

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.2,  
KAMRUP (M), GUWAHATI**

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

**MAC Case No.2022 of 2014**

I. Smt. Dipa Sarma

II. Sri Dipak Sarma

III. Sri Iswar Sarma ... Claimants

-Versus-

1. The Oriental Insurance Company Ltd.

2. Shri Dipankar Ghosh

3. Sri Maniram Deka ...Opposite Parties

**NAME OF THE ADVOCATES WHO APPEARED IN THIS CASE**

1. For the claimant : Shri N. Devnath & Miss Rulee Hazarika

2. For the O.P. No.1 : Smt. Dipika Talukdar

**DATES OF THE CASE**

1. Claim petition filed on : 12-11-2014

2. Evidence recorded on : 05-12-2016, 04-01-2017 & 09-02-2017

3. Arguments heard on : 18-03-2017

4. Judgment delivered on : 23-03-2017

**J U D G M E N T**

1. The instant Motor Accident Claim case has arisen out of a petition filed by the claimants, u/s 166 of the M.V. Act. 1988, seeking compensation for the death of the deceased, namely Lt. Dilaram Sharmah in a motor vehicular accident occurred on 18-10-2014 at about 10:20 A.M. near Bornewria, under Borpathar Police Station.

2. The case of the claimants in brief is as follows :

On 18-10-2014, at about 10:20 A.M. the victim namely, Dilaram Sharmah was going by riding his Scooty bearing registration No.AS-05-D-7040 and on the way when he reached near the shop of Shri Dhan Kumar Roy, he was knocked down by the Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069 coming from the opposite direction, as a result of which he sustained grievous injuries on his person. After the accident, he was taken to the K. K. Civil Hospital, Golaghat for his treatment, however, he succumbed to his injuries on the same day. The claimants have averred that the accident occurred due to the rash and negligent driving of the offending vehicle i.e. Xylo E-4 Mahindra bearing registration No.AS-09-C-6069 on the part of its driver. The FIR was lodged after the accident, and the Borpathar P.S. Case No.92 of 2014 was registered for commission of offences punishable under Section 279, 338 and 304 (A) of the Indian Penal Code and investigated the case and after completion of investigation police submitted the charge-sheet against the driver of the offending vehicle.

3. The further case of the claimants is that at the time of accident he was a retired person from the Grade IV of the Govt. and his monthly pension was Rs.11,000/-. Apart from his pension, he was also used to earn Rs.8,000/- per month by doing petty business.

4. At the time of accident the claimants were depended upon the income of the deceased and he has left behind him the claimants as his legal heirs and representatives.

5. On receipt of notices, the opposite party No.1 the insurance company has entered its appearance and submitted its written statement and the case proceeded ex-parte against the O.P Nos. 2 & 3 the owner and driver of the offending vehicle.

6. The O.P. No.1 the Oriental Insurance Company Ltd. in its written statement has pleaded that the claim petition is not maintainable, the claim petition is incomplete and liable to be dismissed. There is no cause of action for the case. The O.P. No.1 has denied the name, address, age, occupation and monthly income of the deceased and asked the claimants to strict proof of it. Further pleaded that the insurance company is not liable to indemnify the owner of the offending vehicle if at the time of accident there is any breach of policy condition found. The O.P. No.1 has denied the rash and negligence act on the part of the driver of the offending Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069

7. Upon pleadings of the parties the following issues were framed:-

1. Whether the victim Dilaram Sharmah died as a result of the injuries sustained by him in the alleged road accident dated 18-10-2014 at about 10:20 A.M. which took place at the National Highway No.39, near Bornewaria, under Barpatha Pilice Station and died on the same ay, involving the vehicle NoAS-09-C-6069 (Xylo E-4 Mahindra) and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle ?
  2. Whether the claimants are entitled to receive any compensation, and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will have to pay ?
8. The claimants in order to prove their case examined as many as 02 (two) PWs and exhibited some documents, while the opposite party has also examined two witnesses in their favour and exhibited some documents.
9. Heard arguments of learned counsels for both sides and perused the record.

### **DECISION AND REASONS THEREOF**

10. I have carefully examined the evidence on record and after hearing the arguments advanced by the learned counsel for the claimant and the Opposite Parties, give my decision on the above issues as follows:

#### **ISSUE NOS.I**

11. The claimant P.W.-1 Smt. Dipa Sarma has deposed in her evidence that she is the wife of the deceased Dilaram Sharmah. Her husband met with an accident on 18-10-2014, at about 10:20 A.M. the victim namely, Dilaram Sharmah was going by riding his Scooty bearing registration No.AS-05-D-7040 and on the way when he reached at the shop of Shri Dhan Kumar Roy, he was knocked down by the Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069 coming from the opposite direction, as a result of which he sustained grievous injuries on his person. After the accident, he was taken to the K. K. Civil Hospital, Golaghat for his treatment, however, he succumbed to his injuries on the same day. The claimants have averred that the accident occurred due to the rash and negligent driving of the offending vehicle Xylo E-4 Mahindra bearing registration No.AS-09-C-6069 on the part of its driver.
12. In the cross-examination she has deposed that she did not see the accident.

13. The P.W.-1 has exhibited the Ext.-1 accident information report; the Ext.-2 certified copy of the FIR; the Ext.-3 certified copy of the seizure list; the Ext.-4 certified copy of the MVI report; the Ext.-5 certified copy of the charge-sheet; the Ext.-6 certified copy of the post-mortem report and the Ext.-8 income certificate.

14. The P.W.-2 Sri Bharat Sharmah has deposed that he has witnessed the accident. At the time of accident he was waiting at the side of the road to receive one of his relative. At that moment, he noticed that the deceased was proceeding by riding his Scooty bearing registration No. AS-05-D-7040 and on the way, when he reached at the shop of Shri Dhan Kumar Roy, he was knocked down by the Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069 coming from the opposite direction, as a result of which he sustained grievous injuries on his person. His further evidence is that he has lodged the FIR in connection with the accident. He has further stated that the accident occurred solely due to rash and negligent driving of the driver of the offending Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069.

15. In cross-examination he has deposed that the deceased was his neighbour. He saw the accident.

16. In support of the case, the claimant has submitted the Ext.-1 accident information report. From the Ext.-1 Accident Information Report, it is found that the accident occurred on 18-10-2014 at about 10:20 A.M involving the Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069 and due to the accident the deceased had sustained injuries and succumbed. The name of the owner is Dipankar Ghosh and the name of the driver is Maniram Deka. It is also found that the vehicle was insured with the Oriental Insurance Company Ltd. vide its Policy No.322203/31/2014/2991.

17. From the Ext.-6 post mortem examination report it is found that, the death was due to shock & haemorrhage as a result of the injury sustained over his body.

18. The Ext.-5 Charge-sheet depicts that the charge sheet was submitted in connection with the accident against the driver of the offending vehicle Xylo E-4 Mahindra vehicle bearing registration No.AS-09-C-6069. The opposite party could not rebut the above evidence of the claimant side either by cross-examination or by adducing evidence.

19. From the above noted evidence, it is clearly established that the accident is a fact and the deceased died due to the injury sustained in the accident. It is also established that the driver drove the vehicle in a rash and negligent

manner at the time of accident. Therefore, it is held that on 18-10-2014, at about 10:20 A.M. the accident occurred involving the Xylo E-4 Mahindra vehicle bearing registration No. AS-09-C-6069 causing him grievous hurt which leading to death. It is also established that the accident occurred due to the rash and negligent driving of the driver of the offending Xylo E-4 Mahindra vehicle. Accordingly, these issues are decided in affirmative and in favour of the claimant.

### **ISSUE NO.II**

20. Since the deceased died in a motor vehicular accident certainly the claimants are entitled to just and proper compensation. The P.W.-1 the wife of the deceased has testified that at the time of death her husband was a retired person and his monthly pension was Rs.12,000/-. Apart from his pension, he was also used to earn Rs.8,000/- per month by doing petty business. The P.W.-1 has submitted the pension payment order vide Ext.-7 and income certificate vide Ext.-8. The Ext.-7 is a Government certificate, therefore, the same is admissible in evidence and as the Ext.-8 has not been proved by calling the author of it, the same can not be taken into consideration.

21. I have gone through the salary certificate of the deceased vide Ext.-7 pension payment order, according to which, the monthly pension of the deceased was Rs.10,150/-. Except the above Ext. 7 Pension Payment Order the claimant side has not produced any other document to prove the pension of the deceased at the relevant time. Hence, Rs. 10,150/- has been held to be the monthly income of the deceased.

22. The P.W.-1 has stated in her evidence that at the time of death, the deceased was aged about 62 years old. As per the Ext.-7, the date of birth of the deceased is 15-04-1952 and the deceased died on 18-10-2014. Therefore, at the time of death the deceased was 62 years, 06 month and 03 days. So I am of the opinion that at the time of accident the deceased was in between the age group of 61-65. As per the decision of ***Sarla Verma and others -Vs- Delhi Transport Corporation reported in (2009) 6 SCC 121***, the multiplier would be for the age group 61-65 is 07. Hence, multiplier 07 has to be taken for ascertaining the loss of dependency in this instant case.

23. Since the deceased was a pension holder, there should be no addition towards the future prospect as per the decision of the Apex Court in case of the ***Sarla Verma (supra)***.

24. So far as the dependency is concerned, the deceased left behind one dependent, viz. the claimant No.1. The claimant Nos.2 & 3 have failed to prove that they were depended upon the income of the deceased. Therefore, they are not considered as dependents. As per the decision of **Sarla Verma (supra)**, the deduction towards personal and living expenses of the deceased should be 1/3<sup>rd</sup>, where the number of dependent family members is 2 to 3. Hence, the assessment of the compensation in details is as follows:

|                        |   |                           |
|------------------------|---|---------------------------|
| Total monthly pension  | : | Rs.10,150/-               |
| Total Annual pension   | : | Rs.1,21,800/- (10,150x12) |
| Less 1/3 <sup>rd</sup> | : | Rs.1,21,800-40,600        |
|                        | : | Rs.81,200                 |
| Multiplier             | : | 07                        |
| Total Compensation     | : | Rs.81,200 x 07            |
|                        | : | Rs.5,68,400               |

25. In addition to the aforesaid amount of Rs.5,68,400/-, placing reliance on **Rajesh and Ors. v. Rajbir Singh and Ors, (2013) 1403 ACJ** the claimants are also entitled to receive an amount of Rs.25,000/- towards funeral expenses, an amount of Rs.1,00,000/- towards loss of consortium and an amount of Rs.1,00,000/- towards loss of estate. In total, the claimants are entitled to receive Rs.7,93,400/- (rupees seven lakh ninety three thousand and four hundred) only, as compensation.

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

27. The contesting opposite party has examined two witnesses, namely Mr. Sarvesh Suman as D.W.-1 and Sri Rajsekhar Gogoi as D.W.-2.

28. D.W.-1 has deposed that the Xylo E-4 Mahindra vehicle bearing registration No. AS-09-C-6069 was a commercial vehicle and at the time of accident the vehicle was driven by one Moniram Deka who had possessed a private driving license by which he was authorized to drive non-transport vehicle. He has exhibited the Ext.-A authorization letter and the Ext.-B copy of driving license vide No.AS-0520130007046. During cross-examination he has deposed that the driving license was valid at the time of accident. He has further stated that at the time of accident no passenger was travelling by the offending vehicle.

29. D.W.-2 has also deposed that the driver Moniran Deka was not authorized to drive the transport vehicle. As per official record, he was a private driving license holder.

30. He has exhibited the Ext.-A authorization letter and the Ext.-B copy of driving license vide No.AS-0520130007046. He has also deposed that the driving license was valid at the time of accident.

31. I have gone through the evidence adduced by the contesting opposite party and found that the driving license was valid and effective at the time of accident. It is also found from their evidence that the driver was authorized to drive non-transport vehicle only and not authorized to drive transport vehicle. But the opposite party insurance company has not produced the insurance policy to show that there was a breach of policy condition. Even the opposite party has failed to prove that the offending vehicle was insured as a Transport vehicle. Therefore, it cannot be said that the offending vehicle was a transport vehicle.

32. In view of the above discussion, it is held that the Opposite Party No.1, the Oriental Insurance Company Ltd., the insurer of the offending Xylo E-4 Mahindra vehicle bearing registration No. AS-09-C-6069 is liable to pay the compensation amount of Rs.7,93,400/- (rupees seven lakh ninety three thousand and four hundred) only, to the claimants. The issue No.II is decided accordingly.

### **ORDER**

33. In the result, the claim petition is allowed on contest and an amount of Rs.7,93,400/- (rupees seven lakh ninety three thousand and four hundred) only, is awarded as compensation to the claimant No.1. The Opposite Party No.1, the Oriental Insurance Company Ltd., the insurer of the offending 'Xylo E-4 Mahindra' vehicle bearing registration No. AS-09-C-6069 is directed to pay the compensation amount of Rs.7,93,400/- (rupees seven lakh ninety three thousand and four hundred) only, to the claimant No.1, along with interest at the rate of 06% per cent per annum from the date of filing of the application under Section 166 of the Motor Vehicles Act, 1988, till the date of payment.

34. Out of the compensation amount payable to the Claimant No.1, 30% (thirty percent) of it shall be invested in long term fixed deposit i.e. for three years in a nationalized bank of her locality. 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.

- 35.** Under the facts and circumstances of the case, parties are left to bear their own costs.
- 36.** The MAC Case is disposed of accordingly.
- 37.** Signed, sealed and delivered in the open Court on this the 23<sup>rd</sup> 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