

**IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, NO.2
KAMRUP, GUWAHATI**

Present : Shri D. Bhattacharjee, AJS
Member, M.A.C. T. No.2,
Kamrup (M), Guwahati.

1. MAC Case No.788 of 2012

I. Sunil Kr. Prasad

II. Sri Rahul Prasad

Claimants

-Vs-

1. Reliance General Insurance Co. Ltd.

2. Mr. Mridul Paban Das

3. Sri Samiran Deka

Opposite Parties

NAME OF THE ADVOCATES WHO APPEARED IN THIS CASE

1. For the claimants	:	S. K. Pandey
	:	Jiyarul Haque
2. For the O.P. No.1	:	Shri. R. Goswami,
	:	Shri T. Kalita
	:	Shri S. Hazarika
3. For the O.P. No.2 & 3	:	Smt. Sabita Mahanta
4. Date of Argument	:	09-03-2017
5. Date of Judgment	:	15-03-2017

JUDGMENT & ORDER

1. The story of the claimant's case in brief is that on 07-08-2011, at about 04:45 P.M. the deceased Manita Devi was proceeding by the motorcycle bearing registration No.AS-01-AQ-8617 as a pillion rider and, at that time, the super bus bearing Regd. No. AS-03-AC-3301 knocked down an auto van from the back side coming in a rash and negligent manner and in high speed, as a result of that the auto van lost its control and knocked down the motorcycle, as a result of which the accident occurred and the deceased sustained grievous injuries on her person and ultimately succumbed to the injuries afterwards. The accident occurred under

Basistha P.S. and accordingly, in connection with the accident, the Basistha P.S. Case No. 519 of 2011, U/S 279/304(A)/427 of IPC was registered against the driver and the owner of the offending vehicle. At the same time, it is also found that the deceased Manita Devi was doing business and was aged about 37 years and her monthly income was Rs.15,000/-.

2. The opposite parties have contested the case by filling their written statement.

3. The O.P. No.1, the Reliance General Insurance Company Ltd. has stated that the claim petition is not maintainable. The claim petition is bad for mis-joinder of necessary party. The claim petition is barred by principles of estoppels, waiver and acquiescence. The claim petition is misconceived, frivolous and untenable under the law. The O.P. No.1 has denied all the averments of the claim petition and asked the claimants to strict proof of it. Further, it has denied the factum of rash and negligence on the part of the driver of the vehicle-in-question. The O.P. No.1 has admitted that the vehicle was insured with it vide policy No.1505712340000244, but disputed the maintainability of the claim petition. It is further pleaded that the liability of the insurance company, if any, is subject to the terms and conditions of the insurance policy.

4. The opposite party Nos.2 and 3, the owner and driver of the offending vehicle have denied the averments of the claim petition. They have pleaded that there is no cause of action for the case. However, while admitting the accident, they have pleaded that at the time of accident the vehicle-in-question was duly insured with the insurance co. vide its policy No.111000405874 and it was valid up to 04-08-2012 and the driver had also possessed a valid driving license vide No.AS-0119900020684 and it was valid up to 13-05-2013. Therefore they have pleaded that they are not liable to pay compensation to the claimants and prayed to dismiss the case.

5. On the pleadings of the parties the following issues are taken for my consideration.

I. Whether the victim late Manita Devi died in the alleged accident dated on 07-08-2011 involving the vehicle No.AS-03-AC-3301 (Super Bus) and whether the said accident took place due to the rash and negligent driving of the driver of the offending vehicle ?

II. Whether the claimant is entitled to get any compensation for the injuries sustained by him/her, and if yes, to

what extend and by whom amongst the opposite parties, the said compensation amount will be payable ?

6. It is worth mentioning that the case was once decided ex-parte against the opposite party No. 1 vide judgment and order dated 06.02.2015 but subsequently, on application of the opposite party No. 1 the ex-parte judgment and order was set aside and the case was tried afresh.

7. During the course of hearing, the claimant Sunil Kr. Prasad has examined himself as only witness. The Opposite Parties has examined none.

8. Heard argument of learned counsels for both the parties. Perused the record.

DECISION AND REASONS THEREOF

9. I have carefully examined the evidence on record and after hearing the arguments advanced by the learned counsel for the claimant and the Opposite Party No.1, give my decision on the above issues as follows:

ISSUE NO.I

10. From evidence of the claimant, namely, Sunil Kr. Prasad (P.W.-1) it is found that the death was caused to the deceased Manita Devi due to injury sustained in the accident occurred on 07-08-2011 at about 04:45 P.M. On the alleged day of accident, the deceased Manita Devi was traveling by a motorcycle bearing Regd. No. AS-01-AQ-8617 as a pillion rider from Jorabat side towards Khanapara, at that time, the super bus bearing Regd. No. AS-03-AC-3301 knocked down one auto van from the back side coming in a rash and negligent manner and in high speed, as a result of that the auto van knocked down the motorcycle, as a result of which the accident occurred and the deceased sustained grievous injuries on her person and ultimately she succumbed to her injuries afterwards. From his evidence, it is found that due to rash and negligent driving of the driver of the super bus, the accident occurred and for which the deceased sustained injuries on her person and died afterwards.

In the cross-examination, he has deposed that at the time of accident, he was driving the motorcycle and his wife Manita Devi was a pillion rider. He has denied the suggestion that the accident occurred due to his fault.

11. P.W.-1 has exhibited the Ext.-1 accident information report; the Ext.-2 postmortem report; the Ext.-3 to 3(4) copy of FIR and the Ext.-4 income tax return.

12. From the Ext.-1 accident information report, it is found that a case was register vide Basistha P.S. Case No.519 of 2011 U/S 279/304(A)/427 IPC against

the driver of the offending vehicle. It is also found that the accident is a fact and on the day of the accident the vehicle-in-question bearing Regd. No.AS-03-AC-3301 (Bus) was involved with the accident. It is also found in Ext.-1 that due to the accident, the death was caused to the deceased Manita Devi. The Ext. 2 post mortem report reveals that the deceased Manita Devi died as a result of shock and hemorrhage as a result of the injuries sustained. Further, it is also found from Ext.-1 that at the time of accident the offending vehicle was duly insured with the insurance co. vide its policy No.111000405874 and its validity was up to 04-08-2012 and also it is found that the driver drove the vehicle-in-question with a valid driving license vide D/L No.AS-0119900020684 and it was valid up to 13-05-2013. Considering the evidence of P.W.-1 and the documents placed before me it is found that that accident is a fact and the deceased Manita Devi died due to the accident. As per postmortem examination report it is found that the death was caused to the deceased Manita Devi @ Rava due to shock & Hemorrhage as a result of injury sustained on her body. The other side has failed to discredit the testimony of the P.W.-1 as well as documentary evidence also of the claimant side. So I feel that the cases have been proved by the claimants against the O/Ps, owner, driver and insurer.

13. In view of the above discussion, it must be held that 07-08-2011, at about 04:45 P.M., near Meghalaya, under Khanapara Police Station, an accident occurred due to the rash and negligent driving of the Super Bus bearing registration No.AS-03-AC-3301 on the part of its driver and the said accident has caused death of the deceased, Smt. Manita Devi @ Rava. Therefore, the issue No.I is decided in the affirmative in favour of the claimant.

ISSUE NO.2

14. From evidence of the claimant it is found that the deceased Manita Devi died at the age of 37 years. The post mortem examination report vide Ext.-2, also shows that the deceased died at the age of 32 years. So, I am of the opinion that at the time of accident the deceased was in between the age group of 31-35. As per the decision of **Sarla Verma (SMT) and others -Vs- Delhi Transport Corporation reported in (2009) 6 SCC 121**, in that case the multiplier would be for the age group of 31-35 is 16. In view of the above decision on the age of the deceased, multiplier 16 has to be taken for ascertaining the loss of dependency in the instant case. Now, coming to the question of income of the deceased, the claimant in her evidence stated that at the time of death the deceased was a

business lady and her monthly income was Rs.15,000/-. The claimant side has submitted the income tax return for the year 2008-09, 2009-10 and 2010-2011 vide Ext.-4. However, from the income tax return it is very difficult to assess the actual income of the deceased. Even, the claimant has not proved the income tax return by calling any witness, hence the same cannot be taken into consideration. However, it is found from the income tax return that the deceased was a reputed businessman, hence, it would be just and reasonable to hold that the monthly income of the deceased, at the time of her death was Rs.8,000/-. Therefore, I have taken Rs.8,000/- per month as income of the deceased for assessing the loss of dependency. As the deceased was aged in between the age group of 31-35, it can be presumed that he was a young woman at the time of death and he could be expected to live more than 60 years. Therefore, he would have a scope for earning more, had she been alive. Hence, the future prospect can not be ruled out in this case. So, as per the above cited case there should be an addition of 50% towards the future prospect. So far as the dependency is concerned, the deceased left behind two dependents, they are Sunil Kr. Prasad and Rahul Prasad (as per the claim petition). As per the decision of ***Sarla Verma and others -Vs- Delhi Transport Corporation reported in (2009) 6 SCC 121***, the deduction towards personal and living expenses of the deceased should be $\frac{1}{3}^{\text{rd}}$, where the number of dependent family members is 2 to 3. Hence, the assessment of the compensation in details is as follows:

Total monthly income	:	Rs.8,000/-
Total Annual Income	:	Rs.96,000/- (8,000x12)
Add 50%	:	Rs.96,000/-+50%
	:	Rs.1,44,000/-
Less $\frac{1}{3}^{\text{rd}}$:	Rs.1,44,000 \div 3 x 2
	:	Rs.96,000/-
Multiplier	:	16
Total Compensation	:	Rs.96,000 x 16
	:	Rs.15,36,000/-

15. The claimant is entitled to get Rs.15,36,000/- towards loss of dependency. Besides loss of dependency, the claimants are also entitled to funeral expenses as well as some amount of general damages caused to him. As per the decision of the Apex Court in ***Rajesh & Ors -Vs- Rajbir Singh and Ors. (2013) 1403 ACJ***, the award for funeral expenses, loss of consortium and loss of care and guidance for minor as well as some general damages are awarded to justify the

situation as follows :

Loss of Dependency	:	Rs.15,36,000/-
Funeral expenses	:	Rs. 25,000/-
Consortium	:	Rs. 1,00,000/-
Loss of care and guidance	:	Rs. 1,00,000/-
For minor		
Loss of estate	:	Rs. 5,000/-
Transportation of Body		
<u>of the deceased</u>	:	<u>Rs. 5,000/-</u>
Total	:	Rs.17,71,000/-

16. Now, let us decide who, amongst the opposite parties shall have to pay the said compensation amount.

17. The claimants have stated in the claim petition that on the day of the said accident, the offending Super Bus bearing registration No.AS-03-AC-3301 was insured with the Opposite Party No.1 Insurance Company vide Policy Cover Note No.111000405874. The Opposite Party No.1 Insurance Company has failed to prove that at the time of accident said policy was not issued by it to the Opposite Party No.2 insuring the offending vehicle or that the policy was not valid on the day of the alleged accident. Moreover, from the Ext. 1 accident information report submitted by the claimant it is also found that on the day of the alleged accident, the insurance policy of the offending vehicle was valid and effective till 04-08-2012 and also it is found that the driver drove the vehicle-in-question with a valid driving license vide D/L No.AS-0119900020684 and it was valid up to 13-05-2013. Therefore, the opposite party No.1 is liable to pay the compensation to the claimants.

18. In view of the above discussion, it is held that the Opposite Party No.1, the Reliance General Insurance Company Ltd., the insurer of the offending Super Bus bearing registration No.AS-03-AC-3301 is liable to pay the compensation amount of Rs.17,71,000/- (Rupees seventeen lakh and seventy one thousand) only, to the claimants. The issue No.II is decided accordingly.

ORDER

19. In the result, the claim petition is allowed on contest and an amount of Rs.17,71,000/- (Rupees seventeen lakh and seventy one thousand only) is awarded to the claimants. The Opposite Party No.1, Reliance General Insurance Company Limited, the insurer of the offending Super Bus bearing registration No. AS-03-AC-3301 is directed to pay the compensation amount of Rs.17,71,000/- (Rupees seventeen lakh and seventy one thousand only), to the claimants, along

with interest at the rate of 06% (six percent) per annum from the date of filing of the application under Section 166 of the Motor Vehicles Act, 1988, till the date of payment.

20. The claimant No.1 shall receive 30% of the compensation amount and the Claimant No.2 shall receive the remaining 70% of the awarded compensation amount.

21. Out of the compensation amount payable to the Claimant No.2, 60% (sixty percent) shall be invested in long term fixed deposit till attaining his majority. The bank shall not permit any loan or advance on the said fixed deposits. The bank also shall not allow premature withdrawal of the fixed deposits without prior written permission of this Tribunal.

22. Under the facts and circumstances of the case, parties are left to bear their own costs.

23. The MAC Case is disposed of accordingly.

24. Signed, sealed and delivered in the open Court on this the 15th day of March, 2017, in Guwahati.

(Shri D. Bhattacharjee)
Member, M.A.C. T. No.2,
Kamrup (M), Guwahati

Dictated & corrected by me.

(Shri D. Bhattacharjee)
Member, M.A.C. T. No.2,
Kamrup (M), Guwahati