

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL DIBRUGARH

MAC Case No. 17 of 2016 (Death)

1. Sri Mitlesh Rajak,
S/o- Ganga Rajak.
2. Smt. Kalabanti Rajak,
W/o- Pramod Rajak.
Both are residents of Ouphalia Tea Estate,
PO- Moran, District- Dibrugarh, Assam. Claimants

-VERSUS-

1. Sri Hemanta Saikia,
S/o- Bhaben Saikia,
R/o- Namtilal Pather,
Near Morangghar, PO & PS- Sivasagar, Assam.
(Driver of the truck bearing registration No. AS-04-AC-6629)
2. Sri Manash Pratim Borah,
S/o- Sri Jadav Borah,
R/o- Malachakar, W/No. 10,
PO & District- Sivasagar, Assam.
(Owner of the truck bearing registration No. AS-04-AC-6629)
3. United India Insurance Company Limited,
Sivasagar Branch,
PO & District- Sivasagar, Assam.
(Insurer of the truck bearing registration No. AS-04-AC-6629)
4. Md. Isphaqul Ahmed,
S/o- Md. Tabibul Ahmed,
R/o- Laluka Gaon, PO- Mohanaghat,
District- Dibrugarh, Assam.
(Driver of the vehicle bearing registration No. AS-03-AC-6685)
5. Aradhana Kakoti,
C/o- Dilip Dutta,
R/o- Chiring Chapori,
PN Road, PO & PS- Dibrugarh, Assam.
(Owner of the vehicle bearing registration No. AS-03-AC-6685)
6. Cholamandalam MS General Insurance Company Limited,
2nd Floor, Dare House, 2 NSC Bose Road, Chennai-600001.

(Insurer of the vehicle bearing registration No. AS-03-AC-6685)
....Opp Parties

Date of Argument : 15.12.2021
Date of Judgment : 23.12.2021

ADVOCATES FOR THE PARTIES

For the Claimants : Mr. DJ Baruah.
For the OP No. 1 & 2 : Ex-parte.
For the OP No. 3 : Mr. Ganesh Gohain Phukan.
For the OP No. 4 : Smt. Anju S. Gogoi.
For the OP No. 5 : Mr. AK Dutta (Senior Advocate)
For the OP No. 6 : Mr. Bhaben Sarmah.

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

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 Ranjeeta @ Ranjita Rajak (hereinafter referred to as the "deceased"), who was the wife of the claimant No. 1 and daughter of claimant No. 2.
2. The case of the claimants, in brief, is that on 26-08-2015, Ranjeeta Rajak along with other relatives was travelling from Moran towards Jorhat by bus No. AS-03-AC-6685 as a passenger. At about 1:20 PM, when the bus reached Pragati Chariali, PS- Sivasagar, suddenly, the trailer/truck No. AS-04-AC-6629 came from the opposite direction and was driving in a rash and negligent manner, dashed against the traveler bus because of which Ranjeeta Rajak suffered grievous head injury and was admitted in Sanjivani Diagnostic and Hospital, Dibrugarh. However, she on 30-08-2015 succumbed to her injuries while under treatment.

3. The OP No. 1 and 2, driver and owner of the truck No. AS-04-AC-6629 not having appeared to contest the present case, the case proceeded ex-parte against the owner and driver, i.e., the said OP No. 1 and 2.
4. OP No. 3, the insurer of the truck in its written statement denied all the material averments of the claim petition and pleaded, inter alia, that the amount of compensation claimed by the claimant is highly exaggerated and speculative. It has been further stated that the 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. OP No. 3 has denied the amount of income alleged to have been earned by the deceased. The insurance company has stated that the OP No. 1 (Hemanta Saikia), who was driving the truck No. AS-04/AC/6629 and holder of driving license No. F/79854/BNG/PROFF was reported not to have been issued by the DTO, Bongaigaon and as such, the owner alone is liable to pay compensation.
5. OP No. 4, the driver of the traveler bus No. AS-03-AC-6685 filed written statement denying the materials averments.
6. OP No. 5, the owner of the traveler bus No. AS-03-AC-6685 filed written statement and stated that at the relevant time, the bus was duly insured with the OP No. 6 vide Policy No. 3373/00406493/000/01 and valid upto 15-03-2016 and hence, compensation, if any, is to be paid by the said insurance company. It has been further stated that the OP No. 4, driver of the traveler bus had a valid driving license and was experienced and competent to drive the traveler bus.
7. OP No. 6, the insurer of the traveler bus also denied the material averments and stated that the trailer truck being responsible for the accident, the OP No. 6 is not liable to pay any compensation in the present case.
8. On the basis of pleadings of the parties, the following issues were framed by my learned predecessor, for adjudication:-

- i. Whether Ranjeeta Rajak died on 30-08-2015 as a result of the injuries sustained in the motor vehicle accident that occurred on 26-08-2015?
- ii. Whether the alleged accident occurred as a result of rash and negligent driving of the vehicle bearing registration No. AS-04-AC-6629?
- iii. Whether the claimants are entitled to any compensation as prayed for? If so, from whom and to what extent?

9. During enquiry, the claimant No. 1 Sri Mitlesh Rajak examined himself as CW-1 and filed relevant documents. Contesting OPs No. 3 and 5 also adduced evidence.

10. 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.

11. The evidence of CW-1 is that his wife Ranjeeta Rajak died because of the motor accident which occurred on 26-08-2015. It has been reiterated that at the relevant time, his wife was aged about 26 years and was earning Rs. 10,000/- to Rs. 20,000/- per month by running a beauty parlour. CW-1 has proved Ext. 1/Accident Information Report, Ext. 2/Post-mortem Report, Ext. 3/Death Certificate, Ext. 4 to Ext. 30/hospital bills and cash memos. Claimant No. 1 was duly cross-examined.

12. OP No. 3 adduced the evidence of Sri Pradip Kumar Saha, Administrative Officer. In the evidence filed on behalf of OP No. 3, it has been admitted that the truck No. AS-04-AC-6629 was insured with United India Insurance Company Limited vide policy No. 1304023114P111017704 with validity from 24-03-2015 to 23-03-2016. It has been further stated that on verification, the driving license No. F/79854/Bng/Proff of OP No. 1 was reported not to have been issued by the DTO, Bongaigaon as informed vide letter No. DTO/BANGN/2016 dtd. 08-03-2016. OP No. 3 has further stated that since the driving license was fake, OP No. 3 ought to be absolved of any

liability. OP No. 3 has exhibited amongst others the insurance policy as Ext. A and driving license report of the DTO, Bongaigaon as Ext. D.

13. In cross-examination, OP No. 3 has denied the suggestion that owner of the trailer/truck did not have knowledge that driver of the said truck did not have a valid driving license.

14. OP No. 5, Sri Dilip Dutta (husband of Late Aradhana Kakoti, who was at the relevant time owner of the traveler bus) in his evidence has reiterated that driver of the bus had a valid driving license on the day of accident and the bus being duly insured with OP No. 6, liability, if any, is to be borne by OP No. 6.

15. From the evidence of witnesses, it is seen that the accident occurred on 26-08-2015 involving the trailer truck No. AS-04/AC/6629 and Traveler bus No. AS-03/AC/6685. Wife of the Claimant No.1, Ranjeeta Rajak was travelling as a passenger in the Traveller Bus, is not disputed. From Ext 1, the Accident Information Report and Ext 2 post mortem report, it is seen that Ranjeeta Rajak died on 30.8.2021 as a result of injuries sustained in the said accident.

16. The claimant No.1 is the husband of the deceased Ranjeeta Rajak and claimant No.2 is the mother of the deceased. As to whether parents of a married daughter are entitled to compensation or not, the Hon'ble Madras High Court after elaborately discussing the law on the point in **Glory Bai vs S.K.A. Noorjagan Beevi** [reported in **2011 0 Supreme(Mad) 1128**] held that parents of married daughter are entitled to compensation and that multiplier method is to applied to compute the compensation.

17. 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.**

18. 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 PAN No. CAOPR9572A, is recorded as 04-04-1987 in Ext. 31. Hence, at the time of the accident/death, the claimant No. 1's wife age was 28 years 4 months 22 days. Therefore, the relevant multiplier as per Sarla Verma (Supra) will be 17.

19. The claimant No.1 has stated that his wife used to earn Rs. 10,000/- to Rs. 20,000/- per month from her beauty parlour. However, the claimant No.1 has not adduced any evidence in support of the said fact that his wife was earning the said amount as a beautician in a beauty parlour situated in their locality. In absence of any proof thereof, this Tribunal is to be guided by the judgment of the Hon'ble Supreme Court in **Arun Kumar Agrawal and another –vs- National Insurance Co Ltd** and others reported in (2010) 9 SCC 218.

20. While answering the question as to "*What should be the criteria for determination of the compensation payable to the dependents of a woman who dies in a road accident and who does not have regular source of income..*", the Hon'ble Supreme Court in the said judgment has laid down as such in paragraph 32:

"....32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for

*compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in **General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others (supra)**, **U.P. S.R.T.C. v. Trilok Chandra (supra)**, **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another (supra)** and also take guidance from the judgment in **Lata Wadhwa's** case. The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker."*

21. Hence as per the aforesaid judgment of the Hon'ble Supreme Court, the income of the non-earning spouse is to be taken as 1/3rd of that of the earning spouse. However in the instant case no evidence has been led as to the income of the claimant. In absence of the same and in absence of any cogent proof with regard to the same, this Tribunal is inclined to accept Rs.4000/- to be the income of the deceased.

22. 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.

23. The Hon'ble Supreme Court in **National Insurance Co. Ltd Vs. Pranay Sethi and others [2017 (16) SCC 680]** in paragraphs 52 and 57 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..."

"...57.... Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years, an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

24. 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..."

25. 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 40% increase towards future prospect.

26. 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.

27. The claimants are also entitled to some amount, on account of funeral expenses, loss of consortium and loss of love and affection apart from the medical expenses incurred during the time the claimant No. 1's wife was hospitalized. 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.

28. Apart from the above, claimants are also entitled to be re-imbursed the medical expences amounting to Rs. 77,444/- incurred and as reflected in

Ext 4 to 19. From perusal of the cash memos exhibited, it is seen that Ext 5 is a slip wherein details of expenses amounting to Rs.12,550/- has been mentioned, however, the same not being a bill in proper form of Sanjivani Diagnostics & Hospital and only a seal being seen on a slip of paper, the same is held to be not-admissible. Thus, just and reasonable compensation to which the claimant is entitled is assessed as under:-

| | Head | Amount |
|----|--|---|
| a) | Monthly income Rs. 4,500/- Annual income Rs. 4,500/- x 12 | 54,000/- |
| b) | Future Prospects [40% of the income to be added] | 21,600/- |
| | The annual income of the deceased is thus computed to be [Rs. (54,000/- + 40% of Rs. 54,000/- = Rs. 75,600/-]. | |
| c) | Deduction towards personal expenditure [1/3 rd of Rs. 75,600/-] | Rs.25,200/- |
| d) | Income after deduction – 75,600 (-) 25,200/- = 50,400/- | |
| e) | Multiplier – 17 | |
| f) | Loss of dependency [d x e] | 8,56,800/- |
| g) | Loss of consortium for husband/claimant No.1 | 44,000/- |
| h) | Loss of love and affection for claimant No. 2. | 44,000/- |
| i) | Loss of estate | 16,500/- |
| j) | Funeral expences | 16,500/- |
| k) | Medical expenses (as per cash memos) | 77,444 |
| | Total compensation awarded [f + g+ h+ i + j + k] | 10,55,244/- along with interest at the rate of 7.5% p.a from the date of filing of the claim petition till payment. |

29. Having computed the amount of compensation, it is now to be ascertained as to which of the opposite parties are to satisfy the amount. The OP No. 3 has brought on record that the driver of Trailer-Truck (arraigned as OP No.1) did not have a valid driving license. The law in regard, that is, when the Insurer takes the plea that the driver of the offending vehicle did not have a valid driving license, is now well settled in catena of judgments of Hon'ble

Supreme Court. In **Pepsu Road Transport Corp vs National Insurance Co** [reported in **2013 0 Supreme (SC) 784**], it has been held, amongst others, thus:

".....In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

30. In the instant case, nothing has been brought on record to show that the owner of the Trailer Truck (OP No.2) had specific knowledge that the driving license held by OP No.1 had not been issued by the competent authority. Thus, insurer of the said trailer-truck, that is, United India Insurance Co. Ltd (OP No.3) cannot be allowed to submit that it should be absolved from the liability arising out of the accident at hand.

31. Again, it is seen that the present case would attract the principle of composite liability, in as much as, two vehicles were involved in the accident and claimant No.1, was a passenger of the Traveller Bus. In consonance with the said principle, the claimant can seek compensation from either of the vehicles involved in the accident. In **Khenyei vs New India Assurance Co. Ltd** [reported in **2015 0 Supreme 397**], the Hon'ble Supreme Court has held that :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award."

32. In the present case all the parties have been duly impleaded. It is the specific case of the present claimants as well as the claimants in analogous cases (being MACT Case No. 20 of 2016 and MACT Case No. 21 of 2016/which

are being disposed of simultaneously by separate judgment) that the accident occurred because of negligence of OP No.1. In absence of any material on record to show that the Traveler Bus too, was responsible for the accident, this Tribunal cannot presume negligence on its part and proceed to apportion compensation between OP. No.3 and OP No.6.

33. Having held the driver of Trailer-Truck No. AS-04-AC-6629 /OP No. 1 to be responsible for the accident, the Opposite Party No. 3 is to pay the award.

A W A R D

34. Rs. 10,55,244/- (Rupees Ten Lakh Fifty Five Thousand Two Hundred and Forty Four only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 14-03-2016 till payment to the claimants. The total amount (principle plus interest) is apportioned between the two claimants; the claimant No. 1 (husband) is awarded 75%, claimant No. 2 (mother) is awarded 25%.

35. The OP No. 3, United India Insurance Co. Ltd, is directed to pay the award within one month from the date of the order.

36. 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.

Given under my hand & seal of this Court on this 23rd December,2021.

Member
Motor Accident Claims Tribunal/District Judge
Dibrugarh