

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL:: DIBRUGARH

MAC Case No. 63 of 2017 (Death)

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

1. Smt. Khirumoni Gogoi,
W/o- Sri Rantu Gogoi,
2. Sri Rantu Gogoi,
S/o- Sri Tuleswar Gogoi,

Both residents of Borpathar Nagaon,
PO- Barbaruah,
District- Dibrugarh, Assam. Claimants

-VERSUS-

1. Sri Manik Chandra Barman,
S/o- Late Nipendra Chandra Barman,
R/o- Jhinaidanga, Nilkuthi,
Coach Bihar, West Bengal,
(Driver of Truck No TN-20-M-6963)
2. Union of India,
ADIGPGC, CRPF Avadi,
Chennai-65.
(Owner of Truck No TN-20-M-6963)
3. Sri Lalit Changmai,
S/o- Rohan Changmai,
R/o- Burahazar Konwar Gaon,
PO- Barbaruah,
District- Dibrugarh, Assam.
(Owner cum driver of Motor Cycle No AS06-L-1525)Opp
Parties

Date of Argument: 07-02-2022.
Date of Judgment: 25-02-2022.

ADVOCATES FOR THE PARTIES

For Claimant: Sri DJ Baruah.
For OP No.1: Mr. A Ahmed.
For OP No.2: Smt. Monika Devi, Govt. Pleader, Dibrugarh.
For OP No. 3: Not appeared (Exparte).

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 their minor son, Gynob Gogoi @ Jit (hereinafter referred to as the “deceased”), who expired in the road traffic accident.

2. The case of the claimants, in brief, is that on 23-06-2017, when their minor son was travelling on the motorcycle No. AS-06-L-1525, driven by Sri Lalit Changmai/OP No. 3, as a pillion rider, the said motorcycle met with an accident at Godapani Fly Over Bridge because of rash and negligent driving of the truck No. TN-20/M/6963, which was being driven by OP No. 1. The claimants have stated that the accident occurred as the said truck while trying to overtake another car, knocked the motorcycle as a result of which, both the rider of the motor cycle (maternal uncle of the child) and their son (pillion rider) sustained injuries, to which their son succumbed.

3. OP No. 1, the driver of the truck No. TN-20/M/6963 filed written statement denying all the material averments of the claim petition and stated that at the relevant time, the OP No. 1 was returning from his service camp and driving the Govt. truck No. TN-20/M/6963 from Barbaruah side towards Dibrugarh town and when he reached the flyover at Godapani, he noticed that one male child was lying with injuries in the middle of the bridge and one motorcycle with another injured too was lying there. Since OP No. 1 was serving in the CRPF, he stopped the Govt truck to help the injured person. But suddenly people started raising hue and cry that the truck which he was driving was involved in the accident. OP No. 1 stated that notwithstanding the same, he/OP No.1, shifted the injured child to the hospital, only to be falsely implicated in the instant case.

4. OP No. 2, Union of India, owner of the truck No. TN-20/M/6963, through JP Kumar Ray, DIGP, Office of Group Centre, CRPF, Guwahati, filed its written statement denying that the said truck was involved in the accident. It has been stated that death of Late Master Gynob Gogoi @ Jit was not as a result of the rash and negligent driving by OP No. 1.

It has been further stated that the said minor did not die on the spot after the mishap, the party commander and driver of the Govt. vehicle/truck got out of the vehicle and both the injured persons namely, Lalit Changmai and Gynob Gogoi @ Jit, were evacuated to Damani Nursing Home, Dibrugarh with the help of public, where the child was declared dead and Lalit Changmai was referred to Assam Medical College & Hospital at Dibrugarh for better treatment. It has been further stated that the incident occurred not because of the rash and negligent driving of OP No. 1, but because of the negligence of the rider of the motorcycle/OP No. 3 who had driven the motorcycle at high speed and in a rash and negligent manner. OP No. 2 has annexed copies of driving license of OP No. 1, registration card of the truck, vehicle issue voucher No. RV/Veh/28/04-05/MT-165 dtd. 16-08-2004 as Annexures A, B, C and D respectively. It has been further stated that at the time of filing of the written statement, the vehicle had been made available with 171 Battalion, CRPF deployed at Dibrugarh, Assam. OP No. 2 has further stated that after the occurrence, a Court of Enquiry was ordered by the Commandant, 171 Battalion, CRPF and in the said Enquiry, report was submitted by the Enquiry Officer that death of the minor Gynob Gogoi @ Jit was not as a result of the rash and negligent driving by OP No. 1, but it was because of the driver of the motorcycle/OP No. 3 who, along with the pillion rider had fallen down on the other side of the road immediately after hitting the divider of NH-37 Flyover Bridge, Godapani. It has been further stated that in the report, it was also mentioned that at the relevant time, it was raining, the roads were full of moisture; slippery due to rain water and the truck was at a speed of 25-30 kilometer per hour and there were 3-4 other civil vehicles between the truck. A Royal Enfield motorcycle was in front of the vehicle which, suddenly stopped without taking side of road and OP No. 1 turned the vehicle towards the right side in order to save the Royal Enfield, but the Tata truck skidded away and OP No. 1 could not control the heavy vehicle and front bumper hit the divider of the bridge. OP No. 1 immediately turned his truck left side in order to control the vehicle. In the mean time, the Yamaha motor bike No. AS-06-L-1525 which was driven by the OP No. 3 with pillion rider came

from the opposite direction in speed and being driven in a rash and negligent manner got nervous seeing the situation and turned his Yamaha motorcycle towards the left side, lost control, hit the divider resulting in fall and the said motorbike slithered towards the Tata truck and got trapped under the disperser of the Govt. truck. Seeing the said situation, OP No. 1 immediately stopped the vehicle. It has been stated that the Tata truck did not directly hit the motorcycle. In the said situation, OP No. 1 had taken the injured to the hospital. By the said written statement, it has been stated that the Union of India or the Department is thus not liable to pay any compensation to the injured or the deceased.

5. OP No. 3, owner cum rider of the Yamaha Motor Cycle No. AS06-L-1525 inspite of receipt of notice, did not participate in the proceeding and the case proceeded ex-parte against the said OP No. 3 vide order dtd. 03-12-2018.

6. On the basis of pleadings of the parties, the following issues were framed on 03-01-2019, for adjudication:-

(i) Whether Gynob Gogoi @ Jit died in the motor vehicle accident that occurred on 23-06-2017?

(ii) Whether the alleged accident occurred as a result of rash and negligent driving of the vehicle bearing registration No. TN-20/M/6963?

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

7. During enquiry, the claimant No. 1 examined herself CW-1 and one Sri Madhabjyoti Dehingia also filed evidence on affidavit as CW-2. The contesting OP No. 1 and 2 also adduced evidence.

8. 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.

9. The evidence of CW-1 is that her minor son Gynob Gogoi @ Jit who was travelling as a pillion rider of motorcycle No. AS-06-L-1525 died because of the motor accident which occurred on 23-06-2017. It has been reiterated that at the relevant time, the age of her son was about five years and the accident occurred because of the rash and negligent driving of the Govt. truck by OP No. 1. CW-1 has proved the Ext. 1/Accident Information Report (AIR), Ext. 2/ Post-mortem Report, Ext. 3/Police Report and Ext. 4/Death Certificate, Ext, 5/Birth Certificate, Ext. 6/Village Head Report and Ext. 7/copy of Charge-Sheet. CW-1 was duly cross-examined by the contesting OPs.

10. CW-2, Sri Madhabjoyti Dehingia in his evidence has stated that on 23-06-2017, he was proceeding from Dibrugarh University side towards Jamirah on foot through NH-37. At about 11:00 am when he was over the Godapani Flyover, he had seen the motorcycle AS-06-L-1525, with pillion rider coming from the same direction, in a normal speed and at the same time, the CRPF truck No. TN-20/M/6963 coming from the opposite direction and being driven in a rash and negligent manner, knocked the said motorcycle as a result of which the rider and pillion rider both sustained grievous injuries. It has been stated that the pillion rider, minor boy was declared dead by the doctors of the hospital. The entire accident, as per CW-1 had taken place because of the rash and negligent driving of the CRPF truck. In cross-examination, CW-2 denied the suggestion that he had not witnessed the accident and that he had deposed falsely for the sake of the claimant.

11. OP No. 1, as DW-1 filed evidence on affidavit stating that on 23-06-2017, he was on duty and driving the truck No. TN-20/M/6963 through NH-37 and while he was so driving, he noticed a minor child lying in the middle of the flyover about 30 feet ahead and, being a CRPF personnel, he stopped the truck and helped to rescue the child and shifted him to the hospital. DW-1 has reiterated that he had no role in the accident and further stated that he had been sincerely serving in the CRPF and had no adverse remark in his entire career. DW-1 has exhibited his identity card as Ext. 1 and service certificate as Ext. 2. In cross-examination, DW-1 denied the suggestion that the accident had

occurred because of his rash and negligent driving and admitted that Charge-Sheet had been filed in connection with the said case against him.

12. DW-2, Sri Diken Hazarika, constable of CRPF deposed that on 23-06-2017, when he reached Godapani Flyover, they had seen an injured child in an unconscious condition in the middle of the flyover. In cross-examination, he denied the suggestion that he had deposed falsely and admitted that he could not say because of whose negligence, the accident had taken place.

13. Ext. 1 is the Accident Information Report from which it transpires that Truck No. TN-20/M/6963 was involved in an accident on 23-06-2017, in which claimant's son expired. It has been further recorded in Ext. 1 that OP No. 1 was the driver of the vehicle at the relevant time and holder of DL No. WB 6319930938771 valid upto 04-09-2017. The said truck was owned by OP No. 2, Union of India, through ADIGPGC, CRPF Avadi, Chennai-65. In respect of the said accident, Barbaruah PS Case No. 138/2017 was registered. Ext. 2 is the Post-mortem Report of Gynob Gogoi @ Jit which shows that death of the minor occurred due to blunt force impact. Ext. 5 is the Birth Certificate of the minor wherein his date of birth has been recorded as 31-12-2012.

14. The OP No.1 while denying that accident occurred because of his negligence has stated that when the truck reached the spot he had seen the minor lying in the middle of the road in an injured condition, whereas in the Report of enquiry referred to by OP No.2 it has been stated that because of the extreme weather conditions and involvement of another motor cycle, the driver of the Truck/OP No.1 turned his truck on one side in order to save the other motor cycle; hit the divider and the OP No.3 coming from the opposite side seeing the same got nervous; hit the divider and came under the said truck. Hence, two separate versions, one of the driver of the Truck and another of the owner of the truck has come on record. On the other hand, Ext 7, Charge sheet has been filed against OP No.1, in the police case registered after the accident. Moreover, Claimant Witness No.2,

categorically stated that the accident occurred because of the rash and negligent driving of the OP No.1. Nothing adverse could be elicited from CW 2 in cross examination. In view of the latter, the defence sought to be put forth by the OP No.1 and OP No.2 is held to be unsustainable. Hence, the oral evidence of the claimant witnesses, coupled with the documentary evidence mentioned above, establishes that the the minor son of the claimants died in the said motor vehicle accident, due to rash and negligent driving of the Truck No. TN-20/M/6963. That the said offending vehicle was owned by OP No.2, is not in dispute.

15. In view of the discussion hereinbefore, claimant is held to be entitled to compensation. Ext. 5 is the Birth Certificate of the minor wherein his date of birth has been recorded as 31-12-2012. Thus, the age of the minor son of the claimants, was 4 years 6 months 23 days, on the date of accident (23.6.2017).

16. Claimants are entitled to pecuniary damages, calculated on the basis of notional income @ of Rs.15000/- and multiplied by factor 15. Apart from the above, filial consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Hon'ble Supreme Court Hon'ble Supreme Court in **National Insurance Co. Ltd Vs. Pranay Sethi and others [2017 (16) SCC 680]** in paragraphs 52 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.

17. 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...”

18. Thus following the aforesaid judgments of the Hon’ble Supreme Court, just and reasonable compensation to which the claimant is entitled is assessed as under:-

Pecuniary loss (15,000/- x 15)	:	Rs. 2,25,000.00
Filial consortium to both claimants (Rs.44000/- x 2)	:	88,000.00
Funeral expenses	:	16,500.00
TOTAL	:	3,29,500.00

19. Having held the OP No.1 to be responsible for the accident, the Opposite Party No.2, owner of the offending Truck No. TN-20/M/6963, is held to be liable to pay the award.

A W A R D

20. Rs. 3,29,500.00/- (Three Lakhs Twenty Nine Thousand Five Hundred) only inclusive of no-fault is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 20.07.2017 till payment. The OP No. 2, is directed to pay the award within one month from the date of order.

21. Let a free copy of this judgment be furnished to claimant and OP No.1 and 2 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 25th of February, 2022.

Member
Motor Accident Claims Tribunal/District Judge
Dibrugarh