

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:  
BONGAIGAON.

**M.A.C. CASE NO. 99/2015**

1. Smt. Rina Roy,  
W/O Lt. Nil Kamal Roy @ Nil Kr. Roy.
2. Smt. Madhu Bala Roy,  
W/O Sri Subash Chandra Roy.
3. Kumkum Roy,  
D/O Lt. Nil Kamal Roy @ Nil Kumar Roy.
4. Sri Subash Ch. Roy  
S/O Lt. Jogesh Ch. Roy  
Claimant No. 3 being minor is  
represented by her mother i.e. claimant  
No.1.

.....*Claimants.*

Vs.

1. The Divisional Manager,  
United India Insurance Co. Ltd.,  
Bongaigaon.  
....Insurer of Vehicle No. AS-17/B-1215  
(Winger).
2. The Divisional Manager,  
National Insurance Co. Ltd.,  
Bongaigaon.  
....Insurer of Vehicle No. AS-16/5367  
(TVS Fiero F2).
3. Mozmul Hussain,  
S/O Lt. Somtullah Sk.,  
Owner of the vehicle No. AS-17/B-1215  
(Winger).
4. Amzad Hussain,  
S/O S. Sheikh,  
Driver of the vehicle No. AS-17/B-1215  
(Winger).
5. Animesh Debnath,  
S/O B. Ch. Debnath,  
.....Owner of the Vehicle No. AS-16/5367  
(TVS Fiero F2)

.....*Opposite Parties.*

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

*Advocate for the claimants : M. H. Khan*  
*Advocate for opposite party No.1 : Smt. C. Choudhury*  
*Advocate for opposite party No. 2 : Mr. D. J. Mukherjee*  
*Advocate for opposite party No. 5: Sri S. Kr. Sarkar*

Date of Argument : 12.04.17

Date of Judgment : 28.04.17

### **JUDGMENT AND ORDER**

1. The claim case arose out of the petition preferred U/S 166 of the Motor Vehicle Act, 1988 filed by the claimants claiming compensation from the Opposite Parties on account of death of Nil Kamal Roy @ Nil Kr. Roy in a motor vehicle accident.

2. Case of the claimants in brief, is that, on 12.02.15 at about 5:00 P.M, while deceased Nil Kamal Roy @ Nil Kr. Roy along with his friend Sanjib Nath was proceeding from his house towards Kokrajhar on his own left side by riding the vehicle bearing No. AS-16/5367 (TVS Fiero F2) and reached at South Jaypur on PWD road, suddenly the vehicle bearing No. AS-17/B-1215 (Winger) coming from opposite direction in rash and negligent manner knocked down the motor cycle of the deceased Nil Kamal Roy. As a result, both the deceased and his friend fell down on the road along with the motor cycle. Due to which, deceased Nil Kamal & Nil Kr. Roy and his friend sustained grievous injuries. Immediately, after the accident Nil Kamal Roy was taken to Kokrajhar RNB Civil Hospital but succumbed on the same day of

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accident. The autopsy of the dead body was done in Kokrajahar RNB Civil Hospital. Deceased Nil Kamal Roy @ Nil Kr. Roy was a professional driver in occupation and earned Rs. 7,000/- per month. It is further contended that with regard to the accident, Kokrajahar P.S. Case No. 257/15 U/S 279/338/304(A)/427 IPC was registered. The deceased was 32 years old at the time of accident and left behind his wife, one minor daughter and old aged parents. Hence, prayed compensation of Rs. 14,20,000/- from the opposite parties.

3. In response to the notice, opposite party No. 1 i.e. United India Insurance Co. Ltd., the insurer of the Winger No. AS-17/B-1215 entered its appearance and by filing written statement contended inter alia that there is no cause of action and the claim is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties. Denying the rash and negligent driving of the Winger further stated that the accident took place due to the rash & negligent driving of the motor cycle and put the claimants to make strictest proof with regard to the alleged accident, driving license, fitness certificate, road permit, tax receipt etc. It is also 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 on the answering opposite party that the insured and the claimant are in collusion to have wrongful gain against the answering opposite party. It is further pleaded that the claim of the claimants is highly excessive. In this premise, the answering opposite party prayed to dismiss the claim.

4. In response to the notice, opposite party No. 2 i.e. National

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Insurance Co. Ltd., the insurer of the vehicle No. AS-16/5367 (TVS Fiero F2), entered its appearance and by filing written statement contended inter alia that there is no cause of action and the claim petition is barred by principles of waiver, acquiescence and estoppels and also for reasons of collusiveness and violation of policy conditions by insured as well as the claimants. Denying the rash and negligent driving of the motorcycle alleged that the accident took place due to the rash and negligent driving of the Winger and as such the answering opposite party put the claimants to make strictest proof with regard to the alleged accident, driving license, insurance certificate, registration certificate etc. It is further contented that non appearance of the insured of vehicle No. AS-17/B-1215 in the claim proceeding without any just cause and reason, and his negligence or failure to take part in the proceeding will be sufficient to cause apprehension of the answering opposite party No. 2, that the insured and the claimants are in collusion to have wrongful gain against the opposite party No. 2. It is further pleaded that the claim of the claimants is highly excessive. Hence, the answering opposite party prayed to dismiss the claim.

5. Opposite party No. 5 the owner of the motor cycle bearing No. AS-16/5367 also contested the case by filing written statement and pleaded that he is the registered owner of the motor cycle No. AS-16/5367 having valid registration certificate and on the day of accident, the deceased drove his motor cycle with intend to proceed his home, but on the way at village South Jaypur on PWD Road, Nil Kr. Roy met with an accident due to the rash and negligent driving of the driver of the Winger bearing No. AS-17/B-1215 which was coming from opposite

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direction and knocked down the motor cycle driven by Nil Kr. Roy and sustained injuries along with his friend Sanjib Nath who accompanied him as pillion rider. Immediately, after the accident Nil Kr. Roy was taken at RNB Civil Hospital, Kokrajhar where he succumbed on the same day due to the injury sustained by him. He also stated that the deceased was serving as a driver of him and drawing salary Rs. 7,000/- per month. He further contended that the motor cycle bearing No. AS-16/5367 was duly insured with the opposite party No. 2 i.e. the National Insurance Co. Ltd vide policy No. 200703/31/14/700003895 valid upto 20/01/16 and as such the insurance company is liable to pay compensation, if any. Hence, prayed to exonerate him from the claim.

6. In spite of receipt of the notice, the Opp. Party No. 3 & 4 the owner and the driver of the vehicle No. AS-17/B-1215 (Winger) did not turn up and hence, the case was proceeded ex-parte against them.

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

*i. Whether the claimant's husband Nil Kamal Roy died in motor vehicle accident occurred on 12/02/15 at South Jaypur, Kokrajaha due to rash and negligence driving of the vehicles No. AS-17/B-1215 & AS-16/5367?*

*ii. Whether the claimants are entitled to compensation, if so, to what extent and by whom it is payable ?*

8. In course of trial, the claimant side examined three witnesses and the contesting opposite parties duly cross-examined them.

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The contesting Opposite Parties have not adduced any evidence.

9. I have heard argument from both sides and carefully gone through the evidence on record.

**Issue No. i**

10. Claimant No.4 Subash Ch. Roy, father of the deceased Nil Kamal Roy @ Nil Kr. Roy has averred in the claim petition as well as in evidence (PW1) that on 12.02.15 at about 5:00 P.M, when his son Nil Kamal Roy @ Nil Kr. Roy along with his friend Sanjib Nath were proceeding from his house towards Kokrajhar by riding the vehicle bearing No. AS-16/5367 (TVS Fiero F2) and reached at South Jaypur on PWD road, suddenly the vehicle bearing No. AS-17/B-1215 (Winger) coming from opposite direction in rash and negligent manner knocked down the motor cycle. As a result, the motor cycle fell down on the road and his son Nil Kamal & Nil Kr. Roy and his friend sustained grievous injuries. Immediately after the accident, his son Nil Kamal Roy was taken to Kokrajhar RNB Civil Hospital but due to the injuries sustained by him his son Nil Kr. Roy died on the same day of accident. The autopsy of the dead body was done in Kokrajhar RNB Civil Hospital. He also stated that with regard to the accident, Kokrajhar P.S. Case No. 257/15 U/S 279/338/304(A)/427 IPC was registered. In support of his evidence PW1 proved accident information report as Ext.1, Ejahar as Ext.2, seizure list as Ext.3, charge sheet as Ext.4 and post-mortem report as Ext.5. During cross by the opposite party No. 1 he stated that at the time of accident his son was riding bike and the bike was not his own. He heard that there was head on collision of both the vehicle and as per

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version of the person who saw the accident, due to fault of the Winger, the accident occurred.

11. Claimants examined one eye witness Sri Bandan Roy as PW2, who deposed that on the day of accident i.e. on 12.02.15 at about 5:00 P.M when he was standing in front of his house he had seen that Nil Kamal Roy @ Nil Kr. Roy along with his friend Sanjib Nath was coming from Medhipara side towards Kojrajhar by riding the vehicle bearing No. AS-16/5367 (TVS Fiero F2) and when they reached at South Jaypur on PWD Road, suddenly the vehicle bearing No. AS-17/B-1215 (Winger) coming from opposite direction in rash and negligent manner knocked down the motor cycle of the deceased Nil Kamal Roy. As a result, Nil Kamal Roy and his friend sustained injuries. Immediately, after the accident they were taken to Kokrajhar RNB Civil Hospital. But due to the injuries Nil Kamal Roy succumbed on the same day of accident. During cross by opposite party No.1, he stated that the accident occurred at 5:00 P.M at day light and there was head on collusion between the vehicles. During cross by opposite party No. 2 he stated the place of occurrence is about 10 meters away from his house and he saw the accident. He clarified that the Winger was coming speedily while the bike was proceeding slowly on its own side and Winger coming in right side knocked the bike. According to him, for fault of the Winger, the accident occurred.

12. From the evidence of PWs and other documents proved by the claimants side, it is clear that the deceased Nil Kamal Roy @ Nil Kr. Roy died due to the motor vehicle accident occurred on 12/02/15. The

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accident information report Ext.1 reflects that on 12/02/15 at about 5:00 P.M an accident occurred at South Jaypur PWD Road, Kokrajhar involving the vehicle bearing No. AS-17/B-1215 (Winger) and motor cycle No. AS-16/5367 wherein Nil Kamal Roy @ Nil Kr. Roy was shown as deceased. The PWs including the eye witness categorically stated that when the deceased along with his friend Sanjib Nath was proceeding from his house towards Kokrajhar by riding the motor cycle bearing No. AS-16/5367 and reached at South Jaypur on PWD Road, in the mean time, the Winger bearing No. AS-17/B01215 coming from opposite direction in rash and negligent manner knocked down the motor cycle due to which they fell down on the road along with the motor cycle and sustained grievous injuries. After the accident, Nil Kr. Roy was taken to Kokrajhar RNB Civil Hospital but due to the injuries he succumbed on the same day of accident. With regard to the accident, Kokrajhar P.S. Case No. 257/15 U/S 279/338/304(A)/427 IPC was registered and charge sheeted (Ext.4) the same against the driver of the Winger Md. Amzad Hussain. During cross by the contesting opposite party, nothing could be elicited regarding rash and negligent driving of the offending vehicle. During cross, the eye witness PW2 who saw the accident, clearly stated that the accident took place due to the fault of Winger bearing No. AS-17/B-1215. 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 vehicle No. AS-17/B-1215 (Winger). The opposite party did not adduce 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, I am of the opinion that the accident took

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place at South Jaypur on DWD Road, Kokrajhar due to rash and negligent driving of the offending Winger bearing No. AS-17/B-1215 and the deceased died due to the injury sustained by him in the said accident. Accordingly, this issue is decided in favour of the claimants.

**Issue No. ii**

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

14. In view of my foregoing finding, I am of the opinion that the deceased died in a motor vehicle accident who left behind his wife, one minor daughter and old parents. Therefore, claimant No. 1 to 3 being wife, mother and minor daughter are entitled to compensation. Now coming to the quantum of compensation, the claim petition and the post mortem report Ext.5 reflects that the age of the deceased was 32. In absence of any other document, the age of the deceased is taken as 32 years at the time of accident and hence for the age group of 31-35 years, multiplier would be '16' for ascertaining the loss of dependency. Regarding income, the claimants side examined one witness i.e. PW3 Aminesh Debnath, the opposite party No.5 who deposed that the deceased was serving as driver of his wife's, Innova Commercial Car bearing No. AS-16/C-5084 for last 1 month 10 days but the deceased was not his permanent driver and he also did not finalize the salary of the deceased. However, after one month, he paid the deceased Rs.7,000/- per month to the deceased. During cross he also stated that he had not submitted any document regarding the salary payment. From the

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evidence of PW3, it is clear that deceased was serving as private driver of PW3 only for one month 10 days and for one month he paid Rs. 7,000/- as salary. But no salary payment document is proved by PW3. However, the deceased Nil Kamal Roy @ Nil Kr. Roy being a professional driver at the age of 32 years, in the year 2015, he certainly able to earn at least Rs.4,500/- per month. The deceased was a married person and left behind his wife, one minor daughter and old aged mother as dependents at the time of his death. Therefore, 1/3<sup>rd</sup> of the income of the deceased is to be deducted towards his living and personal expenses. Thus taking his monthly income as Rs. 4,500/-, his annual income would be Rs. 54,000/- (Rs. 4,500 X 12) and after deduction of 1/3<sup>rd</sup> towards his living and personal expenses, it comes to Rs. 36,000/- (Rs.54,000-18,000). Moreover, the claimants will entitle to a sum of Rs.1,00,000/- on the head of loss of consortium, an amount of Rs. 1,00,000/- towards loss of care and guidance for the minor and an amount of Rs. 25,000/- for funeral expenses. The aforesaid calculation is shown in tabular form as under:-

| Sl. No. | HEADS                                   | CALCULATION   |
|---------|---|---------------|
| (i)     | Loss of dependency (36,000/- X 16)      | Rs.5,76,000/- |
| (ii)    | Loss of consortium                      | Rs.1,00,000/- |
| (iii)   | Loss of care and guidance for the minor | Rs.1,00,000/- |
| (iv)    | Funeral expenses                        | Rs. 25,000/-  |
|         | Total                                   | Rs.8,01,000/- |

15. The vehicle bearing No. AS-17/B-1215 (Winger) involved in the accident was duly insured with the opposite party No.1, i.e. The United India Insurance Co. Ltd. vide Policy No. 130681/31/14/01/00001717 which was valid up to 20/08/15. Hence, the

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opposite party No. 1 is liable to pay the compensation to the claimants. Issue No. (ii) is decided accordingly.

**O R D E R**

16. In the result, the claim petition is allowed on contest. Opposite party No.1 The United India Insurance Co. Ltd. is directed to pay the amount of Rs.8,01,000/- (Rupees eight lac one thousand) to the claimant No. 1, 2 and 3 along with interest @ 6% p.a. from the date of filing of the claim petition, i.e. 01/09/15 till its realization. The opposite party No.1, The United India Insurance Co. Ltd. is directed to pay the said amount through this Tribunal within 2 (two) months from the date of passing of the order. Out of the awarded amount, an amount of Rs. 2,50,000/- shall be fixed in the name of minor daughter Kumkum Roy, the claimant No.3, in any public sector bank nearest to her permanent residence till she attains majority. No premature discharge of the FDRs shall be permitted without permission of this court. Further, an amount of Rs.2,00,000/- be given to the claimant No.2 Smt. Madhu Bala Ray the mother of the deceased. The opposite party is entitled to deduct the amount, if any, already paid.

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

18. Given under my hand and the seal of this Tribunal on this 28<sup>th</sup> day of **April, 2017**.

*Dictated and corrected by me,*

*(I. Barman)  
Member, MACT  
Bongaigaon.*

*(I. Barman)  
Member, MACT  
Bongaigaon.*

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