

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
DIBRUGARH**

MAC Case No. 83 of 2016 (Death)

1. Mrs. Sabera Khatoon,
W/o- Late Abdul Zabbher Khan.
(Mother of the deceased).
2. Mrs. Afsana Begum,
W/o- Late Nasser Khan @ Naser.
(Wife of the deceased)
3. Master Nisrat Khan,
S/o- Late Nasser Khan @ Naser.
(Minor son of the deceased represented by his mother/natural guardian, i.e.,
Mrs. Afsana Begum)

All are residents of Paltan Bazar, Maijan Road,
PO & District- Dibrugarh, Assam.

.... Claimants

-VERSUS-

1. Md. Abdul Gaffar Khan,
S/o- Late Abdul Zabbar Khan,
R/o- Paltan Bazar,
Maijan Road, Near E & D Div. Office,
PO & District- Dibrugarh, Assam.
(Driver cum owner of the offending vehicle)
2. United India Insurance Co. Ltd.,
Tinsukia Divisional Office,
Rongagora Road,
PO & PS- Tinsukia, Assam.
(Insurer of the offending vehicle)

....Opp Parties

Date of Argument: 20-11-2021.

Date of Judgment: 15-12-2021.

ADVOCATES FOR THE PARTIES

For the Claimants: Sri Dibyajyoti Baruah
: Smt. Anjana Baruah, Advocates

For the OP No. 1 : Sri Satyabrata Sarma,
: Monikuntal Sarma, Nomita Neog,
: Priyanka Baruah, Bikash Prasad,
: Debaborninee Devi. Advocates.

For the OP No. 2 : Sri Ganesh Gohain Phukan, Advocate.

Present

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

J U D G M E N T

1. The instant claim petition has been filed by the claimant under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the death of Nasser Khan @ Naser (hereinafter referred to as the "deceased"), who was the son/husband/father of the claimants No. 1, 2 and 3 respectively.

2. The case of the claimants, in brief, is that on 08-07-2016, in the afternoon, the deceased was travelling in a brand new scooty, registration for which was applied for, as a pillion rider from Dibrugarh to Lahoal through NH-37. At the relevant time, said scooty was driven by Abdul Gaffar Khan and when they reached M-1 Dhaba, the driver of the scooty lost control on a ditch on the said highway resulting in both the driver and the pillion rider falling from the scooty. It has been stated that in the said accident, the pillion rider Nasser Khan @ Naser sustained grievous injuries and was admitted at Assam Medical College & Hospital at Dibrugarh. However, he succumbed to his injuries after about seven days of hospitalization, i.e., on 14-07-2016. The claimants have attributed the accident to the rash and negligent driving of the OP No. 1.

3. The OP No. 1, the owner cum driver of the new scooty (for which registration had been applied for) admitted the accident and has stated that in spite of the fact that Nasser Khan @ Naser was wearing a helmet, he sustained grievous injuries in the said accident and died in the hospital on 14-07-2021. OP No. 1 has further stated that he had a valid deriving license at the time of accident and the scooty was duly insured with OP No.2 at the relevant time.

4. The OP No. 2, insurer of the new scooty filed its written statement stating that the scooty was duly insured vide Policy No. 130301/31/16/P/102988341 with effect from 02-06-2016 to 01-06-2017. The OP No. 2 has denied all the material averments of the claim petition and pleaded inter alia that the amount of compensation claimed by the petitioner is highly exaggerated and speculative. It has been stated that the insurer is not liable to pay any compensation, in as much as, the scooty was not registered and further unless it is proved that the driver of the scooty had valid driving license and the condition of the insurance policy was not violated by the insured.

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

i. Whether Nasser Khan @ Naser died as a result of the injuries sustained in the motor vehicle accident that occurred on 08-07-2016?

ii. Whether the alleged accident occurred as a result of rash and negligent driving of the vehicle bearing engine No. AE21-1032898 and chassis No. MB8CE46AHE8132827?

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

6. During enquiry, the claimant No. 2, Smt. Afsana Begum, aged 28 years, examined herself CW-1 and filed relevant documents. The contesting OP No.2 also adduced evidence in the case.

7. The evidence of CW-1 is that her husband died due to the rash and negligent driving of the driver of the scooty on 08-07-2016. It has been stated that at the time of accident, the deceased was 40 years of age and was earning Rs. 7,500/- per month as Mohori under the Inland Water Transport Department at Mazerbari Ghat. CW-1 has exhibited the FIR-54 as Ext. 1, Post-Mortem Report as Ext. 2, Cadaver Report as Ext. 3, driving license in proof of age of the deceased as Ext. 4 and legal heir certificate issued by Ward Commissioner, Dibrugarh Municipal Board as Ext. 5. The claimants have claimed compensation of Rs. 11,05,000/-.

8. In cross-examination, CW-1 has stated that the scooty was of the elder brother of the deceased. CW-1 denied the suggestion that Ext. 6 had been procured for the purpose of instant case and it was a false document and that her husband was not working in Inland Water Transport Department and he was not earning Rs. 7,500/- per month.

9. CW-2 Md. Arif Khan in his evidence in affidavit stated that while he was proceeding from Bokul towards Lahoal through NH-37 on 08-07-2016, at about 5:00 pm, he saw the driver of one scooty which was being driven in a rash and negligent manner, loose control and fall in a ditch, as a result of which, the pillion rider Nasser Khan sustained grievous injuries on his head and with the help of local people, was sent to Assam Medical College & Hospital at Dibrugarh in 108 ambulance. CW-2 has stated that later he learnt that the said pillion rider had died in the hospital.

10. CW-2 in cross-examination stated that the scooty which met with the accident, did not have a number plate and that he did not know the person who was driving the scooty. CW-2 denied the suggestion that he had not witnessed the occurrence.

11. OP No. 2 United India Insurance Company has through its Administrative Officer, Tinsukia Division Office filed evidence on affidavit admitting that the scooty involved in the present accident was duly insured with the United India Insurance Company. DW-1 has in his evidence denied that the claimant had sustained loss of dependency as sought to be portrayed and also disputed the income certificate exhibited and the medical document exhibited by the claimant No. 2. It has been

further stated that the deceased could have avoided the accident by immediately ceasing to be a pillion rider, in as much as, the claimants have stated that rider of the scooty inspite of requests continued to drive in a rash and negligent manner. It has been further stated that in view of the latter, since the deceased contributed in the accident, the claimants are not entitled to be paid any compensation.

12. In cross-examination, DW-1 stated that the scooty was covered by a comprehensive insurance policy (Ext. B) and the driver of the scooty had valid driving license at the time of accident.

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

14. Ext. 1 is the Accident Information Report from which it transpires that the new scooty (registration applied for) was involved in an accident, in which the claimant No. 2's husband expired. It has been further recorded in Ext. 1 that OP No. 1 was the owner cum driver of the scooty and that he had a valid driving license being DL No. AS-06 20110002244 valid upto 28-03-2018. Lahoal PS Case No. 99/2016 was registered pursuant to the said accident. Ext. 2 is the Post-mortem Report of the deceased which shows that Nasser Khan died because of head injury. From the evidence of the claimant No. 2, it is apparent that he was one of the persons who witnessed the accident, in as much as, OP No.2 has categorically stated that at the time of the accident, the scooty was unregistered and the injured was sent to Assam Medical College & Hospital at Dibrugarh by the local people in 108 ambulance. OP No. 2 has not been able to elicit anything adverse from CW-2.

15. Thus, the oral evidence of the witnesses coupled with documentary evidence mentioned above, establishes that Nasser Khan @ Naser died because of the motor vehicular accident on 08-07-2016 due to the rash and negligent driving of the offending scooty. The said Scooty bearing Engine No.AE21-1-32898, Chassis No. MB8CE46AHE8132827 was insured with the OP No. 2 is not in dispute as would be

evidence vide Policy No. 130301/31/16/P/102988341 (valid with effect from 02-06-2016 to 01-06-2017).

16. In view of the discussion made hereinbefore, claimant No. 1 (mother), claimant No. 2 (wife) and claimant No. 3 (minor son of the deceased) 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**.

17. The claimant has stated that her husband used to earn Rs. 7,500/- per month as Mohori. In support thereof, Ext. 6 issued by one Diganta Gogoi certifying that Late Nasser Khan @ Naser was working as Mohori under him since the year 2010 at Mazarbari Ghat (Inland Water Transport Department, Dibrugarh) has been brought on record by the claimants. The claimants however could not adduce the evidence of the said Sri Diganta Gogoi. As per the rates of MGNREGA the daily wages for unskilled worker was Rs.182/- per day, in the year 2016 in the State of Assam. As the claimants have merely declared the income of the deceased without substantiating the same further, this Tribunal deems it appropriate to take Rs.182/- to be the daily/ minimum wage which the claimant No.2's husband was earning. Hence, the monthly wage of Nasser Khan @ Naser is to be taken as [Rs.182/- x 30 days = Rs. 5460/-].

18. The claimant has stated that the deceased was 40 years of age at the time of accident. From the Driving License Ext 4, it is seen that the date of birth of Nasser Khan @ Naser is recorded as 18.8.1976. At the time of death, that is, 14.7.2016, the age of Nasser Khan @ Naser is seen to be 39 years 10 months 26 days. Therefore, the relevant multiplier as per Sarla Verma (Supra) will be 15 [for age group 36 to 40 years].

19. 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..."

20. 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..."

21. 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.

22. At the time of death, the deceased left behind three dependents/claimants, hence $1/3^{\text{rd}}$ is to be deducted from the income of the deceased towards personal expenses.

23. Besides loss of dependency, the claimants are entitled to some amount, on account of funeral expenses, loss of consortium and loss of love and affection. At 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.

24. Again, from Ext 3, the Cadaver Report of Assam Medical College Hospital, Dibrugarh, it is seen that Nasser Khan @ Naser was admitted to ICU 1 on 8.7.2016 with poly traumatic severe head injuries following RTA and expired on 15.7.2016. Though the claimants have not exhibited any vouchers, nevertheless the claimants must have

incurred expenditure on various counts like treatment, medicines, attendant etc. Hence, even in absence of vouchers, the claimants are to be awarded a reasonable amount on for expenses incurred during the said period of treatment.

25. Thus, just and reasonable compensation to which the claimants are entitled is assessed as under:-

| | Head | Amount |
|----|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| a) | Annual Income (Monthly income Rs. 182 x 30x 12) = Rs. 65,520 | |
| b) | Future Prospects [40% of the income to be added] Rs. 26,208/- | |
| c) | Deduction towards personal expenditure [1/3 rd of 91,728/-] = 30,576/- | |
| d) | Total income = Rs. 61,152/- | |
| e) | Multiplier – 15 | |
| f) | Loss of dependency [d x e] | 9,17,280/- |
| g) | Loss of parental love and affection to claimant No.1 | 44,000/- |
| h) | Loss of consortium for claimant No.2 | 44,000/- |
| i) | Loss of filial love and affection for claimant No.3 | 44,000/- |
| j) | Loss of estate | 16,500/- |
| k) | Funeral expences | 16,500/- |
| l) | Medical expenses for treatment from 8.7.2016 to 15.7.2016 (Rs.1000/- per day) | 8000/- |
| | Total compensation awarded [f + g+ h+ i + j + k + l] | 10,90,280/- along with interest at the rate of 7.5% p.a from the date of filing of the claim petition till payment. |

26. Having held the Scooty bearing Engine No.AE21-1-32898, Chassis No. MB8CE46AHE8132827 to be responsible for the accident, the Opposite Party No. 2, United India Insurance Co Ltd is to pay the award.

AWARD

27. Rs. 10,90,280/- (Ten Lakhs Ninety Thousand Two Hundred and Eighty only) inclusive of no-fault, is awarded with interest @ 7.5% pa from the date of filing of the claim petition, i.e. 17.12.2016 till payment to the claimants. The total amount (principle plus interest) is apportioned between the three claimants; the claimant No.1 is awarded 25% and claimant No. 2 is awarded 50% and the claimant No.3 is awarded 25%. The amount awarded to claimant No. 3, Master Nisrat Khan is to be kept in fixed deposit in any nationalized bank till claimant No.3 attains the age of majority.

28. OP No.2, United India Insurance Ltd, is directed to pay the award within one month from the date of order.

29. Let a free copy of this judgment be furnished to claimants and OP 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 15th day of December, 2021.

Member
Motor Accident Claims Tribunal/
District Judge
Dibrugarh