

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL :: MORIGAON**

*Present:- Sri. S. K. Poddar, AJS  
Member, MACT,  
Morigaon.*

**MAC (Death) Case No. 13/2016**

1. Smti. Aruna Saikia,  
W/O: Late Nareswar Saikia,
2. Sri Bikash Saikia (Minor and represent by claimant No. 1)  
S/O: Late Nareswar Saikia,  
  
Both R/O: Lathabori,  
P.O: Morigaon,  
P.S. Morigaon.  
District: Morigaon, Assam. .... Claimants

**-Vs-**

1. The Oriental Insurance Company Limited,  
Guwahati Branch, Guwahati.  
(Insurer of the Vehicle No.AS-21-E-1405, TATA NANO)
2. Sri Tarini Sarma,  
S/O- Late Dambarudhar Sarma,  
R/O: Phulbari, Ward No.8,  
P.S.: Morigaon,  
District: Morigaon, Assam  
(Owner of the Vehicle No.AS-21-E-1405, TATA NANO)  
  
..... Opposite Parties

**Advocate Appeared:-**

Mr. Abdus Salam ..... for the Claimant.  
Mr. Hiranya Kumar Nath ..... for the O.P. No. 1.  
Mr. Moyuri Goswami .....for the OP No. 2.

Date of Argument:- 08.01.2020

Date of Judgment:- 30.01.2020

## **JUDGMENT**

1. The claim petition has been filed by the wife and minor son of the deceased as claimant No. 1 and 2, under section 166 of M.V Act, 1988, claiming compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs ) only on the death of Nareswar Saikia in a motor vehicle accident occurred on 09.01.2016. The claimant No.2 Bikash Saikia being a minor is represented by claimant No. 1 i.e her mother. `

2. Claimant's case in brief is that, on 09.01.2016, at about 11.30 AM, while her husband Nareswar Saikia was coming from Morigaon Saturday weekly Market by driving motor cycle bearing Registration No. AS-09-A-9037 and reached near Pub Siva Mandir, Morigaon, the vehicle bearing Registration No. AS-21-E-1405, (TATA NANO) was coming from back side with a very rash and negligent manner and knocked on the back side of the m/cycle. As a result of this accident, Nareswar Saikia sustained multiple grievous injuries on his head and other parts of the body. Immediately Nareswar Saikia was admitted at Morigaon Civil Hospital and providing preliminary treatment, he was referred to Guwahati for better treatment. Accordingly, he was admitted at Agile Hospital, Guwahati. During treatment Nareswar Saikia died on 21-01.2016 at Agile Hospital. Post-mortem was done at GMCH, Guwahati. The accident took place due to rash and negligent driving of Nano vehicle, which was coming in a high speed. It is pleaded that at the time of the accident, the deceased was 63 years. He was a retired government employee and also working as consultant in Columbia Global Center, South Asia Model District Education Project and used to earn Rs. 52,033/-(Rupees fifty two thousand thirty three) only per month. Deceased was the sole bread earner of his family. With regard to the accident, Morigaon Police station registered a case vide Morigaon PS Case No. 26/16 U/S 279, 304 (A) IPC. The offending vehicle No. AS-21-E-1405, (TATA NANO) was duly insured with OP No. 1 vide Policy No. 121500/31/2016/01/50018756, valid up to 22.11.2016 and was driven by O.P. No. 2, having valid Driving Licence.

3. On receipt of notices, both the opposite parties have submitted their respective written statements. The Opposite party No. 1/Oriental Insurance Company Limited, in its written statement denied all the averments made and stated inter-alia that they had no authenticated information regarding the accident. The insurance company declined to accept the liability, if there was violation of the terms and conditions of the policy or the driver did not have valid and effective driving license. They also stated that they had no information regarding the age and income of the deceased. In absence of proper documents, the income of the injured could not be accepted to be true. The amount of compensation claimed by the claimants is highly exaggerated and without any basis.

4. The Opposite Party No. 2, the owner-cum-driver of the offending vehicle No. AS-21-E-1405, (TATA NANO Car) in his written statement did not denied the accident dated on 09.01.2016 and the pleadings of his negligent driving causing the accident. It is stated that he has a valid driving license bearing DL No.3710/MG/Pvt./07 valid upto 26/08/2018 at the time of accident and the vehicle is duly insured with Oriental Insurance Company Limited bearing policy No. 121500/31/2016/01/50018756, valid up to 22.11.2016 and the policy was in force at the time of accident. If any award is passed, then the entire liability is to be fastened upon the O.P. No. 1/Oriental Insurance Company Limited.

5. Upon the above pleading of the parties, the following issues framed by then presiding officer for just decision of this case:-

*1) Whether the accident took place on 09.01.2016 at 11.30 A.M. at Morigaon Town near Siva Mandir Pub, due to rash and negligent driving on the part of driver of the vehicle bearing registration No. AS-21-E-1405?*

*2). Whether Nareswar Saikia died in the said accident that took place on 09.01.2016 at 11.30 AM?*

*3) Whether the claimant is entitled to get compensation, if so, by whom it is payable and to what extent?*

6. During trial, in support of claim petition, the claimant Smt. Aruna Saikia has examined herself as PW 1, Bhakta Baruah as PW 2 and proved several documents. The opposite party No. 1/Oriental Insurance company Limited has its investigator Sri Nitumoni Choudhury as DW 1.

7. I have heard arguments of both the parties and perused the materials on records.

### **DECISIONS AND REASONS THERE**

8. **ISSUE NO. 1 & 2:-** The claimant in the claim petition and also in her affidavit of evidence as PW 1 deposed that on 09.01.2016, at about 11.30 AM, while her husband Nareswar Saikia was coming from Morigaon Saturday weekly Market by driving motor cycle bearing Registration No. AS-09-A-9037 and reached near Pub Siva Mandir, Morigaon, the vehicle bearing Registration No. AS-21-E-1405, (TATA NANO) was coming from back side with a very rash and negligent manner and knocked on the back side of the m/cycle. As a result of this accident, Nareswar Saikia sustained multiple grievous injuries on his head and other parts of the body. Immediately Nareswar Saikia was admitted at Morigaon Civil Hospital and providing preliminary treatment, he was referred to Guwahati for better treatment. Accordingly, he was admitted at Agile Hospital, Guwahati. During treatment Nareswar Saikia died on 21-01.2016 at Agile Hospital. Post-mortem was done at GMCH, Guwahati. The accident took place due to rash and negligent driving of Nano vehicle, which was coming in a high speed. With regard to the accident, Morigaon Police station registered a case vide Morigaon PS Case No. 26/16 U/S 279, 304 (A) IPC. In support of his evidence so far accident, negligent driving, getting injury, taking treatment and death of Nareswar Saikia, PW 1 has proved the Form 54 (accident information report) as Exbt. 1, Copy of P M report as Exbt. 2, c/copy of FIR as Exbt. 3 & 4, C/Copy of Charge Sheets for the accident as Exhibit No 5, and various documents showing taking treatment from 09.01.2016 till 22.01.2016. In her cross-examination by OP No. 1, she denied the allegations that accident

occurred for the fault of her husband. PW 2 some documents on income of the deceased.

9. To prove the fact of accident due to negligence of Op No. 2 and the fact of death of Nareswar Saikia due to injury sustained by him on 09.01.2016 mainly relied various police papers and medical certificates as mentioned here-in-before. The claimant side has claimed that after the accident Chandra Gogoi was under treatment at Agile hospital, Guwahati and proved various medical documents vide Exbt. 6 to 152. I have gone through the documents. From Exbt. 152 the final bill issued by Agile Hospital it appears that Nareswar Saikia was admitted there on 09.01.2016 and was admitted there till 22.01.2016. PM report shows that post mortem was conducted on the dead body of Nareswar Saikia on 22.01.2016 and cause of death was ascertained for sustaining injury on scalp. No challenge was made on the accident and sustaining injury by Nareswar Saikia and his death on 22.01.2016.

10. SO far negligence aspect is concerned, claimant has solely relied on police papers. In the FIR dated 24.01.2016, it was clearly mentioned that accident occurred for the fault of Op No. 2. After due investigation on this FIR, police laid charge sheet against Op No. 2 to face trial for negligent driving and causing death of Nareswar Saikia. The fact of negligent driving was not even specifically denied the OP No. 2 in his w/s, which can also be presumed from Exbt. 2, police report of accident (Form 54) and from the charge sheet submitted by police against OP No. 2. OP No. 1 though brought the copy of G D Entry No. 284 dated 09.01.2016 on evidence through DW 1, but looking at the contents, it appears that while the deceased while driving his m/cycle tried to overtake the Nano car driven by Op No. 2, suddenly the Nano car take left turn on which the deceased hit the Nano car and fell down and sustained injury. The defence argument that the deceased was trying to overtake from wrong side i.e. left side of Nano Car but it was the duty of the Nano driver to look into left side before taking sudden left turn. Contents of the G D Entry clearly indicates that for sudden turn on left side, the accident occurred. However, this G D Entry was made just after the preliminary investigation. After detail

investigation, the charge sheet was laid against the Op No. 2 b holding him guilty of negligent driving. Insurance company though tried to impress upon that the deceased had contributed in the accident but failed to do so by calling any eye witness of accident even did not bother to examine the OP No. 2, who would have been the best witness. Mere proving of G D Entry which also indicts the Op No. 2 through investigator will not absolve the insurance company from their burden to prove the plea of contributory negligence at least on the standard of preponderance of probability.

11. It may be mentioned here that the standard of prove of negligence as required in a claim petition u/s 166 M V Act is on the touchstone of preponderance of probability as held by Hon'ble Supreme Court of India in *Bimla Devi v. Himachal Road Transport Corporation* [(2009) 13 SCC 530].

12. Hon'ble Gauhati High Court in the reported case of *Godavari Devi Sharma and ors vs United India Insurance Company Ltd. and ors* [2012 (4) GLT 516] held as follows:-

*(14) Moreover, while conducting the inquiry into a claim under Section 166 of the M. V. Act, the Tribunal is not expected to search for proof or evidence beyond reasonable doubt, rather it is preponderance of probability, what the tool is, for assessment of the evidence. The Tribunal can arrive at its finding on the prima facie materials, such as the First Information Report to presume existence of the certain facts, in absence of other evidence which might debase such presumption."*

13. Evidence of the claimant side both oral as well as documentary, in regards the accident involving the offending vehicle driven by OP No. 2 and that, the offending Tata Nano was driven in a rash and negligent manner is proved. As such, I hold that the road traffic accident was occurred due to rash and negligent driving of the Tata Nano driven by OP No. 2 in which Nareswar Saikia sustained head injury and subsequently succumbed to the injuries during treatment. These 2 issues are decided accordingly.

14. **ISSUE NO. 3:-** In view of the discussion and decision of the previous issues, the claimants being wife and son of deceased and legal

representative are entitled to get compensation under the provisions of section 166 of M V Act. Now the prime question is what should be the just and fair quantum of compensation. In determining the compensation, essential factors e.g. age of the deceased, income, future prospects, dependency etc. are relevant.

15. So far age of the deceased is concerned, in the claim petition, the age of the deceased was mentioned as 63 year. In PM report age was shown as 62 years. Claimant side has proved pensions papers of the deceased vide exbt. 153 wherein date of birth of the deceased was mentioned as 02.12.1953. Accident occurred on 09.01.2016. Nareswar Saikia died on 22.01.2016. No challenge was made on this document. Thus, it is proved that on the date of accident, the deceased was aged about 62 years 1 month. As per the table of multiplier shown in the **Sarla Verma's** case, as the deceased was about 62 years of age, the multiplier will be 7 (fixed for the age groups of 61 to 65).

16. So far income of the deceased is concerned, PW 1 in her evidence deposed that deceased was a retired teacher, having monthly Pension of Rs. 22,868/- per month. However pension cannot be treated as income rather it was paid by Govt. to its retired employees for living dignified life. Even after the death of deceased the claimant being wife is certainly getting 50% of the pension amount as family pension to her. Thus virtually there is no loss on account of pension if we deduct the expenses of the deceased on his own from the said pension amount.

17. Apart from above, claimant has claimed that the deceased worked with Columbia Global Centers, South Asia, Mumbai as consultant for the district of Morigaon and earned Rs. 30,000/- per month w.e.f. 03.03.2014 till his death. PW 2 has proved some document vide Exbt. 153 series showing that the deceased was asked to consultant at Columbia Global Centers, South Asia, Mumbai for the District of Morigaon at a monthly remuneration of Rs. 30,000/- per month with some parks. The aforesaid contract was renewed from time to time upto 02.12.2015. No document was produced to show further renewal of

contract. Few of the renewal papers were in Xerox copies. There is nothing to show that on the date of accident, the deceased was in employment of Columbia Global Center in India. However considering that the deceased being a retired teacher has the ability to earn apart from his pensions and under this circumstances, by taking help of guess work and the fact that accident occurred in the year 2016, and that the deceased was aged person, the monthly income of the deceased apart from pension can safely be taken as Rs. 15,000/- per month which he could have saved for his family after maintaining himself and his family from pension amount.

18. So far the question of deduction on account of personal expenses of deceased is concerned, following the ratio of Sarla Verma's case, it will be 1/3 (one third) as the deceased had left behind his wife and one child as dependant. The monthly income after 1/3 (one third) deduction will be Rs. 10,000/-. As the deceased was aged about 62 years, there will not be any addition as future prospects.

19. Apart from the compensation to be calculated as above, claimant is entitled for a lump-sum amount for funeral expenses, loss of consortium to wife and loss of estate as per guidelines of National Insurance Company Limited –VS- Pranay Sethi and Ors. [(2017) 16 SCC 680]. Child of the deceased is also entitled for loss of parental consortium @ 40000/- as per the judgment of Hon'ble Supreme Court of India in **Magma General Ins. Co. Ltd.**

20. Furthermore the claimant side has claimed that after the accident Nareswar Saikia was under constant treatment at Guwahati and spent about Rs. 4,00,000/- on the treatment of her husband. Claimant had proved various medical documents vide Exbt. 6 to 152. I have gone through the documents. From these documents issued by Agile Hospital, Guwahati, it appears that claimant has spent total expenses of Rs. 3,37,164/- on the treatment of deceased from 09.01.2016 till 22.01.2016. Claimant though deposed about other expenses but failed to prove vouchers for the same. However as part of incidental expenses, claimant is entitled for some amount towards

transportation from Morigaon to Guwahati, cost of attendant during treatment at Guwahati and other Misc. Expenses.

21. Thus, having considered the facts and circumstances of the case, just and reasonable compensation is assessed as under.

|  |                 |
|--|-----------------|
| Loss of dependency Rs. 10000/- x 12 x 7 -                    | Rs. 8,40,000/-  |
| Cost of treatment  | Rs. 3,37,164/-  |
| Transportation/Misc. Expenses during treatment               | Rs. 10,000/-    |
| Cost of attendant for 15 days                                | Rs. 2,500/-     |
| Loss of Consortium to wife                                   | Rs. 40,000/-    |
| Loss of parental consortium to son                           | Rs. 40,000/-    |
| Loss of Estate   | Rs. 15,000/-    |
| Funeral expenses   | Rs. 15,000/-    |
| <hr/>  |                 |
| Total ...  | Rs. 12,99,664/- |
| Rounded Off to Rs. 13,00,000/- (Rupees thirteen lakhs) only. |                 |

22. Now the question is who shall pay the above amount of compensation. There is no dispute to the fact that at the relevant time of accident, the offending Tata Nano bearing Reg. No. AS-21-E-1405 was duly insured with OP No. 1 vide Policy No. 121500/31/2016/01/50018756, valid up to 22.11.2016 and was driven by O.P. No. 2, having valid Driving Licence. As such, the OP No. 1 M/S Oriental Insurance Co. Ltd shall pay the amount to the claimant.

### **AWARD**

23. Claimant No. 1 being wife and claimant No. 2 being minor son of the deceased are jointly entitled to get Rs. 13,00,000/- (Rupees thirteen lakhs) only with interest @ 7.5% (seven point five) p.a. from the date of filing the claim-petition, i.e. 21.03.2016 till payment, from the OP No. 1, M/S Oriental Insurance Co. Ltd.

24. To avoid any future dispute between the claimants, by using the powers under The Fatal Accidents Act 1855 and Assam M V Rules, the award with interest is apportioned between the claimants. Considering age and need of the claimants it is provided that both the claimant will get the amount in equal share.

25. To protect the interest of the claimant No. 1 (wife of the deceased) it is directed that, on receiving payment of the awarded amount with interest, 60% (sixty) of the amount received, from her share be kept in FIXED DEPOSIT of a Nationalized Bank in their name for a minimum period of three years. Rest 40% amount be released to them through a/c payee bank cheques.

26. To protect the interest of the child of the deceased, (claimant No. 2), 80% (eighty) of the amount from his share be kept in fixed deposit in his name in any Nationalized Bank till he attains the age of 18 years. Rest 20% amount be released to the claimant No. 1 (mother of the claimant No. 2) through a/c payee bank cheques to be utilized to meet the expenses of the case as well for future well being of the children.

27. The OP No. 1, M/S Oriental Insurance Co. Ltd. is directed to pay the award amount with interest within 30 (thirty days) from today.

28. Furnish a free copy of this judgment to claimant No. 1 and Op No. 1 as provided u/s 168(2) M V Act within 7 (seven) days from the date of judgment.

Given under my hand and seal of this Court on this the 30<sup>st</sup> day of January, 2020 at Morigaon.

Member, MACT,  
Morigaon.