

**IN THE COURT OF MEMBER, M.A.C.T. ::: MORIGAON**

**MAC (Death) Case No. 57/2016**

U/S 166 M.V. Act

**Present : Mr. P. Das,  
Member, M.A.C.T.  
Morigaon, Assam.**

**Claimants: 1) Musstt. Farida Begum** (Mother of the deceased)

**2) Md. Abu Hanifa** (Father of the deceased)

-Versus-

**Opp. Parties : 1. National Insurance Co. Ltd.**

Policy No. 55270031156360191529

Valid upto 25.03.2017.

(Insurer of the vehicle bearing registration No. AS-02-AC-0697

(Tata Mobile 207 DI).

**2. Md. Nur Zamal**

(Owner of the vehicle bearing

registration No. AS-02-AC-0697

(Tata Mobile 207 DI).

**Appearance:**

Advocate for the Claimants : Mr. A. Salam, Ld. Advocate.

Advocate for the O. P. No. 1 : Mrs. S. Bhuyan, Ld. Advocate.

Advocate for the O. P. No. 2 : Mr. P. Saikia, Ld. Advocate.

Date of Argument : 26.09.2019.

Date of Judgment : 01.11.2019.

## **JUDGMENT**

- 1.** The instant claim petition has been filed U/s 166 of the MV Act, filed by two claimants, namely, Md. Farida Begum and Md. Abu Hanifa, seeking compensation for the death of their minor Daughter Farjina Khatun in a road traffic accident, which is stated to have occurred on 17.05.2016, at 5.15 PM at Bandura Ati under Kachua PS, in the district of Nagaon, involving a vehicle bearing registration No. AS-02-AC-0697 (Tata Mobile 207 DI). The claimants are stated to be the parents of the deceased and that they are presently residing at Telahi Chariali under Dharamtul PS, Morigaon. The respondent no.1 is stated to be the insurer of the vehicle bearing registration no. AS-02-AC-0697 (Tata Mobile 207 DI) and the respondent no. 2 Md. Nur Zamal is stated to be its owner.
  
- 2.** Upon issuance of notices, all the respondents appeared and filed their respective written statements.
  
- 3.** On the basis of the pleadings of the parties, the following issues were framed:

  - i. Whether, the alleged accident took place on 17.05.2016, at about 5.15 PM, at Bandura Ati under Kachua Police Station in the district of Nagaon, due to rash and negligent driving on the part of the offending vehicle bearing Registration No. AS-02-AC-0697 (Tata Mobile 207 DI)?
  - ii. Whether, in the alleged accident, the Daughter of the claimants i.e. Farjina Khatun died as a result of the motor vehicle accident involving the vehicle bearing Registration no. AS-02-AC-0697 (Tata Mobile 207 DI)?
  - iii. Whether, the claimants are entitled to get any compensation, and if so, what should be the quantum of the said compensation and who will be liable to pay the compensation?
  
- 4.** I have heard Ld. Counsels of both sides.

**5.** During the proceedings, the claimant No.1 Musstt. Farida Begum adduced evidence on affidavit as PW-1 and also exhibited some documents. The respondent side did not adduce any evidence.

**6.** The claimant no.1 Farida Begum, stated to be the mother of the deceased adduced evidence as PW-1 in which she has stated that on 17.05.2016 at about 5.15 PM, her minor daughter Ms. Farjina Khatun was standing at Bandura Ati under the boundary of Safiquil Islam and at that time vehicle bearing registration No. AS-02-AC-0697 (Tata Mobile 207 DI) coming on that road and driving in a rash and negligent manner knocked down her daughter, as a result of which, she sustained multiple grievous injuries and died on the spot. It is stated that her daughter was aged 8 years old at the time of her death. PW-1 also stated that the accident took place due to rash and negligent driving of the driver of the Tata Mobile 207 DI vehicle. In cross-examination, she stated that her daughter died in the accident; that she had not seen the accident; that her daughter was studying in class III at the time of accident. As part of the evidence on affidavit, the PW-1 has exhibited the following documents;

- i) Exhibit – 1 : Accident Information Report, Form-54.
- ii) Exhibit – 2 : Post Mortem Report.
- iii) Exhibit – 3 : FIR.
- iv) Exhibit – 4 : Ejahar.
- v) Exhibit – 5 : Charge-sheet.
- vi) Exhibit – 6 : Voter ID of the claimant.
- vii) Exhibit – 7 : Gaonburha Certificate.

**7.** I have perused the Accident Information Report (Form-54), which has been exhibited as Exhibit 1, indicating the name of the deceased as Farjina Khatun aged 8 years; the date, time and place mentioned as 17.05.2016 at 5.15 PM, at Bandura Ati; the registration number of the vehicle involved in the accident as AS-02-AC-0697 (Tata Mobile 207 DI) and the name of the owner and driver of the offending vehicle mentioned as Md. Nur Zamal and Md. Nur Amin

respectively. I have also perused Exhibit 3 & 4, the ejahar & FIR lodged in connection with the accident, whereupon, Kachua P. S. case No. 121/16 was registered u/s 279/304(A) IPC and after completion of investigation, charge-sheet (Ext.5) was submitted against Md. Nur Amin-the driver of the said offending vehicle u/s 279/304 (A) IPC. Further, I have also perused Exhibit 2, the post mortem report of the deceased including the column pertaining to opinion as to cause of death.

**8.** On the basis of the aforesaid materials on record, I come to the considered finding that on 17.05.2016 at 5.15 PM, an accident took place at Bandura Ati, under Kachua PS, Nagaon, involving a vehicle bearing Registration No. AS-02-AC-0697 (Tata Mobile 207 DI) in which the daughter of the claimants-Farjina Khatun died and that the said accident took place due to rash and negligent driving of the driver. Issue no. 1 and 2 are decided accordingly.

**9.** In the claim petition, it is stated that the claimant have filed the claim petition seeking compensation for the death of their daughter in the concerned accident. In her evidence on affidavit, PW-1 has stated about she being the mother of the deceased. Further, the claimant side has exhibited as Ext.7-Gaonburha Certificate in which it is stated that presently the PW-1 is staying as a tenant at Telahi Chariali. The aforesaid materials and testimony has remained unshaken and therefore, I come to the finding that the claimants being the parents of the deceased are entitled to compensation for the death of their daughter in a road accident.

**10.** As per the evidence of claimant No.1, the deceased was aged 8 years old and the same has remained unshaken in the cross-examination. Further, in the post-mortem report, the age of the deceased is indicated as 8 years. It is well settled that determining the compensation with regard to the death of a minor child by MAC Tribunal is a challenging task since the child is not an earning person. However, under the MV Act, just compensation must be awarded to the

claimants. Accordingly, there is no other option but to go by notional income of Rs. 15,000/- per annum and a multiplier of 15 as laid down by the Hon'ble Supreme Court and the Hon'ble High Courts in various decisions. Therefore, this court considers the multiplier to be 15 in this case and as such the loss of income of the deceased is assessed as Rs. 15000x15=2,25,000/- (Two Lakhs twenty five thousand only).

**11.** As per the law laid down by the Hon'ble Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680*, the compensation towards funeral expenses, loss of estate has been quantified at Rs. 15,000/- each. Further, as per the decision of the Hon'ble Supreme Court in the *Magma General Insurance Company Ltd. Vs Nanu Ram, 2018 SCC online SC 1546*, the filial consortium is required to be awarded to the parents who have lost the child in an accident. As per the decision laid down in *Pranay Sethi (Supra)*, consortium amount has been quantified as Rs. 40,000/-. Therefore, in the instant case, filial consortium of Rs. 40,000/- is awarded to each of the parents by making it a total of Rs. 80,000/-. Finally, towards litigation costs, an amount of Rs. 10,000/- is awarded to the claimants.

**12.** So, in view of the above calculation, claimants are entitled to get compensation as follows :

a) Dependency/Loss of income	Rs. 2,25,000/-
b) Filial Consortium	Rs. 80,000/-
c) Funeral expenses	Rs. 15,000/-
d) Loss of estate	Rs. 15,000/-
e) Cost of litigation	Rs. 10,000 /-
Total :	Rs. 3,45,000/-

**(Rupees Three lakhs Forty Five Thousand only)**

**13.** In the written statement of the owner/respondent No.2, it is stated in para 3 and 4 that at the time of accident vehicle bearing registration No. AS-02-AC-0697 was covered by insurance policy No. 55270031156360191529, issued by National Insurance Company Ltd. with a validity up to 25.03.2017 and that the driver Nur Amin was holding a driving license valid upto 15.03.2033. A copy of the insurance policy is annexed with the written statement, perusal of which reveals the said coverage details with validity from 26.03.2016 to the midnight of 25.03.2017. The Form-54 exhibited as Ext.1 also indicates the aforesaid coverage. Further, the insurer has also not adduced any rebuttal evidence challenging the coverage of the offending vehicle at the time of the accident.

**14.** On the basis of the aforesaid evidence on record, I come to the considered finding that on the date of the accident–17.05.2016, the offending vehicle bearing registration No. AS-02-AC-0697 was covered by a valid insurance policy issued by the respondent No.1 – National Insurance Co. Ltd. Therefore, the insurer would be liable to indemnify the owner with regard to the awarded compensation.

**15.** Under the above facts and circumstances and in view of the above discussion, the claimants are found entitled to a total compensation of Rs. 3,45,000/- (Rupees Three lakhs Forty five thousand only) along with an interest @ 6% per annum payable from the date of filing of the claim petition till payment to be paid by the respondent No. 1/ National Insurance Company Ltd./Insurer of the offending vehicle to the claimant within a period of three months.

**16.** Send a copy of this judgment to the Opposite Party No. 1 (National Insurance Company Ltd.) for compliance of this judgment.

Given under my hand and seal of this Court on this 01<sup>st</sup> day of November, 2019.

Dictated and corrected by me

P Das  
Member, MACT, Morigaon,

(P Das)  
Member, MACT, Morigaon

### **APPENDIX**

**A. Claimant's witness:**

PW-1 : Musstt. Farida Begum

**B. Opposite parties witness:**

Nil.

**C. Claimant's exhibit:**

- A. Exhibit – 1 : Accident Information Report, Form-54.
- B. Exhibit – 2 : Post Mortem Report.
- C. Exhibit – 3 : FIR.
- D. Exhibit – 4 : Ejahar.
- E. Exhibit – 5 : Charge-sheet.
- F. Exhibit – 6 : Voter ID of the claimant.
- G. Exhibit – 7 : Gaonburha Certificate.

**H. Opposite Party's Exhibit :**

Nil.

P Das  
Member, MACT, Morigaon

**MAC (Death) Case No. 57/2016****01.11.2019:**

The claimants and the insurer are represented by their respective learned counsels.

Judgment is ready and pronounced in the open Court.

The claim of the claimants are allowed on contest for an award of Rs. 3,45,000/- (Rupees Three lakhs Forty five Thousand only) along with an interest @ 6% per annum payable from the date of filing of the claim petition till payment to be paid by the respondent No. 1/National Insurance Company Ltd./Insurer of the offending vehicle to the claimant within a period of three months.

Send a copy of this judgment to the Opposite Party No. 1 (National Insurance Company Ltd.) for compliance of this judgment.

The instant MAC Case stands disposed of on the aforesaid terms.

P Das  
Member, MACT, Morigaon