

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
GOALPARA, ASSAM.

Present: D. MECH,
Member, MACT, Goalpara.

MAC CASE NO:- 72 OF 2017

1. Karimullah Sheikh
S/O – Late Baharuddin Sheikh,
2. Saiful Hoque
S/O – Karimullah Sheikh.

----- Claimants.

Vs.

1. Oriental Insurance Co. Ltd. ----- Insurer of the vehicle no. AS-01/CC-4117 (Oil Tanker),
2. Bishnu Prasad Das ----- Owner of the vehicle no. AS-01/CC-4117 (Oil Tanker),
3. Pankaj Rabha ----- Driver of the vehicle no. AS-01/CC-4117 (Oil Tanker).

----- Opp. Parties.

Advocates appeared in the case:

Mr. M. Ahmed ----- Advocate for the Claimants.

Mr. G.C. Saha ----- Advocate for the Opp. Party no-1.

Date of hearing Argument ----- 15.05.2019.

Date of delivery of Judgment ----- 03.06.2019.

J U D G M E N T

1. The husband & son of the deceased Sahirun Bibi filed the instant claim petition under section 166 of the M. V. Act claiming compensation for the death of the deceased Sahirun Bibi who died in a motor vehicle accident dated 08.09.2016 at about 4-30 P.M. involving vehicle no. AS-01/CC-4117 (Oil Tanker) which is insured with Opp. party no-1, Oriental Insurance Co. Ltd.

2. The facts giving rise to this case is that on 08.09.2016 about 4-30 P.M. the claimant no-1 along with his wife Sahirun Bibi (since deceased) & brothers was travelling from Guwahati towards home at Godharbori in a vehicle no. AS-18/B-4875 (Bolero). When the said vehicle reached near Makhipara, an accident of head on collision took place with the vehicle no. AS-01/CC-4117 (Oil Tanker) as a result the claimant no-1 and his wife suffered grievous injuries on their persons. Soon after the accident injured claimant no-1 and his wife were brought to Goalpara Civil hospital for treatment. The wife of the claimant no-1 suffered head injury; she was referred to G.N.R.C. where she collapsed due to injuries.

3. Regarding the accident the claimant no-2 lodged an FIR with the O/C of Dudhnoi P/S where upon a case being no. Dudhnoi P/S Case no. 107/2016 U/s 279/304(A) IPC is registered and on conclusion of the investigation submitted charge sheet (G.R. No-2178/16) against the Opp. Party no-3.

4. All the Opp. Parties on record have contested the case by filing their written statements.

5. The Opp. Party no-1 the Oriental Insurance Co. Ltd. in its written statement, besides denying all the averments made in the claim petition, stated that the compensation claimed by the claimant side is excessive, exaggerated and having no real basis. The Insurance Co. denied the accident and put the claimant side in strict proof of the same. The Insurance Co. also denied the age, occupation and income of the deceased and put the claimant side in strict proof of the same. The Insurance Co. would not be liable to pay any compensation until and unless, it is proved that the driver of the offending vehicle had the valid driving licence and the conditions of the insurance policy were not violated by the Opp. Party insured. It is further stated that, due to contributory negligence on the part of the driver of the vehicle No-AS-18/B-4875 (Bolero) the alleged accident took place. It is further stated that, the claim petition is liable to be dismissed on account of non-joinder of the owner driver and the insurance company of the vehicle No-AS-18/B-4875 (Blero). It is stated that, the driver of the vehicle no. AS-01/CC-4117 (Oil Tanker) did not possessed effective license at the material point of the accident, as such the company is not responsible to indemnify the claimants.

6. The Opp. Party no-2 has inter-alia stated that, the his vehicle AS-01/CC-4117 (Oil Tanker) is insured with Oriental Insurance Co. Ltd. (Opp. Party no-1) having valid insurance policy no- 322390/31/2016/7211 with valid coverage at the relevant time of accident as such he is not responsible to pay the compensation to the claimants. The Opp. Party no-3 the driver of the vehicle no. AS-01/CC-4117 (Oil Tanker) has stated that, the accident did not take place due to his negligent driving. He drove the vehicle with care and caution having with effective driving license no. AS1820130014795.

7. Upon the pleadings of both the sides, the following Issues were framed for the just decision of the case:

- I. Whether Sahirun Bibi died as a result of injuries sustained by her in the alleged motor vehicle accident on dated 08.09.2016 involving the vehicle bearing no. AS-01/CC-4117 (Oil Tanker) and whether the said accident took place due to rash and negligent driving of the aforesaid offending vehicle?
- II. Whether the claimant side is entitled to any compensation, and if yes, to what extent & by who amongst the Opp. Parties, the said compensation amount will be paid?

8. To prove the case, the claimant side examined one witness viz. Saiful Hoque as PW-1. During the examination of PW-1 he has exhibited the following documents:

- i. Ext. no-1: Certified copy of the FIR,
- ii. Ext. no-2: Certified copy of the charge sheet,
- iii. Ext. no-3: Certified copy of the seizure list,
- iv. Ext. no-4: Certified copy of the P.M Report.

9. The Opp. Party insurer side examined no witness. Perused the materials on record and upon consideration of the same, the Issues are decided as under:

ISSUE NO - I

(I) The claimant no-2 examined himself as PW-1 who is the son of the deceased Sahirun Bibi. The claimant side has averred in the claim petition and the claimant no-2 in his evidence has stated that the deceased was his mother.

On 08.09.2016 about 4-30 P.M. his father (Clamant no-1) along with his mother Sahirun Bibi (since deceased) & brothers were travelling from Guwahati towards home at Godharbori in a vehicle no. AS-18/B-4875 (Bolero) from Goalpara. When the said vehicle reached near Makhipara, an accident of head on collision took place with the vehicle no. AS-01/CC-4117 (Oil Tanker) as a result his father & mother suffered grievous injuries on their persons. Soon after the accident his injured parents were brought to Goalpara Civil hospital for treatment. His mother as suffered head injury, she was referred to G.N.R.C. where she collapsed to her injuries. He further stated that, his mother was sole earner of the family. His mother was a home maker and also used to look after the business of grocery shop, from which she earned Rs.15,000/- per month. They incurred Rs. 1,50,000/- as medical expenditure, funeral & performing ritual rites as per religion.

(II) Regarding the accident the he lodged an F.I.R. with the O/C of Dudhnoi P/S where upon a case being no. Dudhnoi P/S 107/2016 U/s 279/304(A) IPC is registered and on conclusion of the investigation submitted charge sheet (G.R. No-2178/16) against the Opp. Party no-3.

(III) The aforesaid witness has been cross examined by the Opp. Parties nos-1 & 4 but nothing has is elucidated, to disbelieve his evidence regarding the accidental death of Sahirun Bibi occurred on 08.09.2016.

(IV) I have scrutinized the evidence on record. Regarding the accident, Saiful Haque the son of the deceased lodged an F.I.R. (Ext. no-1) with the O/C of Dudhnoi police station, whereupon the police registered Dudhnoi P/S Case no-107/16 U/s 279/304(A) IPC & submitted charge sheet against the driver (Opp. Party no-3) of the vehicle (Bolero). I have perused the certified copy of charge sheet of Dudhnoi P.S. case no. 107/16. Ext. no-2 is submitted by the police after completion of investigation of Dudhnoi P.S. case no. 107/2016 in connection with a motor vehicular accident which is under consideration. From Ext. no-2, it is found that the police after completion of investigation, submitted charge sheet against the Opp. Party no-3, the driver of the offending vehicle i.e., Oil Tanker, showing him as an accused in the case and stating that the accident causing death Sahirun Bibi had taken place due to rash and negligent driving of the vehicle bearing registration no. AS-01/CC-4117 (Oil Tanker) by Opp. Party no-3,

the driver of the offending vehicle. The submission of charge sheet against the driver of the offending vehicle can be considered as sufficient evidence of rash and negligent driving of that vehicle. In the absence of any evidence contrary there to, filing of the charge sheet, itself shows that the driver of the vehicle was driving the same in a rash and negligent manner. In a decision of Hon'ble Kerala High Court reported in 2012 (1) TAC 816, a Division Bench of the Hon'ble Court held that filing of a charge sheet can be reckoned as sufficient evidence of negligence in a claim u/s 166 of the M.V. Act and if anyone of the Parties do not accept such charge sheet, burden must be on such Party to adduce oral evidence. The Hon'ble High Court also observed that if the charge sheet does not satisfy judicial conscience, the issue of negligence must be decided on the other evidence.

(V) Thus, from the aforesaid discussion, I do hold that, the driver of the offending vehicle bearing no. AS-01/CC-4117 (Oil Tanker) drove the said vehicle in rash and negligent manner for which he is responsible for the alleged accident solely.

(VI) It is held in *Mallamma vs. Balaji And Others*, 2004ACJ368 that, filing of the charge sheet against the driver is also a prima facie case to hold that, the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same.

(VII) The Opp. Party sides did not adduce any rebuttal evidence. Even the Opp. Party no-3, the driver of the offending vehicle did not appear to contest the case by adducing evidence. In view of the above evidence of the claimant side and in the absence of any evidence contrary thereto, there can be no escape from the conclusion that the driver Opp. Party no-3 drove of the vehicle bearing registration no. AS-01/CC-4117 (Oil Tanker) in rash and negligence manner.

(VIII) Hence issue is decided in favour of the claimant side.

ISSUE NO-II

(I) In view of the discussion and decision made in Issue No-I, I am of the opinion that the claimant side is entitled to compensation.

(II) It is admitted fact that the accident involving vehicle is insured with the Opp. Party no-1. I have allowed the claimants petition for the following reasons:

- 1) The claimant has adduced sufficient evidence to prove the accident and negligence of the driver of the offending vehicle which resulted in death of Sahirun Bibi.
- 2) The claimants have filed material documents to prove the factum of the accident and the persons involved therein.
- 3) The documents clearly established the identity of the vehicle involved in the accident, the identity of the driver negligently driving the vehicle, the identity of the owner of the Oil Tanker, the name of the insurer of the offending vehicle, the period of coverage of insurance of the vehicle, the details of the fact of the accident vide Ext. no-1 in the police station concerned in relation to the accident, post-mortem report of the deceased Ext. no-4
- 4) So far as the driver & owner of the offending vehicle are concerned, they were not entered into the witness box to rebut the allegations of the claimants made in claim petition and the evidence. In fact the owner remained absent in proceeding after filing their written statements. An adverse inference against both can be drawn.
- 5) On the other hand the claimant has examined one witness and thereby discharges her initial burden to prove the case.

(III) The claimant in the instant case are the husband & son of the deceased Sahirun Bibi it has come in the evidence the deceased was around 45 years of age and left behind her husband, one son. It has not come in record that she was earning around Rs.15,000/- per month by doing household work, grocery business, but as no any corroborative evidence & cogent evidence has brought on record by the claimant to establish that the deceased used to earn Rs.15,000/- per month from grocery business.

(IV) In J.K. Trivedi vs. K.D. Kumbhar 2015,(I) TAC.673 (S.C), his lordship held in para no 11 that, 'Even assuming J.J. Trivedi was not self-employed doing embroidery and tailoring work, the facts remains that she was a house wife and a home maker. It is hard to monetize the domestic work done by a house-

mother. The service of mother wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house wife /home maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker....., it is reasonable to fix her income at Rs.3,000/- per month." Recognizing the services of home maker and that domestic services have to be recognized in terms of money, in Arun Kumar Agarwal & another v National Insurance com.Ltd. & others ,(2010)9 SCC 218 2010(3) TAC323 , the Honble' Supreme court has held as follows

"The alternative to imputing money values is to measure the time taken to produce these services and compare these with the commercially viable.....
 The courts and Tribunals should do well to factor these considerations in assessing compensation for house wives who are victims of road accidents and quantifying the amount in the name of fixing 'just compensation'."

(V) Having regard to all the facts and circumstances of the case I consider it proper to take Rs.3,000/- to be her monthly income. Deducting 1/3rd towards personal expenses, I get Rs.2,000/-. The claimant is also entitled to claim loss of future prospects @ 25% which works out Rs. 500/- thus making total Rs. 2,500/- . Applying the multiplier of 14, I get Rs. 2,500 x 12 x 14= Rs. 4,20,000/- To the aforementioned amount I add and accordingly awarded Rs.15,000/- for funeral expenses, Rs. 15,000/- for loss of estate, Rs. 15,000/- for pain and suffering, Rs. 20,000/- for loss of love and affection. In this way the claimants are held entitled to claim Rs. 4,85,000/- by way of compensation from the Opp. Party no-1 Oriental Insurance Company Ltd. The amount awarded shall carry interest @ 6% p.a. from the date of institution of claim petition i.e. 20.03.2017 till realisation.

(VI) That the offending vehicle bearing no. AS-01/CC-4117 (Oil Tanker) at the time of accident, is duly insured with Opp. Party no-1, Oriental Insurance Co. Ltd. which, is not in dispute. As such, the Opp. Party no-1, Oriental Insurance Co. Ltd. is to satisfy the award. The Opp. Party nos-2 & 3 have no liability.

A W A R D

1. Rs. 4,85,000.00 (Rupees Four lakh eighty five thousand) only is awarded as compensation to the claimant side with interest @ 6% p.a. from the date of institution of claim petition on 20.03.2017 till realisation. The Opp. Party no-1, the Oriental Insurance Co. Ltd. is directed to deposit the award sum to the claimant within one month from the date of this order with this Tribunal. The amount, if any, paid as no fault liability, shall be adjusted. No interest shall be payable on amount under the head of Future Prospect.
2. Out of the total awarded amount a sum of Rs. 3,00,000.00 (Rupees Three lakh) only shall be fixed deposited in the name of Karimullah Sheikh, husband of the deceased in a nationalised bank in MIS for the period of two years.
3. The remaining awarded amount is given to the claimant side.
4. Free copy of the Judgment is given to the both sides forthwith.
5. The case is disposed on contest.
6. Claim petition is partly allowed.
7. I make no order as to the cost.
8. Given under my hand and the seal of this Tribunal on this 3rd day of June, 2019.

Dictated and Corrected by me.

(D. Mech)
Member,
Motor Accident Claims Tribunal
Goalpara.

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Motor Accident Claims Tribunal
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