following issues were framed to decide the fate of the case :-

(i). Whether Makib Ali died in a Road Traffic Accident at Barama -Nikashi NH on 08-11-2018 at about 8.40 am due to rash and negligent driving by the rider of the offending vehicle bearing registration No.AS-14H-9941 (Motorcycle)?

- (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 is entitled to?

6. Heard learned advocates. Gone through the record and relevant documents on record.

### **DECISION AND REASONS THEREOF**

#### **ISSUE NO.(i)**

7. To arrive at a decision whether on 08-11-2018 when her husband namely, Makib Ali i.e. the deceased was going towards reserve land for taking his cows through Barama-Nikashi High Way, at that time, the alleged motorcycle bearing registration No.AS-14H-9941 which was going towards Barama side in a violent speed as well as in a rash and negligent manner, knocked down her husband from back side and as a result, her husband was seriously injured and died on the spot. Let me first of all discuss the evidence on record. In this regard, the examination of PW-1, makes the position clear that the deceased was the only earning member of her family and he was a cultivator and his monthly income was Rs.10,000/-.She further stated that the deceased left behind her and three major sons namely Farman Ali, 33 years, Janur Ali,31 years and Tajer Ali,29 years respectively. She further stated that her deceased husband was 65 years at the time of his death and as such, she

claims Rs.1500,000/- as compensation from the O.Ps.

During her cross examination, she stated that she did not witness the accident.

PW-1 in support of her case, proved the police report as Ext. 1, Post mortem report as Ext 2, Certified copies of FIR as Ext.3, Certified copies of charge-sheet as Ext.4, Certified copies of seizure-list as Ext.5(i) to Ext.5(ii), Certified copies of MVI report as Ext.6.

It reveals from Ext.1 that i.e. the accident information report that O/C Barbari P.S. mentioned clearly that the accident took place on 08-11-2018 at about 8.40 am on Barbari Barama Road near Police Reserve Baksa and the vehicle involved in the accident was Pulsar 220 bearing registration No.AS-14H-9941 i.e. the offending vehicle in this case. The name of the owner of the aforesaid vehicle is also mentioned as Jaynath Brahma, S/O Mahendra Brahma and the said vehicle was duly insured with New India Assurance Co. Ltd. i.e. O.P. No.3 vide policy No.53090231180100003670 valid up to 26-06-2019.

PW-2, Anowar Hussain corroborated the version of PW-1 and stated that at the time of accident, he was travelling in a Maximo vehicle and a motorcycle suddenly over took their vehicle and knocked his father-in-law.

**8.** In the light of the above discussion, it is crystal clear

that the accident took place on 08-11-2018, resulting death of the husband of the claimant which was due to rash and negligent riding of the rider of the offending vehicle bearing regd. No.AS-14H-9941 ( Motorcycle). In view of the above discussion, the issue is decided in affirmative.

### **ISSUE NOS (ii) & (iii)**

**9.** Now, it is to be decided in the instant case as to whether the claimant is entitled to get any compensation and as to what amount of compensation the claimant is entitled to.

**10. In Sarala Verma and Others Vs Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC), Hon'ble Supreme Court held that " Basically only three facts need to be established by the claimants for assessing compensation in the case of death (a) age of the deceased (b) income of the deceased and (c) the number of dependents."**

**11.** The claimant as PW-1, in her cross examination stated that the age of her husband was 65 years at the time of his death. In the post mortem report (Ext. 2) the age of the deceased is also mentioned as 65 years and the age recorded by doctor in Post Mortem report, is acceptable one. PW 1 also stated that her husband was working as a cultivator and her husband was earning Rs 10,000/- per month, but in this regard she has not submitted any document to prove the income of her deceased husband. So, I am of the view that daily income of a cultivator can safely be fixed at Rs 300/- and can be assessed to be the daily income of the claimant at the time

of accident and in that way the claimant earned Rs. 9000/- per month. It is seen that apart from claimant, Fulban Bibi, the deceased has three major sons, namely, Farman Ali, Janur Ali and Tajer Ali respectively and at the time of death, age of the deceased was 65 years. Accordingly, appropriate multiplier would be 7 and one fourth would be the deduction towards personal and living expense of the deceased in the light of guideline of ***Hon'ble Supreme Court, in the case of Sarala Verma & Others Vs. Delhi Transport Corporation and another, reported in 2009 ACJ 1298.***

**12.** The Hon,ble Supreme Court in **National Insurance Co. Ltd vs Pranay Sethi on 31 October, 2017**, held in paragraph 61 (iv) to the effect that: “

**“While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.**

**In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”**

**13.** To ascertain the loss of estate, loss of consortium and funeral expenses, I relied on the decision of Hon'ble Supreme Court in **“National Insurance Company Ltd.**



1. Fulban Bibi (Wife of the deceased)

### **ORDER**

**16.** In the result, the claim petition filed by the claimant for compensation is allowed. The total amount of compensation to the tune of **Rs. 644000/- (Rupees Six Lakhs Forty Four Thousand Only)** so computed on different heads is awarded to the claimant on account of death of Makib Ali due to vehicular accident. The OP No.3 i.e. the New India Assurance Co. Ltd. is directed to pay the said amount of compensation to the claimant within 60 days from today with 6% interest from the date of filing of the claim petition, i.e, from 26.04.19 till the date of realization. Accordingly, this MAC Case is disposed of on contest.

**17.** The company may satisfy the award by depositing the awarded amount into the bank account (IDBI Bank) of the Tribunal having no.1226104000022941 (IDBI) IFSC Code- IBKL0001226 in the name of Presiding Officer/Member M.A.C.T., Nalbari by RTGS or NEFT or the company may satisfy the award by depositing into the bank account of Punjab National Bank having no 1592010019549 IFSC Code-PUNB0159220 in the name of Presiding Officer/Member M.A.C.T., Nalbari by RTGS or NEFT.

**18.** 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.

Given under my hand and seal of the Tribunal on this  
the 26<sup>th</sup> day of Sept, 2022

(Mrs. M. Deb)

**Presiding Officer/ Member,**

**MACT, Nalbari**

**Dictation Taken by**

**M. Devi**

**Stenographer.**

## **APPENDIX**

### **Witness for the claimant:-**

PW-1 : Fulban Bibi

PW-2 : Anowar Hussain

### **Witness for the opposite party :-**

Nil

### **Documents exhibited by the claimant:-**

Ext. 1 :Police Report

Ext. 2 :Post Mortem Examination Report

Ext. 3 Certified copies of FIR.

Ext. 4: Certified copy of charge sheet.

Ext 5( i – ii ): Certified copy of seizure list.

Ext. 6 : Certified copy of MVI Report.

### **Documents exhibited by the opposite party:-**

**Nil**

**Presiding Officer/ Member,**

**MACT, Nalbari**