

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:
BONGAIGAON.

M.A.C. CASE NO. 85/2015

1. Sri Bhaben Chandra Barua
S/O Lt. Gopal Boruah
 2. Smt. Panchami Barua
W/O Sri Bhaben Chandra Barua
-Claimants.

Vs.

1. The Divisional Manager,
The New India Assurance Co. Ltd.,
Bongaigaon,
....Insurer of the Vehicle No. AS-17/B-0614,
(Bolero Pick Up Van).
 2. Sri Shyamal Ghosh,
S/O Radha Kanta Ghosh,
Owner of the Vehicle No. AS-17/B-0614,
(Bolero Pick Up Van).
 3. Sri Bapon Das,
S/O Ram Narayan Das,
Driver of the Vehicle No. AS-17/B-0614,
(Bolero Pick Up Van).
-Opposite Parties.

**PRESENT : Smt. I. Barman,
Member, M.A.C.T.,
Bongaigaon.**

*Advocate for the claimants : M. Islam.
Advocate for Opposite Party No. 1 : Sri A. Kr. Nath
Advocate for Opposite Party No. 2 & 3 : Sri S. Kr. Dhar*

Date of Argument : 10.04.2017
Date of Judgment : 28.04.2016

JUDGMENT AND ORDER

1. The claim case arose out of the petition preferred U/S 166

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of the Motor Vehicle Act, 1988 filed by the claimants claiming compensation from the Opposite Parties on account of death of Anupom Barua in a motor vehicle accident.

2. Case of the claimant, in brief, is that, on 23.04.2015 while Anupom Barua aged about 17 years with other friends was returning home from Bihu Toli Chokapara High School and at about 2:30 A.M when he reached at North Salmara Bongaigaon, PWD road, in front of Chokapara High School, in the mean time, the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van) coming in rash and negligent manner from North Salmara towards Bongaigaon, knocked down the pedestrian Anupom Barua from back side. As a result, Anupom Barua fell down on the pacca road and the vehicle ran over the head of Anupom Barua due to which he died on the spot. The autopsy of the dead body was done in Bongaigaon Civil Hospital. It is also stated that the deceased Anupom Barua was a brilliant student and had been reading at Chokapara High School in class X and also doing private tuition where from he earned Rs. 6,000/- per month. It is further contended that with regard to the accident, Bongaigaon P.S. Case No. 300/2015 U/S 279/304(A) IPC was registered. The deceased was 17 years old at the time of accident and left behind his parents. Hence, prayed compensation of Rs. 14,92,000/- from the opposite parties.

3. In response to the notice, Opposite Party No.1 The New India Assurance Co. Ltd., the insurer of the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van), by filing written statement contended inter alia that there is no cause of action and the claim is bad for mis-joinder of

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unnecessary parties and non-joinder of necessary parties. Denying the rash and negligent driving on the part of the driver of the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van), the answering opposite party put the claimant to make strictest proof with regard to the alleged accident, driving licence, road permit, registration certificate, fitness certificate etc. and further contended that non-appearance of the insured, if any, in the present claim proceeding without any cause and his negligence or failure to take part in the proceeding will be sufficient to cause apprehension of the answering Opp. Party No.1 that the insured and the claimants are in collusion to have wrongful gain against the answering Opp. Party No.1. It is also contended that the claimants' claim is excessive. In this premise, the answering opposite party prayed to dismiss the claim.

4. The Opp. Party No. 2 & 3, the owner and driver of the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van) contested the case by filing written statement jointly and pleaded that there is no cause and put the claimants to make strictest proof regarding age, occupation and income of the deceased. It is further alleged that at the time of accident the opposite party No.3 was coming from North Salmara towards Bongaigaon by driving the vehicle in permissible speed, but while the said vehicle reached near Bihu Toli of Chokapara High School, suddenly the deceased Anupom Barua came in front of the running vehicle, as a result, he sustained injuries and died on the spot. It is further admitted that at the time of accident the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van) was duly insured with The New India Assurance Co. Ltd. i.e. the Opp. Party No. 1 and the Opp. Party No.3

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possessed a valid driving licence. As such, the insurance company is liable to pay compensation, if any, and prayed to exonerate them from paying any compensation to the claimants.

5. On the pleadings of the parties, the following issues are formulated:-

- i. *Whether the claimants' son Anupom Barua died in a motor vehicle accident occurred on 23.04.15 at Chokapara High School due to rash and negligent driving of the vehicle No. AS-17/B-0614?*
- ii. *Whether the claimants are entitled to compensation, if so, to what extent and by whom it is payable?*

6. In course of trial, the claimant side examined two witnesses and the contesting opposite party duly cross-examined them. The contesting Opposite parties have not adduced any evidence.

7. I have heard argument of both sides and carefully gone through the evidence on record.

Issue Nos. I:

8. Claimant No.1 Bhaben Chandra Barua, father of the deceased Anupom Barua has averred in the claim petition as well as in evidence that on 23.04.2015 when his son along with other friends were returning home from Bihu Toli of Chokapara High School and at about 2:30 A.M when they reached at North Salmara, PWD Road in front of Chokapara High School, in the mean time, the vehicle bearing No.

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AS17/B-0614 coming in rash and negligent manner from North Salmara towards Bongaigaon knocked down his pedestrian son Anupom Barua. As a result, his son fell down on the pacca road and the vehicle ran over his son's head due to which his son died on the spot. The autopsy of the dead body was done at Bongaigaon Civil Hospital. He further stated that his son was of 17 years old and was studying in class X. He also stated that along with the study his son was also doing private tuition wherefrom he earned Rs.6,000/- per month. With regard to the accident, Bongaigaon P.S. Case No. 300/2015 U/S 279/304(A) IPC was registered and submitted charge sheet against the driver of the Bolero Pick Up Van. In support of his evidence he proved accident information report as Ext.1, F.I.R form as Ext.2, Ejahar as Ext.3, charge-sheet as Ext.4, seizure list as Ext.5 and post-mortem report as Ext.6. During cross he stated that at the time of accident his deceased son was 17 years old and he died on the spot. He also stated that he had not seen the accident.

9. Claimants examined eyewitness Swapan Barua as PW2. He deposed that on the day of accident i.e. on 23/04/15 while he was returning towards home from Bihu Toli of Chokapara High School at that time he had seen that Anupom Barua along with his friends were also returning from Bihu Toli towards home and when they reached in front of Chokapara High School at North Salmara, Bongaigaon connected PWD Road, in the mean time, the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van) coming in rash and negligent manner from North Salmara towards Bongaigaon knocked down the pedestrian Anupom Barua from back side. As a result, Anupom Barua fell down on the road and the vehicle ran over the head of Anupom Barua due to which he died on the

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spot. The autopsy of the dead body was done in Bongaigaon Civil Hospital. During cross, he stated that he had seen the accident and the offending vehicle was driven in rash and negligent manner due to which the accident took place.

10. Now, let us see whether the accident took place due to rash and negligent driving on the part of the driver of the offending Bolero Pick Up Van bearing No. AS-17/B-0614.

11. From the evidence of PWs and other documents proved by the claimants side, it is clear that the deceased Anupom Barua died due to the motor vehicle accident occurred on 23.04.15. The accident information report Ext.1 issued by Bongaigaon P.S. reflects that on 23.04.15 at about 2:30 A.M in front of Chokapara High School situated at North Salmara, Bongaigaon connected PWD road an accident occurred involving the Bolero Pick Up Van bearing No. AS-17/B-0614 wherein the deceased Anupom Barua was shown as deceased. The PWs clearly stated that when the deceased Anupom Barua along with his other friends was returning home from Bihu Toli of Chokapara High School and at about 2:30 A.M, when he reached at North Salmara Bongaigaon, PWD road, in front of Chokapara High School, suddenly, the vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van) coming in rash and negligent manner from North Salmara towards Bongaigaon, knocked down the pedestrian Anupom Borua from back side. As a result of which Anupom Barua fell down on the pacca road and the vehicle ran over the head of Anupom Barua due to which he died on the spot. With regard to the accident, Bongaigaon P.S. Case No. 300/2015 U/S 279/304(A) IPC

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was registered and charge sheeted the same against the driver of the offending vehicle as Ext.4. During cross, by the contesting opposite parties, nothing could be elicited regarding rash and negligent driving of the offending vehicle i.e. Bolero Pick Up Van No. AS-17/B-0614. From the above evidence of PWs, both oral and documentary, it appears to me that there was rash and negligence on the part of the driver of the offending Bolero Pick Up Van. The opposite parties have not adduced any rebuttal evidence regarding rash and negligent driving of the offending vehicle concerned. In view of the above evidence of the PWs and in absence of any contrary legal evidence, it is crystal clear that the accident took place on PWD road at North Salmara in front of Chokapara High School due to rash and negligent driving of the offending vehicle i.e. Bolero Pick Up Van bearing No. AS-17/B-0614 and the deceased died due to the said accident. Accordingly, this issue is decided in favour of the claimants.

Issue No. ii:

12. This issue relates to the entitlement of the claimants for compensation and extent thereof as well as liability of the opposite parties to pay such compensation.

13. From the evidence of PWs and other documents, it is clear that minor deceased Anupom Barua died due to the motor vehicle accident occurred on 23.04.15 and the claimant No. 2 Panchami Barua being the mother of the deceased is entitled to compensation.

14. For assessing the compensation the claimants are required

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to establish the age of deceased. The claimants stated that the deceased was 17 years old at the time of accident. On the other hand, the postmortem report Ext.6, reflects that the age of the deceased was 15 years. Hence, appropriate multiplier would be '18' for the age group of 15-20 years. Regarding the income, the claimants stated that deceased Anupom Barua along with his own study also doing tuition wherefrom he earned Rs. 6,000/- per month. But no proof is given regarding the income. Therefore, being a student, the income of the deceased is taken as Rs.4,000/- per month. As such his annual income would be Rs. 48,000 (Rs.4,000 X 12) and after deduction of 50% towards his living and personal expenses his annual income comes to Rs. 24,000 (Rs.48,000 ÷ 2). The claimant is also entitled to Rs. 10,000/- for funeral expenses.

15. Considering the aforesaid aspect, the compensation payable to the claimant No. 2 is being assessed under the following heads:-

Sl. No.	HEADS	CALCULATION
(i)	Loss of dependency (24,000/- X 18)	Rs. 4,32,000/-
(ii)	Funeral expenses	Rs. 10,000/-
	Total	Rs. 4,42,000/-

16. The offending vehicle bearing No. AS-17/B-0614 (Bolero Pick Up Van) involved in the accident was duly insured with the opposite party No.1, i.e. The New India Assurance Company Ltd. vide Policy No. 53030031140100000830 which was valid upto 26.06.2015. Hence, the opposite party No.1 is liable to pay the compensation to the claimant No. 2. Issue No. ii is decided accordingly.

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O R D E R

17. In the result, the claim petition is allowed on contest. The opposite party No.1 The New India Assurance Co. Ltd is directed to pay the amount of Rs. 4,42,000/- (Rupees four lac forty two thousand) only to the claimant No. 2 Panchami Barua the mother of the deceased along with interest @ 6% p.a. from the date of filing of the claim petition, i.e. 07.08.2015 till its realization. The opposite party No.1, The New India Assurance Co. Ltd. is directed to pay the said amount through this Tribunal within 2 (two) months from the date of passing of this order. The opposite party No.1 shall be entitled to deduct the interim compensation already paid to the claimant, if any.

18. Let a copy of the judgment be transmitted to the opposite party No. 1 for information and necessary action.

19 Given under my hand and the seal of this Tribunal on this 28th day of **April, 2017**.

(I. Barman)
Member, MACT,
Bongaigaon.

Dictated and corrected by me,

(I. Barman)
Member, MACT,
Bongaigaon.
