

**CAUSE TITLE**  
**M.A.C.T. CASE NO.3/2018.**

- 1) Sri Sanjib Narah.
- 2) Sri Tileswar Narah.
- 3) Sri Ravon Narah.
- 4) Sri Bipul Narah.

All are sons of Lt. Kuladhar Narah.

R/O Boginadi PGR.

(Boginadi Azarguri).

P.S. Boginadi.

Dist. Lakhimpur.

... Claimants.

-versus-

- 1) Md. Harun Rasid.  
( Owner -cum- driver of the vehicle  
bearing registration No.AS.07.C/ 7175,  
Bolero Pick up ). ... Opp. Party No.1.

- 2) Oriental Insurance Company Ltd.  
( Insurer of the vehicle bearing  
registration No.AS.07.C/ 7175,  
Bolero Pick up ).  
... Opp. Party No.2.

**Advocates :**

For the Claimants. : Smt Kakoli Kakati, Advocate.

For the O.P. No.2. : 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.

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**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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( Insurer of the vehicle bearing  
registration No.AS.07.C/ 7175,  
Bolero Pick up ).  
... Opp. Party No.2.

Date of argument : 16.09.2021.

Date of Judgment : 30.09.2021.

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

1) The claimants in this case are Sri Sanjib Narah,  
Sri Tileswar Narah, Sri Ravon Narah and Sri Bipul

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Narah, who are the sons of the deceased Lt. Kuladhar Narah. They have filed an application u/s 166/ 140 of the Motor Vehicles Act, 1988 ( M.V. Act for short ).

2) The claimants' case, in brief, is that on 05.12.2017, Kuladhar Narah ( hereinafter the deceased ) was returning home from Boginadi Ganesh Mandir on foot, and at about 6 am, when he reached in front of Boginadi Police Station beside NH-15, a vehicle bearing registration No.AS.07.C/ 7175 of Bolero Pick up make proceeding from North Lakhimpur side in rash and negligent manner dashed against the deceased resulting in grievous injuries on his person. Immediately, the injured was taken to North Lakhimpur Civil Hospital, and thereafter to Saumerpith Nursing Home, but on the same day at about 3.45 pm, he succumbed to his injuries. The deceased was retired Lat Gaonburah of Khalihamari, Azarguri and Hekerajan. He was a stockist of paddy and mustard and used to earn Rs.20,000/- per month. The claimants have claimed Rs.20,50,000/- only as compensation.

3) The owner -cum- driver, Harnul Rasid and the insurer, Oriental Insurance Company Ltd., were arrayed as OP No.1 and OP No.2 respectively. Both the Opposite Parties filed written statements.

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4) The O.P. No.1 has *inter alia* contended that the amount claimed by the claimants is exorbitant and fanciful and not based upon any legal and equitable basis. He has denied that the accident took place due to his rash and negligent driving. He is an experienced driver carrying a valid Driving License. He has prayed for exoneration as the vehicle was duly insured.

5) The insurer, O.P. No.2, through written statement has questioned the income of the deceased. The insurer has *inter alia* denied the rash and negligent act of the driver. The accident took place due to contributory negligence of the deceased and the driver of the vehicle. In case of breach of the terms and conditions of the Insurance policy, the O.P. No.2 has prayed to dismiss the petition with compensation.

6) To substantiate their stance, the claimant No.1, Sri Sanjib Narah adduced his evidence and exhibited various documents. The Opposite Party did not adduce any evidence to substantiate their pleadings.

**SUBMISSIONS :**

7) It is submitted that it has been held by Hon'ble the Supreme Court in National Insurance Company Ltd. -vs- Birender and others in Civil Appeal No.244

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of 2020 decided on 13.01.2020, that major earning members are also legal heirs and they are entitled to compensation u/s 166 of the M.V. Act.

8) I have heard the learned counsel for the insurer. The learned counsel for the claimants has submitted written argument.

**ISSUES :**

9) On the backdrop of the rival contentions, the following issues were framed :

i) Whether Kuladhar Narah died as a result of injuries sustained by him in a motor vehicular accident on 05.12.2017 at about 6 am, involving vehicle bearing registration No.AS.07.C/ 7175 ( Bolero Pick up ), and whether the said accident had taken place due to rash and negligent driving of the aforesaid vehicle?

ii) Whether the claimants are 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**

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**ISSUE NOS.1 AND 2 :**

10) As only two issues were framed, both the Issues No.1 and 2 are decided conjointly.

11) The claimant, Sri Sanjib Narah's evidence reiterates his petition. It is clear from his evidence that the deceased died as a result of the accident, which was caused by the O.P. No.1. The O.P. No.1 acted in a rash and negligent manner. The claimants' evidence is substantiated by the documentary evidence adduced by the claimants. Ext.1 is the Accident Information Report in Form-54, which clearly depicts that a Boginadi P.S. Case No.248/2017 was registered against the driver of the vehicle, which met with an accident on 05.12.2017 at about 6 am in front of Boginadi Police Station beside NH-15, resulting in death of the deceased. This case was registered against the O.P. No.1 u/s 279/ 304(A)/ IPC and charge-sheet was laid against the driver, Harun Rasid under the aforesaid sections of Law. Ext.3 is the certified copy of the charge-sheet in three pages.

12) On the touchstone of preponderance of probability, it is held that the vehicle bearing registration No.AS.07.C/ 7175 ( Bolero Pick up ) is the offending vehicle and the driver is responsible

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for the accident. The claimant was cross-examined in extenso, but the defence failed to rebut that the vehicle was driven in a rash and negligent manner. The evidence of CW.1 and the documentary evidence proves that on broad probabilities, the Bolero Pick up bearing registration No.AS.07.C/7175 is the offending vehicle.

13) After scrutinising the evidence, it is clear that the deceased was a retired Lat Gaonburah and was also running a business. Though the claimant claims that the deceased used to earn Rs.20,000/- per month, but they failed to substantiate their claims regarding income of the deceased. So, the notional income of Rs.3,000/- is taken as income of the deceased at the time of the accident.

14) The age of the deceased, according to Ext.2, Post Mortem Report, was 61 years at the time of the accident. Thus, the appropriate multiplier in this case is '7'.

15) Thus, the annual income tantamounts to  $\text{Rs.3,000/-} \times 12 = \text{Rs.36,000/-}$ . Regarding the amount to be deducted towards the personal expenses of the deceased, I would like to refer with profit, the decision of **Hon'ble the Supreme Court in Sarla Verma and others -vs- DTC and**

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**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 ( $1/3^{\text{rd}}$ ) where the number of dependent family members is 2 to 3, one-fourth ( $1/4^{\text{th}}$ ) where the number of dependent family members is 4 to 6, and one-fifth ( $1/5^{\text{th}}$ ) where the number of dependent family members exceed six.”**

16) Reverting back to this case, it is held that as the deceased was survived by four family members, so one-fourth ( $1/4^{\text{th}}$ ) is deducted towards personal expenses of the deceased. The appropriate multiplier in this case is '7'. Thus, the loss of dependency tantamounts to Rs.36,000/- x 7 = Rs.2,52,000/-. After deduction  $1/4^{\text{th}}$ , the loss of dependency is Rs.1,89,000/- ( Rupees One Lac Eighty Nine Thousand) only.

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17) 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, and I have added an amount of Rs.15,000.00 as loss of estate. An amount of Rs.15,000.00 is added as funeral expenses.

18) The documentary evidence submitted by CW.1 especially, the Accident Information Report clearly depicts that the offending vehicle was duly insured vide Policy No.322801/ 31/ 2018/ 6380 and it was valid upto 21.02.2019, 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.AS-0720110001680 and it was valid upto 20.09.2031. The defence failed to rebut the evidence adduced by the claimants. All the Claimants are major and all are above 27 years of age. They are not entitled to parental consortium.

19) Thus, the total compensation sums up to Rs.1,89,000/- (Loss of dependency) + Rs.15,000/- (Loss of estate) + Rs.15,000/- (Funeral expenses) = Rs.2,19,000/- (Rupees Two Lacs Nineteen Thousand) only. Both the issues are decided, accordingly.

### **A W A R D**

20) In view of my foregoing discussions, it is held that the claimants are entitled to an award of Rs.2,19,000/- (Rupees Two Lacs Nineteen Thousand)

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only, from the O.P. No.2, Oriental Insurance Company Ltd.. So, the O.P. No.2 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 O.P. No.2 for compliance.

Judgment is signed, sealed and delivered in the open Court on the 30<sup>th</sup> day of September, 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.

**A P P E N D I X****M.A.C.T. CASE NO.3/2018.****LIST OF WITNESSES FOR CLAIMANT :**

1. CW.1 - Sri Sanjib Narah.

**LIST OF EXHIBITS FOR CLAIMANT :**

1. Ext.1 - Accident Information Report.
2. Ext.2 - Post Mortem Report.
3. Ext.3 - 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.