

BEFORE THE MEMBER: MOTOR ACCIDENT CLAIMS

TRIBUNAL: NALBARI

MAC Case No.49 / 2019(Death)

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

Member, M.A.C.T,

Nalbari.

1. Smt. Pranita Devi (Wife of the deceased)
2. Sri Panchi Kaushik (Sarma)(Daughter of the deceased)
3. Sri Jyotishman Kaushik (Sarma) (Son of the deceased)

..... claimants

- Vs -

Sri Harihar Deka & another

..... Opp. Parties.

Advocates Appeared :-

For the claimants : Sri S.C. Pandit.

For the Opp. No.1 : S. Haque.

Date of Argument : 05.09.2022

Date of Judgment : 30.09.2022

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. Pranita Devi, W/O Late Balen Sarma of Village: Bangaon, P.O.Bangaon, P.S. Patacharkuchi, Dist. Barpeta, Assam for grant of compensation to the tune of Rs.25,66,000/- on account of death of her husband in a motor vehicular accident on 05.10.2018.

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

That on 05.10.2018 at about 2.30 p.m., when the husband of the claimant no. 1, namely, Balen Sarma i.e. the deceased, aged about 48 years was coming from Pathsala to their residence on a motorcycle bearing registration No.AS-15/F-8662, at that time another motorcycle bearing registration No.AS-14-H/2625 which was coming from opposite direction in a rash and negligent manner dashed with the motorcycle of Balen Sarma at Teparatary, Jinaram Road and as a result, Balen Sarma sustained grievous injuries on his head and different parts of his body. Later on he died on the way to hospital on the same day. The deceased was taken to Civil Hospital, Pathsala wherein he was declared dead and thereafter he was taken to F.A.A. Medical College Hospital, Barpeta and Post mortem examination of the dead body was conducted there. In connection with the accident, Patacharkuchi P.S. Case No.666/18 U/S 279/304(A)/427 IPC was registered.

3. On filing of this application, notices were issued to the owner cum rider of the offending vehicle. The O.P. No.1 contested the case by filing his written statement challenging the claim of the claimant and OP no 2 has also filed WS as proforma OP.

4. The claimant, Smt. Pranita Devi in support of her claim petition adduced her evidence on affidavit as CW-1,

Sri Hemen Kr. Sarma as CW-2 and Sri Malin Ch. Bhagabati as CW-3. The O.P. No.1 also examined himself as DW-1.

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 claimants ?
- (ii). Whether Balen Sarma died in an accident occurred on 05.10.2018 due to the injuries he allegedly sustained in a Road Traffic Accident on 05.10.2018 at about 2.30 p.m. due to rash and negligent riding by the rider of the offending vehicle No. AS-14-H/2625(M/Cycle) ?
- (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 05.10.2018 at about 2.30 p.m. while her husband ,namely, Balen Sarma was going towards Pathsala from their residence on a motorcycle bearing registration No.AS-15/F-8662, at that

time, another motorcycle bearing registration No.AS-14-H/2625 which was coming from opposite direction in a rash and negligent manner dashed with the motorcycle of Balen Sarma at Teparatary, Jinaram Road and as a result, Balen Sarma sustained grievous injuries on his head and different parts of his body and he died on the way to hospital on the same day. She further stated that her deceased husband was taken to Civil Hospital, Pathsala wherein he was declared dead and thereafter he was taken to F.A.A. Medical College Hospital, Barpeta and Post mortem examination was conducted there. She also stated that the deceased was the sole earning member of their family consisting herself, two children namely Sri Panchi Kaushik (Sarma), Sri Jyotishman Kaushik (Sarma) and mother, Hemlata Devi. She also stated that her husband worked as a LIC Agent and he earned Rs.20,000/- per month. She further stated that her deceased husband had a brilliant academic carrier and he also did private tuition in batch basis in addition to his LIC Agency till the date of accident. She further stated that her deceased husband was a healthy, energetic, laborious educated man and as such he had bright prospect in his life so as to provide good financial support to the family members. As such, she claims Rs.25,66,000/- as compensation from the opposite parties.

During her cross examination, She stated that at the time of accident, she was at her house.

CW-1 in support of her case, proved the accident information Report as Ext. 1, Post mortem report as Ext.2; LICICI Id Card bearing Code No.LIC016434009 (valid up to 31.03.2021) as Ext.3; Income Tax Return Verification Form in the assessment Year 2016-17 as Ext.4; income Tax Return Verification Form in the assessment Year 2017-18 as Ext5. Income Tax Return Verification Form in the assessment Year 2018-19 as Ext.6Pan Card of the deceased as Ext.7; Voter ID card of the deceased person as Ext.8; Voter ID card of the claimant No.1 as Ext.9. Copies of FIR & ejahar as Ext.10 and Ext.10(1); Copy of seizure list as Ext.11(1 & 2), Copy of charge-sheet as Ext.12, Copy of MVI Report as Ext.13(1 & 2) and Copy of Post mortem report as Ext.14.

Annexure 1: LICICI License Id Card bearing No.0262296921 (valid up to 24.03.2015)

Annexure 2: LICICI Id Card bearing Code No.LIC016434009 (valid up to 31.03.2018) .

Annexure 3: HSLC Certificate of the deceased person issued by the SEBA.

Annexure 4: B.A. Part -2 certificate issued by the Principal of Bajali college, Pathsala.

Annexure 5: Death Certificate of the deceased person.

Annexure 6: Ejahar.

CW-2, Sri Hemen Kr. Sarma stated that Balen Sarma, husband of Claimant No 1 died in a road traffic accident and at the time of accident, Balen Sarma was riding a

motorcycle, but his motorcycle was knocked down by the offending vehicle at Teparari and the accident occurred due to fault of the offending vehicle. He stated that he was near the place of accident at the time of occurrence. During his cross examination, he stated that at the time of accident, he was going towards Pathsala. The deceased was his relative.

CW-3, Sri Malin Ch. Bhagabati stated that he does not know the deceased, Balen Sarma he was an agent of LIC under the Pathsala Branch, LIC. His agency code was LIC 016434009 and his date of appointment as agent was 25th March, 2003. His income in the year 2017-18 was Rs.1,85,281/- under different heads. His income in the year 2018-19 was Rs.1,55,604/- under different heads. As per the record maintained by the LIC his date of birth was 01.01.1967.

During his cross examination, he stated that the income of the agents are not fixed.

DW-1, Harihar Deka stated that he is no way connected with the alleged accident, his vehicle is also no way connected with the alleged accident and the road where the accident occurred was a busy road.

During his cross examination he stated that he had a motorcycle bearing registration No. AS-14/H-2625 and in the year, 2018 his motorcycle was not insured and he did not have any driving license.

It reveals from Ext.1 that i.e. the accident information report that O/C Patacharkuchi P.S. mentioned clearly that the accident took place on 05.10.2018 at about 2.30 p.m. at Village Teparatary and the vehicle involved in the accident was Motorcycle bearing registration No. AS-14-H/2625 i.e. the offending vehicle in this case. The name of the owner of the aforesaid vehicle is also mentioned as Sri Harihar Deka, S/O Sri Tankeswar Deka **but the said vehicle was not insured with any Insurance Company.**

8. In the light of the above discussion, it is crystal clear that the accident took place on 05.10.2018, resulting death of the husband of the claimant, was due to rash and negligent riding of the rider of the offending vehicle bearing regd. No.AS-14-H/2625. In view of the above discussion, the issues 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 claim petition stated that the age of her husband was 48 years at the time of his death, but as per pan card, the age of the deceased was 51 years at the time of accident. CW-1 further stated that the deceased worked as an LIC Agent and from which he earned Rs.20,000/- per month. Regarding income of the deceased, CW-3, Malin Ch. Bhagabati stated that the deceased was an LIC agent. Claimant No. 1, wife of the deceased submitted income tax return for the years 2016-2017, 2017-2018 and 2018-2019, which are exhibits 4,5 and 6. Ext. 6 reveals that gross income of the deceased in the financial year 2018-2019 was Rs 142838/-. It is seen that apart from claimant, Pranita Devi(wife), the deceased had two children namely, Panchi Kaushik(Sarma) and Sri Jyotishman Kaushik(Sarma) aged about 17 years and 14 years respectively and his mother, Hemlata Devi and at the time of death, age of the deceased was 50 years. The age of the deceased is taken to be 51 years. Accordingly, appropriate multiplier would be 11 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. 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 51 years , the claimant shall be entitled to 10% addition in his income towards 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 .

1	Total income	= Rs 142838/-(Annual Income) = Rs 142838/- - Rs 35709/- (1/4 deduction as the deceased has Four dependents) = Rs 107129/- = Rs. 107129 + Rs 10712/- (Addition of 10 % as future prospects) = Rs 117841 X 11(Multiplier) = Rs 1296251/-	Amount = Rs 1296251/-
2	Funeral Expenses		=Rs. 16,500/-
3	Loss of Estate		=Rs 16,500/-
4	Loss of consortium		= Rs. 44,000/-
			= Rs 1373251/-

15. The above amount is awarded as compensation to the following legal heirs of deceased, Balen Sarma:

1. Smt. Pranita Devi (Wife of the deceased)
2. Panchi Kaushik(Sarma) (Daughter of the deceased)
3. Sri Jyotishman Kaushik(Sarma) (Son of the deceased)
4. Smt.Hemlata Devi (Mother 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 13,73,251/- (Rupees Thirteen Lakhs Seventy Three Thousand Two**

Hundred Fifty One only) so computed on different heads is awarded to the claimants on account of death of Balen Sarma due to vehicular accident. The OP No. 1 i.e. Sri Harihar Deka, owner of the offending vehicle is directed to pay the said amount of compensation to the claimant within 60 days from today failing which 6% interest will be added with the awarded amount from the date of Judgment. The claimant, namely, Smt. Pranita Devi is directed to open fixed deposit account of Rs 3,00,000/- (Rupees Three Lakhs) only in any nationalized bank in the name of her minor children namely Sri Jyotishman Kaushik(Sarma) for future maintenance till he attains majority.

Accordingly, this MAC Case is disposed of on contest.

17. The OP No 1 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 OP no 1 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 30th day of September, 2022.

(Mrs. M. Deb)

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

Dictation Taken by

M.Devi

Stenographer

APPENDIX

Witness for the claimant:-

PW-1 : Smt. Pranita Devi

PW-2 : Sri Hemen Kr. Sarma

PW-3 : Sri Malin Ch.Bhagabati.

Witness for the opposite party :-

DW-1 : Sri Harihar Deka.

Documents exhibited by the claimant:-

Ext. 1: the accident information Report

Ext.2: Post mortem report E

Ext.3: LIC Id Card bearing Code No.LIC016434009 (valid up to 31.03.2021)

Ext.4: Income Tax Return Verification Form in the Assamese Year 2016-17

Ext5: Income Tax Return Verification Form in the Assamese Year 2017-18 .

Ext.6: Income Tax Return Verification Form in the Assamese Year 2018-19

Ext.7 :Pan Card of the deceased

Ext.8: Voter ID card of the deceased person.

Ext.9:Voter ID card of the claimant No.1

Ext.10 to Ext.10(1 : Copies of FIR & ejahar).

Ext.11(1 & 2): Copy of seizure list.

Ext.12: Copy of charge-sheet.

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Annexure 5: Death Certificate of the deceased person.

Annexure 6: Ejahar.

Documents exhibited by the opposite party

Nil

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