

**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.168 of 2014**

- I. Sri Mukti Khatbe
- II. Smt. Sunita Kumari
- III. Smt. Tetry Kumari ... Claimants

-Versus-

1. Sri Dipankar Rabha
2. Sri Pranjit Saikia
3. SBI General Insurance Company Ltd. ...Opposite Parties

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

1. For the claimants : Shri Deepjyoti Deka
2. For the O.P. No.3 : Smt. Punam Choudhury

**DATES OF THE CASE**

1. Claim petition filed on : 01-02-2014
2. Evidence recorded on : 08-06-2015
3. Arguments heard on : 29-03-2017
4. Judgment delivered on : 29-03-2017

**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, under Section 166 of the M.V. Act. 1988, seeking compensation for the death of the deceased, namely Lt. Ramdhani Khatbe in a motor vehicular accident.

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

On 12-12-2013, at about 09:20 A.M., while the handyman Ramdhani Khatbe (since deceased) was busy in routine check up of the tyres of the Truck bearing registration No.AS-01-CC-9147, at F.C.I. Kata, near Changsari Petrol Pump, on the National Highway No.37, he was knocked down by another Truck bearing registration No.AS-01-DD-8847, as a result of which he sustained grievous injuries on his person. He was taken to the Tolaram Bafna Civil Hospital, Amingaon, for his treatment, but doctors of the said hospital declared him brought dead. It is further averred that the deceased was a handymen and his monthly income was Rs.6,000/-. The further case of the claimants is that the accident occurred due to rash and negligent driving of the driver of the Truck bearing registration No.AS-01-DD-8847. The FIR was lodged after the accident, and after receipt of the FIR, the Changsari P.S. Case No.17 of 2014 was registered for commission of offences punishable under Section 279 & 304(A) of the Indian Panel Code.

3. On receipt of notices, the opposite party No.3 entered its appearances and submitted its written statement while the case proceeded ex-parte against the O.P. Nos.1 & 2 the driver and owner of the Truck bearing registration No.AS-01-DD-8847.

4. The opposite party No.3 the S. B. I. General Insurance Co. Ltd. the insurer of the Truck bearing registration No.AS-01-DD-8847, by filing written statement has stated that the claim petition is not maintainable, the claim petition is barred by estoppels, waiver and acquiescence and hence not maintainable and liable to be dismissed. Also pleaded that the claim petition is frivolous and is untenable in law. The answering O.P. No.3 has denied the name, address, age, occupation and monthly income of the deceased. The answering O.P. No.3 has denied the statement made in Para No.7, 8 & 9 of the claim petition and asked the claimants to produce the copy of FIR & police report from concerned Police Station. The O.P. No.3 also denied that the deceased died due to the accident caused by the offending Truck. It is contended that the liability if any, of the answering opposite party will always be subject to the terms and conditions of the insurance policy. With the above, it is prayed to dismiss the claim petition.

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

1. Whether the death was caused to the deceased Ramdhani Khatbe on 12-12-2013 due to the involvement of the vehicle bearing registration No.AS-01-DD-8847 (Truck) ?
2. Whether the vehicle was driven by the driver in a rash and negligent manner ?

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3. Whether the driving license and the insurance policy were valid at the time of accident ?

4. What relief/reliefs the parties are entitled to ?

6. The claimants in order to prove their case examined the claimant No.1, the father of the deceased as PW1 and exhibited some documents. On the other hand, the opposite party has examined none.

7. Heard arguments of learned counsels for both sides and perused the record.

### **DECISION AND REASONS THEREOF**

1. I have carefully examined the evidence on record and after hearing the arguments advanced by the learned counsels for the claimant and the Opposite Party No.3, give my decision on the above issues as follows:

### **ISSUE NOS.I. & II.**

8. The claimant as P.W.-1 has deposed in his evidence that he is the father of the deceased Ramdhani Khatbe. His son Ramdhani Khatbe died due to injury sustained in a motor vehicular accident occurred on 12-12-2013, at about 09:20 A.M. At the time of the accident, his son was busy in checking tyres of the Truck bearing registration No.AS-01-CC-9147, at FCI Kata near Changsari Petrol Pump, on the National Highway No.37, at that moment, he was knocked down by the Truck bearing registration No.AS-01-DD-8847, as a result of which he sustained grievous injuries on his person. He was taken to the Tolaram Bafna Civil Hospital, Amingaon for his treatment, but doctors of the said hospital declared him brought dead. In connection with the accident the Changsari police have registered the case as Changsari P.S. Case No.17 of 2014 for commission of offences punishable under Section 279 & 304(A) of IPC. His further evidence is that the accident occurred due to the rash and negligent driving of the offending vehicle bearing Nos. AS-01-DD-8847 (Truck) on the part of its driver.

In the cross-examination, he has deposed that his son was working as a handyman but he has not submitted any document to prove the same.

The P.W.-1 has exhibited the Ext.-1 accident information report; the Ext.-2(i) & 2(ii) post mortem report and the Ext.-3 to 3(ix) copies of FIR, seizure list, MVI report and charge-sheet.

9. I have also gone through the documentary evidence adduced by the

claimant. From the Ext.-1 Accident Information Report, it is found that the accident occurred on 12-12-2013 at about 09:20 A.M. It is also revealed that in connection with the accident the Changsari P. S. Case No.17 of 2014 was registered under Section 279 & 304(A) of IPC. It is also found that the vehicle involved in the accident was Truck bearing registration No.AS-01-DD-8847 and as a result of the accident the deceased Ramdhani Khatbe has sustained injuries.

10. The Ext.-1 further reveals that the name of the owner of the offending vehicle is Pranjit Saikia and the name of the driver is Dipankar Rabha. It is also found that the vehicle was insured with the SBI General Insurance Company Ltd. vide its Policy No.0000000001023999 and it was valid up to 06-06-2014.

11. From the Ext.-2 post mortem examination report it is found that, the death was due to coma as a result of the injuries sustained on his person. All the injuries were antemortem caused by blunt force impact.

12. The Ext.-3(viii) Charge-sheet depicts that the charge sheet was submitted in connection with the accident against the driver of the offending vehicle Truck bearing registration No.AS-01-DD-8847. The opposite party could not rebut the above evidence of the claimant side either by cross-examination or by adducing evidence any rebuttal evidence.

13. 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 12-12-2013, at about 09:20 A.M. the accident occurred due to the involvement of the Truck bearing registration No.AS-01-DD-8847. It is also established that the accident occurred due to the rash and negligent driving of the driver of the offending Truck and due to the injury sustained in the said accident, the deceased Ramdhani Khatbe died. Accordingly, these issues are decided in affirmative and in favour of the claimant.

#### **ISSUE NOS.III & IV**

14. Since in the foregoing issues it is held that the accident was occurred due to the rash and negligent driving of the offending vehicle and as a result of the injury sustained in the accident the deceased Ramdhani Khatbe died, certainly, the legal representative of the deceased will get just amount of compensation.

15. In the case of ***Sarla Verma and others vs. Delhi Transport Corporation***, reported in ***(2009) 6 SCC 121***, the Hon'ble Supreme Court has

held that, "Basically only three factors need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased."

16. The claimant in the claim petition has stated that the deceased died leaving behind him, his wife and one daughter as his legal heirs and successors were fully dependant on him. In cross examination he has stated that his wife is a house wife. The contesting opposite party did not deny that the claimants were depended upon the income of the deceased. Hence, it is held that all the claimants were depended upon the income of the deceased.

17. Relying upon the principles of law laid down by the honourable Supreme Court in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others** reported in **2015 SCC Online SC 505**, the age of the deceased is taken into consideration for adopting the appropriate multiplier.

18. From the claim petition it is found that at the time of his death, the deceased was aged about 25 years old. The claimant has not submitted any document to prove the age of the deceased. However, on perusal of the post mortem report vide Ext.-2 it is found that the deceased died at the age of 25 years. Therefore, it is held that at the time of accident the deceased was in between the age group of 21-25. As per the decision of **Sarla Verma (supra)**, the appropriate multiplier would be 18 for the age group 21-25 years. In view of the age of the deceased at the relevant time, multiplier 18 has to be taken for ascertaining the loss of dependency in the instant case.

19. 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 handymen and his monthly income was Rs.6,000/-. The claimant has not produced any document to prove the same. Hence, the same is not taken into consideration. However, it is found from the Ext.-3(II) & Ext.-3(VIII) that the deceased was working as a handymen at the time of accident and the contesting opposite party has not challenged that point. Hence, it is held that at the time of accident, the deceased was a handymen and in absence of any positive evidence of income of the deceased, Rs.5,000/- p.m. is

taken as notional income for assessing the loss of dependency.

20. In the present context, placing reliance on **Rajesh and Others vs. Rajbir Singh and Ors** reported in **(2013) 9 SCC 54**, since the deceased died at the age of 16 years, there should be an addition of 50% to his income towards future prospect.

21. It is found from the record that the deceased was an unmarried person at the time of his death and hence as per the decision of **Sarla Verma (supra)**, the deduction towards personal and living expenses of the deceased should be 50%. Hence, the assessment of the compensation in detail is made as follows:

Total monthly income	:	Rs.5,000/-
Total Annual Income	:	Rs.60,000/- (5,000x12)
Add 50%	:	Rs.60,000/-+50%
	:	Rs.90,000/-
Less 50%	:	Rs.90,000-50%
	:	Rs.45,000/-
Multiplier	:	18
Total Compensation	:	Rs.45,000 x 18
	:	Rs.8,10,000/-

22. In addition to the aforesaid amount of Rs.8,10,000/-, the claimant is also entitled to receive an amount of Rs.25,000/- towards funeral expenses and an amount of Rs.1,00,000/- towards loss of estate and another amount to Rs.1,00,000/- is awarded to the claimants towards loss of love and affection. In total, the claimants are entitled to receive Rs.10,35,000/- (rupees ten lakh and thirty five thousand only), as compensation.

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

24. The claimant has stated in the claim petition that on the day of the said accident, the offending Truck bearing registration No.AS-01-DD-8847 was insured with the Opposite Party No.3 Insurance Company vide Policy No.000000 0001023999 and was valid up to 06-06-2014. The Opposite Party No.3 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. The Ext.-1 accident information

report submitted by the claimants reveals that on the day of the alleged accident, the insurance policy of the offending vehicle was valid and effective and the driving license of the driver was also valid and effective and on that point there is no contrary evidence available on record. Therefore, the Opposite Party No.3 is liable to pay the compensation to the claimant.

25. In view of the above discussion, it is held that the Opposite Party No.3, SBI General Insurance Company Ltd. is to satisfy the award of Rs.10,35,000/- (rupees ten lakh and thirty five thousand only). This issue is decided accordingly in favour of the claimant.

**ORDER**

26. In the result, the claim petition is allowed on contest and an amount of Rs.10,35,000/- (rupees ten lakh and thirty five thousand only), is awarded as compensation to the claimants. The Opposite Party No.3, the SBI General Insurance Company Ltd., the insurer of the offending Truck bearing registration No.AS-01-DD-8847 is directed to pay the compensation amount of Rs.10,35,000/- (rupees ten lakh and thirty five thousand only), 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.

27. The claimant No. 1 shall receive 10% of the awarded amount; the claimant No. 2 shall receive 60% of the awarded amount and the claimant No. 3 shall receive the remaining 30% of the awarded compensation amount.

28. Out of the compensation amount payable to the Claimant No.2, 20% (twenty percent) of it shall be invested in long term fixed deposit i.e. for 3 (three) years in a nationalized bank of her locality. Out of the compensation amount payable to the Claimant No. 3, 10% (ten percent) of it shall be invested in long term fixed deposit i.e. for 5 (five) years in a nationalized bank of her locality. The bank shall not permit any loan or advances on the said fixed deposits. The bank also shall not allow premature withdrawal of the fixed deposits without prior written permission of this Tribunal.

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

30. The MAC Case is disposed of accordingly.

31. Signed, sealed and delivered in the open Court on this the 29<sup>th</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