

IN THE COURT OF THE MEMBER: MOTOR ACCIDENT

CLAIMS TRIBUNAL: NALBARI

MAC Case No.44 / 2019(Death)

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

1. Smt. Lalita Mushahary
2. Sri Kankan Mushahary
3. Sri Jitu Mushahary

.... claimants

- Vs -

United India Insurance Co. Ltd.& Ors

..... Opp. Parties.

Advocates Appeared :-

For the claimant : Smt. B. Baishya

For the Opp. No.3 : Smt. P. Choudhury.

Date of Argument : 03.09.2022.

Date of Judgment : 03.09.2022.

(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. Lalita Mushahary, W/O Purna Mushahary of Ward No.1, Jungle Basti, P.S. Dhekiajuli, Dist. Sonitpur, Assam for grant of compensation to the tune of Rs.30,00,000/- on account of death of her husband in a motor vehicular accident on 14-05-2019.

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

That on 14-05-2019, when the husband of the claimant, namely, Purna Mushahary was talking with his friend, Tarun Singh on the left side of the road at Dhekiajuli Block Chariali, suddenly a vehicle bearing registration No.AS-01-AZ-8679 (Eon car) which was driven in a rash and negligent manner knocked down both of them from the back side and as a result,they were grievously injured. Immediately after the accident they were taken to Dhekiajuli PHC and from there they were taken to TMCH,Tezpur and after that the husband of claimant no.1 was admitted at GNRC, Guwahati but on 20-05-2019 he succumbed to his injuries. Post mortem examination of the deceased was done in GMCH, Guwahati.

3. On filing of this application, notices were issued to the owner, driver and insurer of the offending vehicle. The

O.P. No.3 contested the case by filing written statement challenging the claim of the claimant. The O.P. No.1 & 2 neither appeared before this Tribunal nor filed any written statement. Hence, the case against the O.P. No.1 & 2 proceeded ex-parte.

4. The claimant, Smt. Lalita Mushahary in support of her claim petition adduced her evidence on affidavit as PW1 and Jusep Kerketa adduced his evidence on affidavit as PW-2. The O.P. No.3 did not examine any witness in support of its 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 any cause of action to file this case by the claimants ?
- (ii) Whether Purna Mushahary died on 20-05-2019 due to the injuries he allegedly sustained in a Road Traffic Accident on 14-05-2019 due to rash and negligent driving by the driver of the offending vehicle No. AS-01-AZ-8679 (Eon car)?
- (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. The claimant, Smti Lalita Mushuhari in support of her claim petition examined herself as PW-1 and one Jusep Kerketa as PW 2. The OP No.3 did not examine any witness in support of its claim so made in the written statement.

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

DECISION AND REASONS THEREOF

ISSUE NO.(i) & (ii)

8. To arrive at a decision whether on 14-05-2019, when the husband of the claimant namely Purna Mushahary was talking with his friend, Tarun Singh on the left side of the road at Dhekiajuli Block Chariali, suddenly the offending vehicle bearing registration No.AS-01-AZ-8679 (Eon car) driven in a rash and negligent manner and knocked down both of them and as a result of which the husband of the claimant was grievously injured and died on 20-05-2019. Let me first of all discuss the evidence on record.

PW-1 in support of her case proved the Ext.1 accident information Report ,accident information report,Ext.2, extract copy of GD Entry, Ext.3(a)-3(c), certified copy of FIR , Ext.4(a)-4(b) certified copy of charge-sheet ,Ext.5(a)-5(e) certified copy of p.m report ,Ext.6, medical advice slip issued by TMCH, Tezpur, Ext.7(1) -7(62), medical bills and vouchers), Ext..8(1)-8(6), medical lab report, Ext. 9(1)-9(2) ,school certificate of claimant Nos. 3 & 4 and Ext.10, death certificate of mother of the deceased, Bheteki

Mushahary. It reveals from Ext.1 i.e. the accident information report that O/C Dhekiajuli P.S. mentioned clearly that the accident took place on 14-05-2019 at about 8.18 p.m. at Dkj Batachipur Road and the vehicle involved in the accident was Eon Car bearing registration No.AS-01-AZ/8679 i.e. the offending vehicle in this case. The name of the owner of the aforesaid vehicle is also mentioned as Sri Saroj Kalita, S/O Sri Rajani Kalita and the said vehicle was duly insured with United India Insurance Co. Ltd. i.e. O.P. No. 3 vide policy No. 1307003118P116352115 valid up to 15-03-2020.

9. In the instant case from the evidence of PW-1(claimant), record and Ext.1, it is found that the husband of the claimant No.1,Purna Mushahary was talking with his friend by the left side of the road at Dhekiajuli Block chariali, suddenly a vehicle bearing registration No.AS-01-AZ-8679 (Eon car) which was driven in a rash and negligent manner knocked down them from the back side.

10. In the light of the above discussion, it is crystal clear that the accident took place on 14-05-2019, 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-01-AZ-8679 (Eon car). In view of the above discussion, the issues are decided in affirmative.

ISSUE NOS (iii) & (iv)

11. 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.

12. *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.*

13. The claimant as PW-1, in her cross examination stated that the age of her husband was 35 years at the time of his death. Regarding age of the deceased, the claimant has not exhibited any document. In the post mortem report (Ext. 5), the age of the deceased is mentioned as 35 years and the age recorded by doctor in Ext. 5, Post Mortem report, is acceptable one. The deceased was a E-Rickshaw puller and from which he earned Rs.10,000/- per month with which he maintained his poor family. PW-1 claimed that her husband was earning Rs.10,000/- per month, but, no document has been submitted in this regard. So, I am of the view that daily income of a E-Rickshaw puller can safely be fixed as Rs.200 and can be assessed to be daily income of the deceased at the time of his death and in that way deceased earned Rs.6000/- (Rs. 200 X 30) per month at the time of his death. It is seen that apart from

claimant, Lalita Mushahary(wife), the deceased had two minor sons namely, Kankan Mushahary and Jitu Mushahary aged about 14 years and 16 years respectively. The deceased was 35 years old at the time of his death and so the appropriate multiplier will be 16 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.***

14. From the record, it reveals that medical expenditure incurred during treatment of the deceased before his death was amounting to Rs 1,12,166/-.

15. 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: **"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."**

16. 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 the age of the deceased was below 40 years, 40 % will be added to his income as future prospects.

1	Total income	= Rs. 6,000/-(Monthly Income) = Rs 6,000/- X 12 = Rs 72,000/-(Annual Income) = Rs 72,000/- - Rs 24,000/- (1/3 deduction as the deceased has three dependents) = Rs 48,000/- = Rs. 48,000 + Rs 19,200/- (Addition of 40% as future prospects) = Rs 67,200 X 16(Multiplier) = Rs 10,75,200/-	Amount = Rs 72,000/- =Rs 48,000/- =Rs 67,200/- = Rs 10,75,200/-
2	Medical Expenses		=Rs 1,12,166/-
3	Funeral Expenses		=Rs. 16,500/-
4	Loss of Estate		=Rs 16,500/-
5	Loss of consortium		= Rs. 44,000/-
	Total		= Rs 12,64,366/-

16. The above amount is awarded as compensation to

the following legal heirs of deceased, Purna Mushahary :

- (1) Smt. Lalita Mushahary- Wife of the deceased.
- (2) Sri Kankan Mushahary- Minor son of the deceased.
- (3) Sri Jitu Mushahary- Son of the deceased.

ORDER

17. In the result, the claim petition filed by the claimants for compensation is allowed. The total amount of compensation to the tune of **Rs. 12,64,366/- (Rupees Twelve Lakhs Sixty Four Thousand Three Hundred Sixty Six only)** so computed on different heads is awarded to the claimants on account of death of her husband due to vehicular accident. The OP No.3 i.e. the United India Insurance Co. Ltd. is directed to pay the said amount of compensation to the claimants with 6% interest from the date of filing of the claim petition i.e. from 17.06.2019 till the date of realization. The claimant, namely, Lalita Mushahary is directed to open a fixed deposit account of Rs 3,00,000/- (Rupees Three Lakhs) only in any nationalized bank in the name of her minor son namely, Sri Kankan Mushahary for future maintenance till he attains majority.

Accordingly, this MAC Case is disposed of on contest.

18. 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.

19. 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 03th 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 : Smt. Lalita Mushahary

PW-2 : Sri Jusep Kerketa

Witness for the opposite party :-

Nil

Documents exhibited by the claimant:-

Ext.1: Police report

Ext. 2: Certified copy of GD extract

Ext. 3(a)--3(c) : Certified copy of FIR

Ext.4(a)-4(b): Certified copy of charge-sheet.

Ext. 5(a)-5(e): Certified copy of post mortem report.

Ext. 6 : Medical advice slip issued by TMCH, Tezpur.

Ext. 7(1)-7(62) : Medical bills and vouchers.

Ext. 8(1)-8(12) : Medical lab reports.

Ext. 9(1) -9(2) : School certificates of claimant Nos. 3 & 4.

Ext. 10 : Death certificate of mother of the deceased Bheteki Mushahary.

Documents exhibited by the opposite party

Nil

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