

HEADING OF JUDGMENT AND AWARD IN M.A.C. CASES :
BEFORE THE MEMBER, MOTOR ACCIDENT CLAIM TRIBUNAL,
GOLAGHAT.

Ref. : **MAC Case No. 97/2007.**

1. Sri Atul Bora,
2. Smti. Dalim Bora,
3. Miss Manjumoni Bora,
4. Sri Jintu Bora,
5. Sri Sanjay Bora.

..... Claimants.

Vs.

1. Smti. Lipika Saikia,
2. Sri Kandarpa kr. Bora,
3. The Branch Manager,
National Insurance Co. Ltd.
K.P. Road, Jorhat Branch,
Jorhat.

..... Opposite parties.

Date of final hearing 01.11.2013.

Date of Judgment &
Award. 06.11.2013.

For the Claimants Mr. R.N. Baksh,
Advocate, Golaghat.

For the Opposite party Mr. P. Singh,
Advocate, Golaghat.

P R E S E N T :

SHRI T. LOHAR,
MEMBER, M.A.C.T.,
GOLAGHAT.

J U D G M E N T :

1. An application u/s 166 and 140 of the Motor Vehicle Act filed by the claimants (1) Sri Atul Bora, son of Late Haru Ram Bora, (2) Smti. Dalim Bora, wife of Sri Atul Bora, (3) Miss Manjumoni Bora, daughter of Sri Atul Bora, (4) Sri Jintu Bora, son of Sri Atul Bora and (5) Sri Sanjay Bora, son of Sri Atul Bora, all are resident of Rongbong, 4 Nos. Dholapur, P.O. Kanaighat under Golaghat police station, District Golaghat against the opposite parties (1) Smti. Lipika Saikia, the owner of vehicle No. AS-03-E/8751 (Motorcycle), (2) Sri Kandarpa Kr. Bora, the driver of the said vehicle No. AS-03-E/8751 (Motorcycle) and (3) the Branch Manager, National Insurance Co. Ltd. K.P. Road, Jorhat Branch, the insurer of the aforesaid Motorcycle claiming compensation of an amount of Rs. 8.90.000/- on account of death of Mintu Bora, who was the son of claimants Nos. 1 and 2.

2. The fact giving rise to the above proceeding, in brief, is that on 30.1.2007, at around 8'30 A.M., Mintu Bora was travelling in a motorcycle bearing registration No. AS-03-E/8751 as pillion rider driven by Sri Kandarpa Kr. Bora (O.P. No.2) in a rash and negligent manner in a very high speed from Telgaram to Golaghat. On the way, the driver Kandarpa Kr. Bora could not control the speed of the said motorcycle and dashed against the light post near Rangajan. As a result, both the rider and pillion rider of the said motorcycle sustained serious injuries. Mintu Bora was shifted to Kushal Konwar Civil Hospital, Golaghat, but he died on the way to Kushal Konwar Civil Hospital, Golaghat. The post mortem examination of the deceased Mintu Bora was done at Kushal Konwar Civil Hospital, Golaghat. At the time of death, the age of the deceased was 21 years old and he was a student of Higher Secondary Second year at Marangi High School. He was brilliant student and had a prospect to earn after completion of his studies.

3. The O.P. Nos. 1 and 2 contested the case by submitting a joint written statement stating inter-alia that motorcycle bearing No. AS-03-E/8751 was duly insured with the O.P. No.3, the National Insurance

Co. Ltd., Jorhat Branch vide policy No. 200200/31/06/6200004186, valid up-to 19.11.2007. The said policy is a comprehensive policy covering all the risks. Therefore, the O.P. No.3, the insurance company is liable to pay the compensation amount. That the claimants are not entitled to claim the exaggerated amount. That there was no rash and negligent driving on the part of the O.P. No.2.

4. The O.P. No.3, the Insurance company submitted a separate written statement stating inter-alia that at the time of death, the deceased had no income at all. The claimants were not dependents upon the deceased. The claim petition is bad for mis-joinder and non-joinder of necessary parties. The owner of the vehicle No. AS-03-E/8751 (motorcycle) violated the terms and conditions of the Insurance policy by allowing the O.P. No.2 to drive the said vehicle. Therefore, the answering O.P. No.3 is not liable to pay compensation.

5. During the trial of the case, no issue was framed. For the purpose of disposal of this case, the following issues are framed.

(1) Whether the O.P. No.1 allowed the O.P. No.2 to drive the vehicle No. AS-03-E/8751 (Motorcycle) and as a result of which, the O.P. No.1 has violated the terms and conditions of the Insurance Policy issued by the O.P. No.3 ?

(2) Whether the claimants are entitled to get the compensation as prayed for and from whom ?

DISCUSSIONS, DECISION AND REASON

THEREOF :

ISSUE NO. 1 :

6. After perusal of the claim petition, as well as the written statements, we find that both the parties have admitted the case of

accident caused by the offending vehicle No. AS-03-E/8751 (Motorcycle) and both the parties have admitted that Mintu Bora, son of Sri Atul Bora died in the said accident.

7. The claimants in order to prove the case, submitted the affidavit evidence of two witnesses and exhibited three documents vide accident report, post mortem examination report and driving licence of O.P. No.2 Sri Kandarpa Kr. Bora vide Ext-1, Ext-2 and Ext-3 respectively. The contents of the aforesaid documents have not been challenged by the other parties. C.W.1 who is the mother of the deceased has stated in her evidence that the deceased Mintu Bora was her son who was a student of Higher Secondary year at the time of his death, C.W.2 is the neighbour of C.W.1. He also supported the version of C.W.1.

8. Seen also the photo copy of driving licence (proved in original) of O.P. No.2 Kandarpa Kr. Bora, issued by the D.T.O., Zunheboto, Nagaland permitting him to drive MC/LMV/MGV/HGV only. The said driving licence was valid up-to 2.3.2008. The occurrence in the instant case was took place on 30.1.2007. The O.P. No.2 drove the motorcycle in question on 30.1.2007 and he had a valid driving licence. The learned counsel on behalf of the claimant submitted the photo copy of insurance policy which was issued in the name of O.P. No.1 Smti. Lipika Saikia. For insuring the motorcycle in question, mentioned 'New' in column of registration number, commencing from 20.11.2006 to 19.11.2007. the policy is a Package policy. The policy covers the date of accident which took place on 30.1.2007 .The learned counsel on behalf of the claimant has submitted that at the time of insuring the vehicle, the vehicle was new which was not registered. Hence, the Insurance company is liable to pay the compensation to the claimant.

9. The O.P. No.1 allowed the O.P. No.2 to drive the motorcycle in question who had at that time valid and effective driving licence to drive the said vehicle. Therefore, it is found that the O.P. No.1 did not violate the terms and conditions of the insurance policy.

Hence, the Issue No.1 is decided in affirmative.

ISSUE NO. 2 :

10. All the claimants are not entitled to get the compensation as the deceased was a student of Marangi Higher Secondary School and he was not an earning member of the family at that time. The claimant No.2 Smti. Dalim Bora, who is the mother of the deceased is only entitled to get the compensation for the death of her son Mintu Bora in the motor accident. The claimant No.1 is the father of claimants Nos. 3, 4 and 5. Therefore, the claimants Nos. 3, 4 and 5 are dependents to the claimant No.1 for their maintenance, as because, at the time of death of the deceased Mintu Bora, the claimants Nos. 3, 4 and 5 were minors. As the deceased was not an earning member of the family at the time of his death, hence, the notional income of the deceased is to be accepted as Rs.3,000/- per month. At the time of death, the age of the deceased was 21 years old. Therefore, the appropriate multiplier would be 17. The deceased was a bachelor at the time of his death. In regards to the bachelor, normally, 50% of his income is deducted as personal and living expenses, because, it is assumed that the bachelor would trend to spend more on himself. In that calculation, the compensation can be computed in the following way -

$$\begin{aligned}
 & \text{Rs. } 3,000'00 \times 12 \\
 = & \text{Rs. } 36,000'00 \\
 & \text{Rs. } 36,000'00 / 2 \\
 = & \text{Rs. } 18,000'00 \\
 & \text{Rs. } 18,000'00 \times 17 \\
 = & \text{Rs. } 3,06,000'00
 \end{aligned}$$

11. Apart from that amount of Rs.3,06,000'00, the claimant is entitled to get Rs. 5,000'00 on the Head of funeral expenses, Rs. 10,000'00 on the Head of Loss of estate and Rs. 1,00,000'00 on the Head of future prospects of the deceased. Hence, the claimant is entitled to get the total amount of Rs.4,21,000'00 (Rupees four lakhs twenty one thousand)only as compensation.

12. In my considered opinion, the above amount of Rs.4,21,000'00 (Rupees four lakhs twenty one thousand)only , would be the just and reasonable amount of compensation .

13. The O.P. No.3, the National Insurance Co. Ltd. is liable to pay the aforesaid amount of compensation to the claimant.

Hence, the Issue No.2 is decided in affirmative.

ORDER :

14. Accordingly, the claim petition is allowed on contest for a sum of Rs.4,21,000'00 (Rupees four lakhs twenty one thousand) only; to be paid to the claimant No.2 Smti. Dalim Bora along with simple interest @ 6% p.a. from the date of filing of the claim petition, i.e. from 8.5.2007 till recovery of the entire amount. The O.P. No.3, the National Insurance Co. Ltd. is directed to pay the aforesaid amount of compensation to the claimant No.2 Smti. Dalim Bora along with interest thereon within 60 days from the date of judgment and order.

15. Let a copy of the judgment & Order be sent to the O.P. No.3, the National Insurance Co. Ltd., K.P. Road, Jorhat Branch, Jorhat for information and necessary action.

Given under my hand and seal of the Tribunal on this the 6th day of November, 2013.

(T. Lohar),
MEMBER,
M.A.C.T., GOLAGHAT.

Dictated & Corrected
by me.

(T. Lohar),
M.A.C.T., GOLAGHAT.

Dictation taken & Transcribed by me :- Sri S. Borpatra, Steno.