

CAUSE TITLE**M.A.C.T. CASE NO.34/2017.**

1) Smt Rupanti Mochahary.
W/o Lt. Tiken Mochahary.

2) Sri Mithinga Mochahary.
S/o Lt. Tiken Mochahary.

Both are resident of -

Vill. Tipukial Charaimoria.
P.O. Charaimoria.
P.S. Boginadi.
Dist. Lakhimpur.

... Claimants.

-versus-

1) Sri Uttam Kumar Baruah.
(Driver of vehicle bearing registration
No.AS.07.J / 2007 (Xcent). ... Opp. Party No.1.

2) Sri Paban Gohain.
(Owner of vehicle bearing registration
No.AS.07.J / 2007 (Xcent). ... Opp. Party No.2.

3) United India Insurance Company Ltd.
(Insurer of vehicle bearing registration
No.AS.07.J / 2007 (Xcent). ... Opp. Party No.3.

Advocates :

For the Claimants. : Sri Tirtha Das, Advocate.

For the Opp. Party No.1. : Sri Sanjib Gogoi, Advocate.

For the Opp. Party No.2. : Smt Nabanita Hazarika, Advocate.

For the Opp. Party No.3. : Sri Brozen Gogoi, Advocate.

Case referred to in chronological order :

1) Sarla Verma and others -vs- DTC and another (2009) 6 SCC 121.

2) National Insurance Company Ltd. -vs- Pranay Sethi and others
(2017) 16 SCC 680.

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL : LAKHIMPUR :
AT NORTH LAKHIMPUR.**

Present : Smt S.P. Khaund, (MA Economics, LLB),
Member, M.A.C.T.
Lakhimpur, North Lakhimpur.

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Date of Argument : 20.10.2020.

Date of Judgment : 21.01.2021.

J U D G M E N T

1) The claimants in this case are Smt Rupanti Mochahary and Sri Mithinga Mochahary. They have filed an application u/s 166/ 140 of the Motor Vehicles Act, 1988 (M.V. Act for short). Smt Rupanti Mochahary is the wife of Late Tiken Mochahary and Mithinga Mochahary is their son.

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2) The claimants' case, in brief, is that on 09.05.2017 at about 1 am, Tiken Mochahary (hereinafter the deceased) was proceeding towards his house on his bicycle. At that time, a car of Xcent make bearing registration No.AS.07.J/ 2007 driven speedily and in rash and negligent manner knocked him down. The deceased immediately died on the spot. As the deceased was a teacher, serving in an L.P. school, the claimants have prayed for compensation of Rs.42,57,784/- only.

3) The driver of the vehicle, Sri Uttam Kumar Baruah, the owner of the Xcent, Sri Paban Gohain and the insurer, United India Insurance Company Ltd. were arrayed as OP No.1, OP No.2 and OP No.3 respectively. All the Opposite Parties filed written statements.

4) The OP No.1 has inter alia denied that he drove the vehicle in a rash and negligent manner, as he is an experienced driver carrying a valid Driving License. He has prayed for exoneration as the vehicle was duly insured.

5) The owner of the vehicle, OP No.2 has also prayed for exoneration stating that the vehicle was duly insured. He has also submitted on behalf of the driver that the deceased suddenly came in front of his car while the driver was driving the car. He has vehemently denied that his driver drove his car in a rash and negligent manner.

6) The insurer through written statement has questioned the income of the deceased and the Driving License of the driver. The insurer has inter alia denied the rash and negligent act of the driver. In case of breach of the terms and conditions of the Insurance policy, the OP No.3 has prayed to dismiss the petition with prayer for compensation.

7) To substantiate their stance, the claimants adduced evidence of three witnesses and exhibited various documents. The Opposite Party did not adduce any evidence to substantiate their pleadings.

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CONTENTIONS OF THE PARTIES :

8) It is submitted by the learned counsel for the claimants that the driver of the vehicle bearing registration No.AS.07.J / 2007, is responsible for the accident, and the insurer is liable to pay the compensation. The documents submitted by the claimant along with her evidence has proved this case against the Opposite Parties.

9) I have heard the learned counsel for the insurer.

ISSUES :

10) On the backdrop of the rival contentions, the following issues were framed by my learned predecessor :

i) Whether Tiken Mochahary died as a result of injuries sustained by him in a motor vehicular accident on 09.05.2017 involving vehicle with registration No.AS.07.J/ 2007 (Xcent), and whether the said accident had taken place due to rash and negligent driving of the aforesaid vehicle?

ii) Whether the claimant is entitled to any compensation, and if yes, to what extent and by whom amongst the Opposite Parties, the said compensation amount will be payable?

DECISION THEREON AND REASONS FOR THE DECISION**ISSUE NOS.1 AND 2 :**

11) As only two issues were framed, both the Issue Nos.1 and 2 are decided conjointly.

12)The claimant (CW.1's),Smt Rupanti Mochahary's evidence reiterates her petition. Another witness, Sri Bhaben Swargiyari submitted his evidence in chief through affidavit, but he was not cross-examined. Sri Saurav Borphukan deposed as CW.2 in favour of the claimants. It is clear from the CW.1's evidence that the victim died as a result of the

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accident, which was caused by the OP No.1. The OP No.1 acted in a rash and negligent manner. It is true that there is no eye witness, but the claimants' evidence is substantiated by the documentary evidence adduced by the claimants. Ext.3(i) is the Accident Information Report in Form-54, which clearly depicts that a Boginadi PS Case No.113/2017 was registered against the driver of the Xcent car, which knocked down the deceased while he was returning on his bicycle. This case was registered against the OP No.1 u/s 279/ 304(A)/ 427 IPC and charge-sheet was laid against the driver, Sri Uttam Kumar Baruah under the aforesaid sections of Law. Ext.4(i), 4(ii) and 4(iii) are the certified copies of the charge-sheet in three pages. On the touchstone of preponderance of probabilities, it is thereby held that the Xcent car bearing registration No.AS.07.J/ 2007 is the offending vehicle and the driver is responsible for the accident. The claimant was cross-examined in extenso, but the defence failed to refute that the vehicle was driven in a rash and negligent manner. It is apt to mention at this juncture that although the owner of the vehicle stated in his evidence that the claimant, Smt Rupanti Mochahary's husband suddenly came in front of the offending vehicle, yet the driver did not mention in his written statement that the accident occurred as the deceased suddenly came in front of the vehicle.

13) Regarding the income of the deceased, the claimant has proved the Last Pay Certificate as Ext.1, which depicts that the net income of the deceased was Rs.38,640/- only, after tax deduction and deduction for GPF and the gross income of the deceased was Rs.40,024/- only.

14) The claimants' evidence is substantiated by the evidence of Sri Saurav Borphukan, who is the Block Elementary Education Officer, Lakhimpur, North Lakhimpur, and he has testified as CW.2 that he has been serving as Block Elementary Education Officer since 07.09.2016. Tiken Mochahary was working as an Asstt. teacher at Brahmapur Boro L.P. School under Boginadi P.S.. Tiken Mochahary died on 09.05.2017 as he met with a motor vehicle accident. Ext.1 is the Last Pay Certificate and Ext.1(1) is his signature.

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15) The documentary evidence submitted by CW.1 especially, the Accident Information Report clearly depicts that the offending vehicle was duly insured vide Policy No.1307023116P114535381 and it was valid upto 30.01.2018, which implies that the policy was valid at the time of the accident. It is indeed true that the driver was carrying a valid Driving License being DL No.AS0719900038874 and it was valid upto 20.12.2021. The defence failed to rebut the evidence adduced by the claimants. It is, thereby, held that the insurer is liable to pay the compensation. This decides Issue No.1.

16) The deceased was 50 years at the time of the accident. Ext.2(1) is the Post Mortem Report, which clearly depicts the age of the deceased at the time of the accident. According to Ext.1, the gross income of the deceased was Rs.40,024/-. The P. tax deducted was Rs.200/- and G.I.S. deducted was Rs.208/-. Thus, the income of the deceased after deduction of GIS and P. Tax tantamounts to Rs.39,616.00. I have relied on the decision of **Hon'ble the Supreme Court in National Insurance Company Ltd. -vs- Pranay Sethi and others (2017) 16 SCC 680, wherein it has been held that -**

“61 (I)....(ii).... (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”

17) In the instant case, the deceased was 50 years of age at the time of accident. So, 15% of his salary is added to Rs.39,616/- as loss of future prospects. Now, the income of the deceased is taken as $Rs.39,616.00 + Rs.5,942.40 = Rs.45,558.40$. Thus, the annual income tantamounts to Rs.5,46,700.80. Regarding the amount to be deducted towards the personal expenses of the deceased, I would like to refer

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with profit, the decision of **Hon'ble the Supreme Court in Sarla Verma and others -vs- DTC and another (2009) 6 SCC 121, wherein it has been observed that -**

“Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.”

18) Reverting back to this case, it is held that as the deceased was survived by two family members, so one-third (1/3rd) is deducted towards personal expenses of the deceased. The appropriate multiplier in this case is '11'. Thus, the loss of dependency tantamounts to Rs.5,46,700.80 x11 = Rs.60,13,708,80. After deduction 1/3 rd, the loss of dependency is Rs.40,09,139.20.

19) I have relied on the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra) and I have added an amount of Rs.15,000.00 as loss of estate. Another amount of Rs.40,000.00 is added as loss of consortium to the claimant No.1. Filial consortium is not awarded to Claimant No.2 as he is an adult. An amount of Rs.15,000.00 is added as funeral expenses. The total compensation sums up to Rs.40,79,139.20, which is rounded off to Rs.40,79,200/- (Rupees Forty Lacs Seventy Nine Thousand Two Hundred) only.

AWARD

20) In view of my foregoing discussions, it is held that the claimants are entitled to an award of Rs.40,79,200/- (Rupees Forty Lacs Seventy Nine Thousand Two Hundred) only, from the OP No.3, United India

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Insurance Company Ltd.. So, the OP No.3 is directed to deposit the awarded amount before this Tribunal to be paid to the claimants. Further, the claimants are entitled to an interest @ 7.5% p.a. on the awarded amount from the date of filing of the Claim Petition till realisation.

21) This MACT case is disposed of, accordingly, on contest.

22) Both the parties will bear their respective costs.

23) Let a copy of this Judgment be forwarded to the OP No.3 for compliance.

Judgment is signed, sealed and delivered in the open Court on the 21st day of January, 2021.

(S.P. Khaund)
Member, M.A.C.T.
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Member, M.A.C.T.
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.

APPENDIX**M.A.C.T. CASE NO.34/2017.****LIST OF WITNESSES FOR CLAIMANT :**

1. CW.1 - Smt Rupanti Mochahary.
2. CW.2 - Sri Saurav Borphukan.

LIST OF EXHIBITS FOR CLAIMANT :

1. Ext.1 - Last Salary Certificate.
2. Ext.2(i) - Post Mortem Report.
3. Ext.2(ii) - Death Certificate.
4. Ext.3(i) - Accident Information Report.
5. Ext.4(i),4(ii) and 4(iii) - Certified copy of the Charge-sheet.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

(S.P. Khaund)
Member, M.A.C.T.
Lakhimpur, North Lakhimpur.