

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL DIBRUGARH

Present: Ms. A. Ajitsaria, AJS,
Member, Motor Accidents Claim Tribunal/
District Judge, Dibrugarh

MAC Case No. 02 of 2019 (Death)

1. Smt. Dipti Saikia,
W/o Late Dr. Bakul Ch. Saikia,
2. Smt. Akanksha Saikia,
D/o Late Bakul Ch. Saikia,
3. Smt. Pratiksha Saikia,
D/o Late Bakul Ch. Saikia

All are residents of Jaloni Gutibari, P.O. Lilapur,
P.S. - Duliajan, District- Dibrugarh, Assam. Claimants

-VERSUS-

1. Sri Bishnu Borah,
S/o- Sri Nakul Borah,
R/o- Pokimuri Habi Gaon,
PO & PS- Pulibor, Dist. - Jorhat, Assam.
(Owner of the vehicle bearing registration No. AS01-FC-4564)
2. Oriental Insurance Company Limited,
Jorhat Branch, Gar Ali,
PO, PS & District- Jorhat, Assam.
(Insurer of the vehicle bearing registration No. AS01-FC-4564)
3. Sri Padum Saikia,
S/o- Sri Dhaniram Saikia,
R/o- Sahpuria Gaon,
PO, PS & Dist.- Jorhat, Assam
(Driver of the vehicle bearing registration No. AS01-FC-4564)
4. Sri Naba Kanta Talukdar,
S/o- Late B. C. Talukdar,
R/o- Near Central School,
PO & PS- Duliajan, District- Dibrugarh, Assam.
(Owner of the vehicle bearing registration No. AS-06-G-1649)
5. Oriental Insurance Company Limited,
Duliajan Branch,

1st Floor, Tamuli Mansion,
Station Road,
PO- Duliajan, District- Dibrugarh, Assam.
(Insurer of the vehicle bearing registration No. AS06-G-1649)

Date of Argument : 18.12.2021
Date of Judgment : 01.02.2022

ADVOCATES FOR THE PARTIES

For the Claimants : Sri Sudeb Ch. Goswami
For the OP No. 1 & 3 : Ms. Gayatri Phukan
For the OP No. 2 & 5 : Sri Ganesh Gohain Phukan.
For the OP No. 4 : Ex-parte.

J U D G M E N T

1. This claim petition has been filed by the claimants under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the death of Dr. Bakul Chandra Saikia (hereinafter referred to as the “deceased”), who was the husband of the claimant No. 1 and father of claimant Nos. 2 & 3.

2. The case of the claimants, in brief, is that on 29-10-2016, Dr. Bakul Chandra Saikia along with Sri Naba Kanta Talukdar, who was the owner of the Aveo Uva No. AS-06-G-1649, was proceeding towards Moran and at that time, the said car was being driven by Dr. Bakul Chandra Saikia. At about 12:30 PM, when the car reached Lepetkata Chariali, PS- Borboruah, suddenly, the Traveller No. AS-01-FC-4564 being driven in a rash and negligent manner, dashed against the Aveo car, from the opposite direction, because of which Dr. Bakul Chandra Saikia died on the spot.

3. OP No. 1 & 3, the owner and driver of the traveler bus No. AS-01-FC-4564 filed written statement denying the materials averments. OP No. 1, the owner of the traveler bus No. AS-01-FC-4564 filed written statement and stated that at the relevant time, the bus was duly insured with the OP No. 2 vide Policy No. 322102/31/2017/163 and valid upto 06-04-2017 and hence, compensation, if any, is to be paid by the said insurance company. It has been further stated that

the OP No. 3, driver of the traveler bus had a valid driving license No. AS0319980C21017 (valid upto 27.12.2017) and was competent to drive the traveler bus.

4. OP No. 2, the insurer of the traveler bus in its written statement denied all the material averments of the claim petition and pleaded, inter alia, that insurer is not liable to pay any compensation until and unless it is proved that the driver of the offending vehicle had valid driving license and the condition of the insurance policy was not violated by the insured.

5. OP No. 4, owner of the Aveo Car No. AS-06-G-1649 not having appeared to contest the present case, the case proceeded ex-parte against the owner, i.e., the said OP No. 4.

6. OP No. 5, the insurer of the Aveo car also denied the material averments and stated that the Traveller bus being responsible for the accident, the OP No. 5 is not liable to pay any compensation in the present case.

7. On the basis of pleadings of the parties, the following issues were framed on 13.9.2019, for adjudication:-

- i. Whether Dr. Bakul Chandra Saikia died on 29-10-2016 as a result of the injuries sustained in the motor vehicle accident that occurred on 29-10-2016?
- ii. Whether the alleged accident occurred as a result of rash and negligent driving of the vehicle bearing registration No. AS-01-FC-4564?
- iii. Whether the claimants are entitled to any compensation as prayed for? If so, from whom and to what extent?

8. During enquiry, claimant No. 1 Smt. Dipti Saikia examined herself as CW-1 and filed relevant documents. Contesting OPs did not adduce evidence.

9. I have carefully perused the entire materials brought on record, heard both sides and all the issues are taken up together for discussion and decision for the sake of convenience and brevity.

10. The evidence of CW-1 is that her husband Dr. Bakul Chandra Saikia died because of the motor accident which occurred on 29-10-2016. It has been reiterated that at the relevant time, her husband was aged about 47 years and was earning Rs. 42,000/- per month by running a school and taking private tutions. CW-1 has proved Ext. 1/Accident Information Report, Ext. 2/Post-mortem Report, Ext. 3/Certified copy of relevant documents of GR case, Ext. 4/Insurance policy of vehicle AS06-G-1649, Ext. 5/Death certificate of Dr. Bakul Chandra Saikia, Ext. 6/Next kin certificate, Ext 7/Driving licence of Dr Bakul Chandra Saikia, Ext. 8/PAN card of claimant Smt Dipti Saikia, Ext. 9/Voter ID of Smt. Dipti Saikia, Ext. 10/Birth certificate of Miss Akanksha Saikia, Ext. 11/Birth certificate of Miss Pratiksha Saikia, Ext. 12 to 18/Academic certificates of the deceased. Nothing adverse could be elicited by the contesting opposite parties, in cross examination of Claimant No. 1.

11. Ext. 1 is the Accident Information Report from which it transpires that the Traveller No. AS-01-FC-4564 was involved in an accident, in which the claimant No.1's husband expired. It has been further recorded in Ext. 1 that OP No. 1 was the owner of the Traveller Bus and that on alleged date of accident the said vehicle was driven by the opposite party No. 3 who was holding a Driving Licence being driving license No. AS0319980C21017 (valid upto 27.12.2017) issued by D.T.O, Jorhat, Rajabari. The said vehicle was also covered under Insurance Policy No. 322102/31/2017/163 valid upto 6.4.2017. Ext. 2 is the Post-mortem Report of the deceased which shows that Bakul Saikia died because of the injuries sustained in a vehicular accident.

12. Learned Counsel for the OP No.2, submitted that contributory negligence on the part of the husband of the claimant No.1, cannot be ruled out, as he was the one who was driving the Aveo Car. Apart from the submissions so advanced, there is nothing

on record to suggest contributory negligence on the part of the deceased; hence, this Tribunal has no hesitation to hold that the accident occurred because of the rash and negligent driving of the driver of the Traveller Bus.

13. In view of the discussion made hereinbefore, claimants are held to be entitled to compensation. This Tribunal, therefore, proceeds to compute the compensation as per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Varma vs. Delhi Transport Corporation reported in (2009) 6 SCC 121.***

14. In terms of the said judgment the multiplier to be applied would depend on the age of the deceased. The date of birth of the deceased who was holder of driving licence no. 44532/DBR, is recorded as 04-08-1969 in Ext. 7. Hence, at the time of the accident/death, the claimant No. 1's husband's age was 47 years 2 months 25 days. Therefore, the relevant multiplier as per Sarla Verma (Supra) will be 13.

15. The claimant No.1 has stated that her husband used to earn Rs. 42,000/- per month from running a school and taking private tutions. However, the claimant No.1 has not adduced any evidence in support of the said fact that her husband was earning the said amount as an owner of the school situated in their locality and from private tutions. The claimant has exhibited several academic research certificates of her deceased husband which shows that the deceased was an MTech in Applied Geology from Dibrugarh University. He completed his PhD in the year 2001 and conducted various research and was awarded certificates by amongst others, ONGC., Considering the educational qualification of the deceased and various exhibited documents, this Tribunal is of the considered view that Rs.12,000/- per month would be a reasonable amount, which can be taken to be the income of the deceased.

16. In order to calculate the actual income as laid down in Sarla Verma (Supra), the amount of income tax is to be deducted. The

income tax slab for the AY 2016-2017 was NIL upto Rs. 2,50,000/-. Thus, no income tax is to be deducted from the annual income of the deceased.

17. The Hon'ble Supreme Court in **National Insurance Co. Ltd Vs. Pranay Sethi and others [2017 (16) SCC 680]** in paragraphs 52 and 61 (iv) has held that :

"....52.... It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years..."

61 (iv) "...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."

18. Again the Hon'ble Supreme Court in **Magna General Insurance Co. Ltd Vs. Nanu Ram Alias Chuhru Ram and Others [2018 (18) SCC 130]** held in paragraph 24 to the effect that:

" The amount of compensation to be awarded as consortium will be governed by the principle of awarding compensation under "loss of consortium" as laid down in Pranay Sethi' case..."

19. Thus, relying on the ratio of the aforesaid judgments of the Hon'ble Supreme Court, the claimants, in the instant case, are entitled to get 25% increase towards future prospect.

20. At the time of death, the deceased left behind the claimant No.1. As per ratio laid down in Sarla Verma (Supra), 1/3rd is to be deducted from the monthly income of the deceased towards personal expenses.

21. The claimants are also entitled to some amount, on account of funeral expenses, loss of consortium and loss of love and affection. In paragraph 52 of the judgment in Pranay Sethi (supra) it has been stated that the amount as laid by the Hon'ble Supreme Court is to be enhanced by 10% every 3 years, hence the first block period of three years from the date of the said judgment being complete, to the amount as stated in the said judgment, 10% is to be added for the purpose of computation under the said head.

22. Thus, just and reasonable compensation to which the claimant is entitled is assessed as under:-

	Head	Amount
a)	Monthly income Rs. 12,000/- Annual income Rs. 12,000/- x 12 = Rs. 1,44,000/-	
b)	Future Prospects [25% of the income to be added]= Rs.36,000/-	
	The annual income of the deceased is thus computed to be [Rs. (1,44,000/- + 25% of Rs. 54,000/- = Rs. 1,80,000/-].	
c)	Deduction towards personal expenditure [1/3 rd of Rs. 1,80,000/-]=60,000/-	
d)	Income after deduction - 1,80,000(-) 60,000/- = 1,20,000/-	
e)	Multiplier - 13	
f)	Loss of dependency [d x e]	15,60,000/-
g)	Loss of consortium for wife/claimant No.1	44,000/-
h)	Loss of love and affection for claimant No. 2. & 3 (Rs.44000 x 2)	88,000/-
i)	Loss of estate	16,500/-
j)	Funeral expences	16,500/-
	Total compensation awarded [f + g+ h+ i + j]	17,25,000/- along with interest at the rate of 7.5% p.a from the date of filing of the claim petition till payment.

23. Having held the driver of Traveller Bus/OP No. 3 to be responsible for the accident, the Opposite Party No. 2, Oriental Insurance Co. Ltd in the capacity of the insurer of the said Bus, is to pay the award.

A W A R D

24. 17,25,000/- (Rupees Seventeen Lakhs Twenty Five Thousand only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 11.2.2019 till payment to the claimants. The total amount (principle plus interest) is apportioned between the three claimants; amount of Rs.4,00,000/- each is to be invested in fixed deposit in a nationalized bank in favour of the minor daughters (Claimant No.2 and 3) and rest of the amount is to be disbursed to the claimant No. 1.

25. The OP No. 2, Oriental Insurance Co. Ltd, is directed to pay the award within one month from the date of the order.

26. Let a free copy of this judgment be furnished to claimants and OP No. 3 as provided u/s 168(2) M. V. Act within 7 (seven) days from the date of judgment.

27. Given under my hand & seal of this Court on this 1st day of February, 2022.

Member

Motor Accident Claims Tribunal/District
Judge Dibrugarh