

BEFORE THE MEMBER: MOTOR ACCIDENT CLAIMS

TRIBUNAL: NALBARI

MAC Case No.27 (Death) / 2020

P R E S E N T :- Mrs. M. Deb

Member, M.A.C.T,

Nalbari.

- 1.Smt. Gitanjali Rajbongshi (Wife of the deceased)
2. Snigdha Smita Rajbongshi (Daughter of the deceased)
3. Mrittik Rajbongshi (Son of the deceased)

..... claimants

- Vs -

Oriental Insurance Co. Ltd. & Others

..... Opp. Parties.

Advocates Appeared :-

For the claimants : Sri R. K. Sarma.

For the Opp. No.1 : Smt. A. Chakraborty.

Date of Argument : 12.09.2022.

Date of Judgment : 12.09.2022.

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,

Smt.Gitanjali Rajbongshi, W/O Gajen Kr. Rajbongshi of Village Japarkuchi, P.O. Chowk Bazar, P.S. & District : Nalbari, Assam for grant of compensation to the tune of Rs.90,00,000/- on account of death of her husband in a motor vehicular accident on 03.01.2020.

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

That on 03.01.2020 at about 3.00 p.m., when the husband of the claimant no. 1, namely, Gajen Kr. Rajbongshi i.e. the deceased, who was aged about 43 years was proceeding from Nalbari towards Pathsala riding his Hero Super Splendor bearing registration No.AS-01MA-2763 accompanied by his colleague Abinash Barman by the left side on NH 31 and when they reached at Karemura near Kali Mandir, the offending vehicle bearing registration No.AS-25AC-4980 (Tata DI Pick Up Van) which was used for Bardoisila Theatre and driven in a rash and negligent manner by OP No.3 from the same direction knocked at the back of the motorcycle which was ridden by her husband and as a result of which both of them were thrown off and the helmet of her husband was broken down and he sustained fatal injuries to the vital parts of the body and went into a state of Coma instantly and his pillion rider too sustained fatal injuries. Immediately after the accident, they were taken to SMKCH, Nalbari from where they were shifted to Sarathi Hospital, Nalbari, but the doctor thereof declared them dead. Post mortem

examination of the deceased was done at SMKCH, Nalbari.

In connection with the accident, Tihu P.S. Case No.39/2020 U/S/279/304(A) IPC was registered and on completion of investigation, police submitted charge-sheet against the driver of the offending Tata DI Pick Up Van i.e. the O.P. No.3.

3. On filing of this application, notices were issued to the owner, driver and insurer of the offending vehicle. The O.P. No.1 contested the case by filing written statement challenging the claim of the claimant. The O.P. No.2 & 3 neither appeared before the Tribunal nor contested the case by filing written statement. So, the case proceeded ex-parte against the O.P. No.2 & 3.

4. The claimant, Smt.Gitanjali Rajbongshi in support of her claim petition adduced her evidence on affidavit as CW1, Sri Prahlad Ch. Deka as CW-2 and Rajib Kr. Kalita as C.W-3 . 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 there is cause of action to file this case by the claimant ?
- (ii) Whether Gajen Kumar Rajbongshi died on 03.01.2020 due to Road Traffic Accident which

occurred on 03.01.2020 at 31st NH at Karemura near Kali Mandir due to rash and negligent driving by the driver of the offending vehicle bearing registration No.AS-25AC-4980 (Tata DI Pick Up Van)?

(iii). Whether the claimants are entitled to get any compensation as prayed for, and if so, to what extent and from whom?

(iv). To what other relief or reliefs the claimants are is entitled to?

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

DECISION AND REASONS THEREOF

ISSUE NO.(i) & (ii)

7. To arrive at a decision whether on 03.01.2020 when the husband of the claimant namely, Gajen Kumar Rajbongshi i.e. the deceased was proceeding from Nalbari towards Pathsala riding his Hero Super Splendor bearing registration No.AS-01MA-2763 accompanied by his colleague Abinash Barman by the left side on NH 31 and when they reached at Karemura near Kali Mandir, the offending vehicle bearing registration No.AS-25AC-4980 (Tata DI Pick Up Van) which was used for Bardoisila Theatre and driven by OP No.3 in a rash and negligent manner from the same direction knocked at the back of

the motorcycle which was ridden by her husband and as a result of which, both of them were thrown off and the helmet of her husband was broken down and he sustained fatal injuries to the vital parts of the body and went into a state of Coma instantly and his pillion rider too sustained fatal injuries. Immediately after the accident, both of them were taken to SMKCH, Nalbari from where they were shifted to Sarathi Hospital, Nalbari, but the doctor thereof declared them dead.

Let me first of all discuss the evidence on record. In this regard, the examination of CW-1, makes the position clear that the deceased was the only bread earner of the family and on his expiry, they (the widow claimant and two Nos. of wards) are left behind in destitute, hopeless and their future lives have been thrown to dark and on his death, a high prospect of life is lost. She further stated that the deceased was Territory Manager in Lifeline Remedies (India) Pvt. Ltd. for North Eastern Region having Head Quarter at Nalbari and he received monthly salary of Rs.42,167/-. Moreover, he ran a Drugs Distributorship by name and style S.N. Drugs & Surgicals at Alternative Road, Nalbari in partnership with one Binoy Rajbongshi from which he earned Rs.2,20,000/- P.A. Moreover, from 2001, he ran an LICI Agency and in the last completed year of his death, he received commission of Rs.1,13,702/- P.A. Thus, his yearly income was Rs.8,39,206/p P.A. and in his death, a high prospect of life has been lost. CW-1 also

stated that her deceased husband was 43 years at the time of his death. As such, she claims Rs.99,00,000/- as compensation from the O.Ps.

During cross examination, she stated that she did not witness the accident. Her late husband was a Manager in the Company named life line remedies Pvt. Ltd. She has exhibited document to prove the salary of her late husband. The salary of her husband was Rs.42,000/-.

CW-1 in support of her case, proved the accident information Report as Ext. 1, GDE Extrace as Ext 1(1), Certified copies of FIR, Charge-sheet, Seizure-list, MVI Report, Post mortem report, Injury Report, Sketch Map, Inquest Report etc. as Ext.2 to Ext.2(33), Employment and Income proof document of the deceased as Ext.3 to Ext.3(21), Voter I/D as Ext.4, Pan Card as Ext.4(1), First referral slip of SMKCH, Nalbari as Ext.5, Brought Dead Certificate as Ext 5(1), Educational document of the deceased as Ext. 6 to Ext.6(1), Death certificate of the deceased as Ext. 7; Next of Kin certificate of the deceased as Ext.8, Birth certificate of the wards of the deceased namely, Snigdha Smitha Rajbongshi and Mrittik Rajbongshi as Ext.9 to Ext.9(1), Voter I/D and Pan Card of the deponent as Ext.10 to 10(1), Driving License of the deceased as Ext.11, R/C of the deceased's motorcycle as Ext.12, Insurance Policy of the deceased's motorcycle as Ext.13 to Ext.13(2).

CW-2, Sri Prahlad Ch. Deka. Branch Manager, Sales of LIC, Nalbari Branch. He stated that Late Gajen Kr. Rajbongshi was an agent of LIC having code no.06211482 and he has brought the income status report of Gajen Rajbongshi which is a system generated document issued by Branch Manager, Bijoy Mukharjee. Ext.14 is the income statement of Gajen Rajbongshi from his inception till death. He has also produced agency status report of Late Gajen Rajbongshi which is marked as Ext.15. During the financial year, 19-20, Late Gajen Rajbongshi's income as an agent was Rs.55,732/-.

During cross examination, he stated that Gajen Rajbongshi got commission from LIC not salary and the income from commission varies.

CW-3 Rajib Kr. Kalita, Area Sales Manager (Lifeline Remedies Pvt. Ltd) stated that deceased Gajen Kumar Rajbongshi was an employee of Lifeline Remedies and he was Territory Manager and he knew him. Ext.3 is the last pay certificate of the deceased Gajen Kumar Rajbongshi and the salary certificate is for the month of December,2019. Ext.3(1) to Ext.3(3) are the appointment letters of deceased Gajen Kumar Rajbongshi.

During cross examination he stated that the salary of the deceased Gajen Kumar Rajbongshi was fixed salary.

It reveals from Ext.1 that i.e. the accident information report that O/C Tihu P.S. mentioned clearly that the

accident took place on 03.01.2020 at about 3.00 p.m. on NH 31 near Karemura Kalimandir and the vehicle involved in the accident was Tata DI Pick Up Van bearing registration No.AS-25AC-4980 i.e. the offending vehicle in this case. The name of the owner of the aforesaid vehicle is also mentioned as Md. Jaidul Alam, S/O Md Nur Nahammad and the said vehicle was duly insured with Oriental Insurance Co. Ltd. i.e. O.P. No.1 vide policy No.321200/31/2020/7299 valid up to 08.12.2020.

8. In the light of the above discussion, it is crystal clear that the accident took place on 03.01.2020, resulting death of the husband of the claimant which was due to rash and negligent driving of the driver of the offending vehicle bearing regd. No.AS-25AC-4980(Tata DI Pick Up Van). In view of the above discussion, both the issue are decided in affirmative.

ISSUE NOS (iii) & (iv)

9. Now, it is to be decided in the instant case as to whether the claimants are entitled to get any compensation and as to what amount of compensation the claimants are 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 CW-1, in her cross examination stated that the age of her husband was 43 years at the time of his death. In the post mortem report (Ext. 2(21)), the age of the deceased is mentioned as 43 years and the age recorded by doctor in Post Mortem report, is acceptable one. CW 1 stated that her husband was working as a Territory Manager and her husband was earning Rs 42,167/- per month as a Territory Manager and exhibited Ext 3 to prove the same and in this regard she examined Rajiv Kumar Kalita Area Sales Manager(Lifeline remedies Pvt Ltd) as CW 3. It reveals from the Ext. 3(the last pay certificate of the deceased) that his last salary for the month of December 2019 was Rs 42167.00. She also examined Sri Prahlad Ch. Deka. Branch Manager, Sales of LICICI, Nalbari Branch as CW 2. He stated that during the financial year, 19-20, Late Gajen Rajbongshi earned Rs.55,732/- as LICICI agent and in this regard he submitted Ext. 14(1) to prove the same. As such, his monthly income as LICICI agent stands Rs. 4644/-. CW 1 also stated in her evidence that the deceased husband had a Drugs Distributorship in partnership with one Binay Rajbonshi from which they earned Rs.2,20,000/- per annum. But, neither any document has been submitted to show that he was earning Rs. 2,20,000/- from the Drugs Distributorship nor anyone has been examined to prove the same. From

the evidence, it is clear that the Drugs Distributorship was in partnership and nothing has been submitted to show his share of income. So considering all aspects, his monthly income is taken to be Rs. 42167.00 + Rs 4644.00 = Rs 46811.00. It is seen that apart from claimant, Gitanjali Rajbngshi (wife), the deceased had two minor children namely Snigdha Smita Rajbongshi and Mrittik Rajbongshi respectively and at the time of death, age of the deceased was 43 years. Accordingly, appropriate multiplier would be 14 and one third 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 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. Vs Pranay Sethi and Ors**" reported in (2017). 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 and as the age of the deceased was 43 years and as per version of CW1, the deceased was on a fixed salary and the commission earned from LIC cannot be taken as permanent salary, so, 25 % will be added to his income as future prospects.

14. Having considered the facts and circumstances of the case, just and reasonable compensation to which the claimant would be entitled in the instant case is assessed as under.

3. Mrittik Rajbongshi (Son of the deceased)

ORDER

16. In the result, the claim petition filed by the claimants for compensation is allowed. The total amount of compensation to the tune of **Rs. 66,30,540/- (Rupees Sixty Six Lakhs Thirty Thousand Five Hundred Forty Only only)** so computed on different heads is awarded to the claimants on account of death of Gajen Kumar Rajbongshi due to vehicular accident. The OP No.1 i.e. the Oriental Insurance Co. Ltd. is directed to pay the said amount of compensation to the claimants within 60 days from today with 6% interest from the date of filing of the claim petition, i.e, from 13.10.2020 till the date of realization. The claimant, namely, Smt. Gitanjali Rajbongshi is directed to open fixed deposit account of Rs 15,00,000/- (Rupees Fifteen Lakhs) only each in any nationalized bank in the name of her minor children namely, Snigdha Smita Rajbongshi (Daughter of the deceased) and Mrittik Rajbongshi (Son of the deceased) for future maintenance till they attain majority.

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 12th day of Sept, 2022

(Mrs. M. Deb)

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

Dictation Taken by

M. Devi

Stenographer.

APPENDIX

Witness for the claimant:-

CW-1 : Smt. Gitanjali Rajbongshi.

CW-2 : Sri Prahlad Ch. Deka.

CW-3 : Sri Rajiv Kumar Kalita

Witness for the opposite party :-

Nil

Documents exhibited by the claimant:-

Ext. 1 :the accident information Report.

Ext. 1(1) : GDE Extract.

Ext.2 to Ext.2(33): Certified copies of FIR, Charge-sheet, Seizure-list, MVI Report, Post mortem report, Injury Report, Sketch Map, Inquest Report etc.

Ext.3 to Ext.3(21) : Employment and Income proof document of the deceased.

Ext.4: Voter I/D.

Ext.4(1): Pan Card.

Ext.5: First referral slip of SMKCH, Nalbari.

Ext 5(1): Brought dead certificate.

Ext. 6 to Ext.6(1): Educational document of the deceased .

Ext. 7: Death certificate of the deceased.

Ext.8 : Next of Kin certificate of the deceased.

Ext.9 to Ext.9(1): Birth certificate of the wards of the deceased namely, Snigdha Smitha Rajbongshi and Mrittik Rajbongshi

Ext.10 to 10(1): Voter I/D and Pan Card of the deponent.

Ext.11: Driving License of the deceased .

Ext.12: R/C of the deceased's motorcycle .

Ext.13 to Ext.13(2): Insurance Policy of the deceased's motorcycle.

Documents exhibited by the opposite party:-

Nil

Presiding Officer/ Member,

MACT, Nalbari