

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

M.A.C. (Death) Case No. 30/2017

U/S 166 M.V. Act

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

Parties :- 1. Mustaque Najibun Aktar
2. Mustaque Nasrin Rahman

.....Petitioners/ Claimants.

-Vs-

1. National Insurance Company Ltd.
(Insurer of vehicle bearing Registration No.
AS-02-M-9130 (Indica Tata Z)
Policy No. 55270031156160157879.
Valid upto 06.01.2017.
2. Md. Mainuddin
(Owner of vehicle bearing Registration No.
AS-02-M-9130 (Indica Tata Z)
..... Opp. Parties.

Appearance of the Parties

Advocate for Claimant : 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. N. Das, Ld. Advocate.
Date of Argument : 06.02.2019.
Date of Judgment : 08.03.2019.

J U D G M E N T

1. The instant claim petition has been filed by Mustaque Najibun Aktar and Mustaque Nasrin Rahman as claimants u/s 166 of the M.V. Act 1988, seeking compensation for the death of Tahidur Rahman stated to be the son of claimant no. 1 and brother of claimant no. 2, in a road accident on 19.10.2016, at *Hatimuria Gostol* under Moirabari police station in the district of Morigaon, Assam. The respondent No. 1 is National Insurance Company Ltd., is stated to be the insurer of the offending vehicle bearing registration No. AS-02-M-9130. The respondent No. 2 is Mainuddin, stated to be the owner of the said vehicle.

2. Upon issuance of notices, both respondents appeared and filed their respective written statements.

3. On the basis of the pleadings of the parties the following issues were framed.

- a) Whether the accident took place on 19.10.2016, at about 3 PM at *Hatimuria Gostol* under Moirabari P.S. due to rash and negligent driving on the part of the driver of the vehicle bearing registration No. AS-02-M-9130 (Indica Tata Z) ?
- b) Whether Tahidur Rahman died in the said accident that took place at *Hatimuria Gostol* under Moirabari P.S. ?
- c) Whether, the claimant is entitled to get any compensation, if so, by whom is payable and to what extent ?

4. DISCUSSION, DECISION AND REASONS THEREOF

At the proceedings, the claimant no. 1 adduced evidence on affidavit as PW-1 and exhibited some documents as part of her evidence. She was cross-examined on behalf of the insurer. In her evidence the claimant as PW-1 stated that on 19.10.2016, at about 3 PM, her son Tahidur Rahman was going from Moirabari to Hatimuria PWD road to his own residence by walking by his own side and when he reached Hatimuria Gostol, one Tata Indica Z vehicle bearing registration No. AS-02-M-9130 coming from opposite direction and driven in a rash and negligent manner hit him, resulting in serious injuries, where after he was taken to Moirabari FRU and then to the GMCH and that he died in GMCH.

The said testimony of PW-1 regarding the accident has remained unshaken. The accident information report has been exhibited as Ext-1 in which the particulars of the accident narrated by PW-1 also find mention. The date of the accident is mentioned in the Form-54 as 19.10.2016, involving AS-02-M-9130. The name of the driver is mentioned as Amtajul Hoque, S/o Habibur Rahman and the owner as Md. Mainuddin. The name of the deceased is mentioned as Tahidur Rahman and it is also stated that Moirabari P.S. Case No. 76/2017 u/s 279/338/304(A) of I.P.C. was registered pertaining to the incident. The ejahar lodged in connection with the accident has been exhibited as Ext-4, the F.I.R. as Ext-3. I have perused the same which narrates the aforesaid details of the accident. I have also perused Ext-2, the post mortem report of the deceased Tahidur Rahman and seen the column of opinion as to cause of death. Moirabari P.S. Case No. 76/2017 which was registered in connection with the accident resulted in a charge sheet upon completion of investigation, against Amtajul Hoque, S/o Habibur Rahman, driver of the vehicle mentioned as AS-02-M-9130. The charge sheet was filed u/s 279/337/338/427/304(A) of I.P.C. On the basis of the aforesaid evidence and materials on record, I come to the considered finding that on 19.10.2016, vehicle bearing No. AS-02-M-9130 was involved in an accident during which it hit the deceased Tahidur Rahman resulting in his death. The accident took place due to the rash and negligent driving of the said vehicle. Thus, Tahidur Rahman died in a road accident on 19.10.2016, involving vehicle No. AS-02-M-9130, with the accident having taken place due to rash and negligent driving of the said vehicle. The issue No. 1 and 2 are accordingly decided.

5. The claimant no. 1 as PW-1 has stated in her evidence on affidavit as well as in the claim petition that the deceased was her husband. It is also stated in the claim petition that the deceased was the brother of the claimant no. 2. Therefore, the claimants being the legal heirs of the deceased are entitled to compensation for his death in the road accident.

6. In her evidence on affidavit, claimant no. 1 has stated that her son was aged 21 years at the time of his death in the road accident. In the post mortem report, the age of the deceased is stated as 18 years. In the context of the above, going by the evidence adduced by the claimant side, I take the age of the deceased as 21 years and therefore, the applicable multiplier would be 18.

7. Claimant as PW-1 has stated that at the time of his death her deceased son was working as a vegetable vendor earning Rs. 15,000/- per month. In her cross-examination she has reiterated that her son was earning Rs. 15000/- per month at the time of his death, as a vegetable vendor. As part of her evidence PW-1 has exhibited as Ext-6 and Ext-7 respectively, documents / certificates, issued by the *Mauzadar*, Moirabari and *Sarkari Gaonburah* of village Hatimuria under Moirabari P.S. regarding his income and occupation. The documentary evidence adduced regarding the income are not adequate. As regards the occupation certificate issued by the Gaon-burah, though it indicates that the deceased was working as a vegetable vendor at the time of his death, the same also does not constitute sufficient proof of his occupation. Of course, in evidence, PW-1 has stated that her deceased son was working as the vegetable vendor at the time of his death and she has reiterated the same in cross-examination. Regarding income also, PW-1 has stated in her evidence on affidavit and in cross examination that her deceased son used to earn ₹ 15,000/- as a vegetable vendor at the time of his death. However, in the context of lack of adequate supporting documentary evidence regarding the said income, it is not possible to go solely by the testimony of the PW-1 regarding the income of the deceased.

However, it is also to be borne in mind that a claim proceeding before the Tribunal is of a summary nature, where the standard of proof is at best preponderance of probability. The beneficial nature of the Motor Vehicles Act, 1988 with regard to a claim proceeding also has to be kept in mind.

In view of the above, in the interest of justice, on the basis of the existing materials on record, this Tribunal can take the view that a person working as a vegetable vendor in Moirabari could be assumed to be earning about Rs. 250/- per day, which would also be compatible with the standard of minimum wages holding the field in the State of Assam. Therefore, striking a balance and also invoking some inevitable guesswork, I take the monthly income of the deceased to be Rs. 7,500/-. Thus, the multiplicand would be Rs. 7,500/- X 12 X 18= 16,20,000/-.

8. From the claimants' petition and the evidence adduced by the claimants' side, it is clear that the deceased was unmarried and he left behind his mother and sister who are claimants in this proceeding. The claimant no. 2, the sister of the

deceased is aged 23 years and in cross-examination her mother as PW-1, has stated that she is unmarried and presently staying with her. Therefore, I would take dependants as two and since the deceased was a bachelor, deduction towards his personal and living expenses would be 50%. Accordingly, loss of dependency would be Rs. 16,20,000 x 50% = 8,10,000/-.

9. The deceased was self employed and aged below 40 years. His loss of income with regard to future prospects could be quantified as 40% X 8,10,000/- = Rs. 3,24,000/-. Rs. 15,000/- each is awarded towards the heads of funeral expenses and loss of estate. Further, in terms of the principles laid down by the Hon'ble Supreme Court in the case of *Magna General Insurance Co. Ltd. v. Nanu Ram, 2018 SCC Online SC 1546 (para 10)*, Rs. 40,000/- each is awarded to both the claimants by way of filial and sibling consortium respectively, as the claimant no. 1 lost her son and claimant no. 2 lost her brother. Finally, an amount of Rs. 10,000/- is awarded towards litigation cost. Accordingly, the total compensation is summarized as follows:-

(i) Dependency	: Rs. 8,10,000/-
(ii) Future prospects	: Rs. 3,24,000/-
(iii) Filial Consortium	: Rs. 80,000/-
(iv) Funeral expenses	: Rs. 15,000/-
(v) Loss of Estate	: Rs. 15,000/-
(v) Cost of litigation	: Rs. 10,000/-
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Total	: Rs. 12,54,000/-

(Rupees Twelve lakhs Fifty Four thousand only).

10. In the written statement submitted by the respondent No.2/ owner of the offending vehicle, it is stated that on the date of the incident the offending vehicle AS-02-M-9130 was covered by an insurance policy issued by the respondent No.1 vide policy No. 55270031156160157879 which was valid up to 06/01/2017. It is also stated that at the time of the accident, the vehicle was being driven by driver Amtajul Hoque with driving license no. F/1910/MG/Prof/09 valid upto 22.03.2018. The accident information report (Ext-1) also indicates the said policy number with regard to the offending vehicle valid up to 06.01.2017, and also the aforesaid

details of the driver. I have perused the copy of the insurance policy available on record which indicates the aforesaid policy number with report to the offending vehicle issued in the name of Mainuddin and valid from 07.01.2016 to 06.01.2017. Admittedly the date of the accident is 19.10.2016. In the context of the above, I come to the finding that the day of the accident, the offending vehicle was covered by valid insurance policy issued by respondent No.1 and therefore, the respondent No.1/ Insurer is liable to indemnify the owner with regard to the awarded compensation.

11. Under the above facts and circumstances and in view of the above discussion, the claimants Mustaque Najibun Aktar and Mustaque Nasrin Rahman are hereby awarded a total compensation of Rs. 12,54,000/- (Rupees Twelve lakhs Fifty Four thousand only) with interest @ 7.5% per annum payable from the date of claim petition till payment. The compensation amount shall be paid by the respondent No.1/ National Insurance Company Ltd./ Insurer of the offending vehicle, within a period of three months. It is further directed that out of the total awarded amount, Rs. 2,00,000/- (Rupees Two lakh only) each, shall be kept in fixed deposits in a Scheduled Bank in the name of the claimant no. 1 (mother of the deceased) and claimant no. 2 (sister of the deceased), for a period of 3 years respectively, for their security and future prospects. The rest of the amount shall be released to the claimants.

12. Send a copy of this Judgment and Order to the opposite party No.1 (National Insurance Company Ltd.) for doing needful at their end, in the light of the directions passed in this judgment and order.

Judgment is delivered in the open Court on this 8th day of March, 2019, under my hand and seal.

Dictated and corrected by me

Member, MACT
Morigaon, Assam

Member, MACT,
Morigaon, Assam

APPENDIX

A. Claimant's witness

PW-1 : Mustaque Najibun Aktar

B. Opposite parties witness :

Nil.

C. Claimant's exhibit

Ext.1 : Accident information report (Form No.54)

Ext.2 : Post-mortem report.

Ext.3 : FIR.

Ext.4 : Ejahar.

Ext.5 : Charge Sheet.

Ext.6 : Income certificate.

Ext.7 : Gaonburha certificate.

D. Opposite Party's Exhibit :

Nil.

Member, M.A.C.T.
Morigaon, Assam

MAC (Death) Case No. 30/2017**08.03.2019:**

Both sides have been represented by their respective learned counsels.

Judgment is ready and pronounced in the open Court.

The claim of the claimants is allowed on contest for an award of Rs 12,54,000/- (Rupees Twelve lakhs Fifty Four thousand only) to be paid by the respondent No.1/ National Insurance Company Ltd. The compensation amount shall be paid by the respondent No.1/ National Insurance Company Ltd./ Insurer of the offending vehicle, within a period of three months.

It is further directed that out of the total awarded amount, Rs. 2,00,000/- (Rupees Two lakh only) each, shall be kept in fixed deposits in a Scheduled Bank in the name of the claimant no. 1 (mother of the deceased) and claimant no. 2 (sister of the deceased), for a period of 3 years respectively, for their security and future prospects. The rest of the amount shall be released to the claimants.

Send a copy of this judgment to the respondent 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, Assam