

IN COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL:
BONGAIGAON.

M.A.C. CASE NO. 14/2016

1. Abdul Hussain,
S/O Lt. Nizam Uddin Sk.
2. Roshna Begum,
W/O Abdul Hussain.

.....Claimants.

Vs.

1. The Divisional Manager,
The New India Assurance Co. Ltd.,
Bongaigaon,
....Insurer of Vehicle No. ML-07/A-3187
(Tata Indica).
2. Nripendra Kr. Sarma,
S/O Manik Ch. Sarma,
Owner of vehicle No. ML-07/A-3187
(Tata Indica).
3. Babul Hussain,
S/O Gafur Ali,
driver of vehicle No. No. ML-07/A-3187
(Tata Indica).
4. Divisional Manager,
United India Insurance Co. Ltd.,
Bongaigaon,
....Insurer of Vehicle No. AS-19/G-8767
(M/Cycle, Bajaj Pulsar).
5. Tomijul Rahman,
S/O Lt. Mojibar Rahman,
Owner of vehicle No. AS-19/G-8767
(M/Cycle, Bajaj Pulsar).

.....Opposite Parties.

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

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| <i>Advocate for the claimants</i> | <i>: Sri M. Islam</i> |
| <i>Advocate for opposite party No.1</i> | <i>: Sri A. Kr. Nath</i> |
| <i>Advocate for opposite party No.3</i> | <i>: Sri M. H. Khan</i> |
| <i>Advocate for opposite party No.4</i> | <i>: Smt. S. Karmakar</i> |

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Advocate for opposite party No.5 : *Sri M. Hoque*

Date of Argument : **28/11/2017**

Date of Judgment : **16/12/2017**

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 Raptaur Hussain in a motor vehicle accident.

2. Case of the claimants in brief, is that, on 1.10.15 when Raptaur Hussain was coming from Pallirtol Bazar towards Madan Bazar by riding motor cycle bearing No. AS-19/G-8767 (Bajaj Pulsar) and at about 5:20 P.M when he reached the P.W.D Road, at Borghola, in the mean time the driver of the vehicle bearing No.ML-07/A-3187 (Tata Indica) coming in rash and negligent manner from Madan Bazar towards Pallirtol, knocked down the motor cycle of Raptaur Hussain, as a result of which, he entered inside the Tata Indica Car. At that moment driver of the Tata Indica backed the car as a result, the wheel of the Tata Indica ran over the chest of the victim, due to which, Raptaur Hussain died on the spot. The autopsy of the dead body was done at Bongaigaon Civil Hospital. It is further contended that with regard to the accident, Jogighopa P.S. Case No. 227/15 U/S 279/304(A) IPC was registered. The deceased was 18 years old at the time of accident and left behind his parents. Hence, prayed compensation of Rs. 18,85,000/- from the opposite parties.

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3. In response to the notice, opposite party No.1 The New India Assurance Co. Ltd., the insurer of the vehicle No. ML-07/A-3187 (Tata Indica), entered its appearance and contested the case by filing written statement contending inter alia that there is no cause of action, the claim is bad for mis-joinder of unnecessary parties and non-joinder of necessary parties and the claim is barred by the principle of estoppels, waiver and acquiescence. Denying the rash and negligent driving on the part of the vehicle No. ML-07/A-3187 (Tata Indica), stated that the accident occurred due to rash and negligent driving of the deceased himself. The answering opposite party also put the claimants to make strictest proof with regard to the alleged accident, road permit, driving licence, 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 negligent to take part in the proceeding will be sufficient to cause apprehension on the answering opposite party that the insured and the claimants are in collusion to have wrongful gain against the answering opposite party. It is also pleaded that claimant's claim is highly excessive. In this premise, the answering opposite party prayed to dismiss the claim petition.

4. In spite of receipt of notice, opposite No.2 the owner of the Tata Indica bearing No. ML-07/A-3187 did not turn up and hence the case proceeded ex-parte against him.

5. Opposite party No.3 the driver of the vehicle No. ML-07/A-3187 (Tata Indica) by filing written statement pleaded that there is no cause of action and the claim is barred by limitation.

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It is submitted that on the day of accident he was not driving the vehicle No. ML-07/A-3187 in rash and negligent manner but the deceased himself was the sole responsible for the said accident. He further submitted that the vehicle bearing No. ML-07/A-3187 was duly insured with the New India Assurance Co. Ltd vide policy No. 53030531150200000131 valid upto 20.04.2016 and he possessed a valid driving licence vide D/L No.4878/BNG/NT/13 valid upto 22.08.2033 at the time of accident and as such insurance company is liable to pay the compensation amount to the claimants, if any. In this premise, he prayed to exonerate him from paying liability.

6. In response to notice, opposite party No.4 the United India Insurance Co. Ltd. the insurer of the Bajaj Pulsar bearing No. AS-19/G-8767 by filing written statement contended inter alia that there is no cause of action and the claim is barred by the principle of waiver, acquiescence and estoppel. Saying that the answering opposite party had no knowledge about the accident put the claimants to make strictest proof with regard to the alleged accident, date, time and place of the accident, expenditure, nature of injury, age of the deceased, driving licence of the rider, tax payment receipt, registration certificate, insurance policy etc. and further contended that non-appearance of the insured/owner of the alleged vehicle in the present claim proceeding without any just cause and reason and their 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 claimants are in collusion to have wrongful gain against the answering Opp. No. 4. The answering opposite party also submitted that

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at the time of accident the deceased borrowed the motor cycle bearing No. AS-19/G-8767 from the owner and as a borrower the deceased stepped into shoes of the owner and cannot be treated as a third party. It is further contended that claimants' claim is highly excessive. In this premise the answering opposite party prayed to dismiss the claim.

7. Opposite party No.5 the owner of the motor cycle bearing No. AS-19/G-8767 also contested the case and by filling written statement contended that the accident occurred due to rash and negligent driving of the vehicle bearing No. ML-07/A-3187 (Tata Indica) and as such the owner, driver and the insurer of the Tata Indica are liable to pay compensation to the claimants, if any. He further submitted that the vehicle No. AS-19/G-8767 (Bajaj Pulsar) was duly with valid insurance policy No. 1306003114P111328710 valid upto 16.03.2016. In this premise the answering opposite party prayed to exonerate him from the liability.

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

i. Whether the claimants' Son Raptaur Hussain died in motor vehicle accident occurred on 01.10.2015 at Borghola, PWD Road due to rash and negligence driving of the vehicle No. AS-19/G-8767 (Bajaj Pulsar) & ML-07/A-3187 (Indica Car)? Contd---P/6

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

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

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

Issue No. I

11. Claimant No.1 Abdul Hussain, father of deceased Raptaur Hussain has averred in the claim petition as well as in evidence that on on 1.10.15 when his son Raptaur Hussain was coming from Pallirtol Bazar towards Madan Bazar by riding motor cycle bearing No. AS-19/G-8767 (Bajaj Pulsar) and at about 5:20 P.M when Raptaur Hussain reached the P.W.D Road, at Borghola, in the mean time, the driver of the vehicle bearing No.ML-07/A-3187 (Tata Indica) coming from Madan Bazar towards Pallirtol in rash and negligent manner, knocked down the motor cycle of Raptaur Hussain. As a result, Raptaur Hussain entered inside the Tata Indica Car and at that moment when the Tata Indica backed the car, the wheel of the Tata Indica ran over the chest of the victim, due to which, Raptaur Hussain died on the spot. The autopsy of the dead body was done at Bongaigaon Civil Hospital. He stated that with regard to the accident, Jogighopa P.S. Case No. 227/15 U/S 279/304(A) IPC was registered. He further stated that his son was 18 years old and was reading at Chalantapara H.S School in H.S 1st year. He also stated that his

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deceased son was working part time job as Generator operator at Pallirtol Bazar to supply electricity to the vendors wherefrom his son earned Rs.10,000/- per month. In support of 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, MVI report as Ext.5 and 6, seizure list as Ext.7 to 11, post-mortem report as Ext.12 and occupation and income certificate as Ext.13. During cross by opposite party No.1 he stated that he had not seen the accident. He denied the suggestion that there was no fault on the part of Tata Indica. During cross by the opposite party No.4, he stated that on the day of accident his son was riding the bike slowly and the accident occurred due to rash and negligent driving of Tata Indica.

12. Claimants examined one eye witness Soleman Ali as PW2, who deposed that on the day of accident when he was coming from Madan Bazar towards Pallirtol Bazar by riding motor cycle and at about 5:20 P.M when he reached the P.W.D road, at Borghola, in the mean time, the vehicle bearing No.ML-07-A-3187 (Tata Indica) coming in rash and negligent manner from Madan Bazar towards Pallirtol knocked down the Motor Cycle riding by the deceased as a result of which, the deceased came under the aforesaid Tata Indica Car. At that time the driver of the Tata Indica backed his car due to which the wheel of the vehicle ran over the chest of the victim. During cross by the opposite party No.1 he stated that when he was coming from bazar, then he had seen the accident. He also stated that deceased was 18 years old at the time of accident and operated generator at market. During cross by the opposite party No.4 he stated that the Indica coming speedily knocked down the bike. He also clearly stated that the accident occurred due to the fault of the Indica.

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13. From the evidence of PWs and other documents proved by the claimants side, it is clear that the deceased Raptaur Hussain died due to the motor vehicle accident occurred on 1.10.2015. The accident information report Ext.1 reflects that on 1.10.2015 at about 5:20 P.M an accident occurred at Borghola on PWD road involving the vehicle bearing No. ML-07/A-3187 (Tata Indica) and AS-19/G-8767 (Motor Cycle, Bajaj Pulsar) wherein Raptaur Hussain was shown as deceased. The PWs including the eye witness categorically stated that when Raptaur Hussain was coming from Pallirtol Bazar towards Madan Bazar by riding motor cycle bearing No. AS-19/G-8767 (Bajaj Pulsar) and at about 5:20 P.M when Raptaur Hussain reached the P.W.D Road, at Borghola, in the mean time, the driver of the vehicle bearing No.ML-07/A-3187 (Tata Indica) coming in rash and negligent manner from Madan Bazar towards Pallirtol, knocked down the motor cycle of Raptaur Hussain, as a result of which, Raptaur Hussain came under the Tata Indica Car and at that moment when the Tata Indica applied back gear, the wheel of the Tata Indica ran over the chest of the victim, as a result of which, Raptaur Hussain died on the spot. With regard to the accident, Jogighopa P.S. Case No. 227/15 U/S 279/304(A) IPC was registered and charge sheeted (Ext.4) the same against the driver (Op No. 3) of the Tata Indica Car. During cross both the PWs clearly stated that the accident occurred due to rash and negligent driving of Tata Indica. During cross of Pws, nothing could be elicited regarding rash and negligent driving of the offending Indica bearing No. ML-07/A-3187. 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 place at Borghola on PWD road, due to rash and negligent driving of the Tata Indica bearing No. ML-07/A-3187 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

14. 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.

15. In view of my foregoing finding, I am of the opinion that the deceased died in a motor vehicle accident who left behind his parents. Therefore, claimant No.2 being mother of the deceased is entitled to compensation. Now, coming to the quantum of compensation, claimant No.1 the father of the deceased in his evidence stated that his son was 18 years old at the time of his death. Postmortem report Ext-12 also reflects the age of the deceased is 18 years. Therefore, in absence of other documents regarding age proof the age of the deceased is taken as 18 years and for the age of 18, the multiplier would be '18' for ascertaining the loss of dependency. Regarding income, the evidence of the claimant is that deceased was a student of H.S. 1st Year and also worked part time job as generator operator wherefrom he earned Rs.10,000/- per month. In that respect the prosecution side proved Ext.13 the certificate with regard to occupation and in earn of the deceased issued by the present of Sankarghola Goan Panchayat wherein the income of the deceased is shown as Rs.10,000/- per month. But the issuing authority is not examined to prove the same. In the above his income is

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taken as Rs. 4,000/- per month. Further the deceased was a bachelor at the time of his death. Hence, 50% of the income of the deceased is to be deducted towards his living and personal expenses. Hence, taking the monthly income of the deceased as Rs. 4,000/-, the annual income of the deceased would be Rs. 48,000/- (Rs. 4,000/- x 12) and after deduction of 50% of the income of the deceased towards his living and personal expenses, it comes to Rs. 24,000/-. Further the claimant No.2 is entitled to a sum of Rs. 15,000/- as loss of estate and amount of Rs. 15,000/- for funeral expenses. The aforesaid calculation is shown in tabular form as under:-

The aforesaid calculation is shown in tabular form as under:-

| Sl. No. | HEADS | CALCULATION |
|---------|----------------------------------|-----------------|
| (i) | Loss of dependency (24,000 x 18) | Rs. 4,32,000.00 |
| (ii) | Loss of estate | Rs. 15,000.00 |
| (iii) | Funeral expenses | Rs. 15,000.00 |
| | Total | Rs. 4,62,000.00 |

16. The offending vehicle bearing No. ML-07/A-3187 (Tata Indica) involved in the accident was duly insured with the opposite party No.1, i.e. the New India Assurance Company Ltd. vide Policy No. 53030 531150200000131 which was valid upto 20.04.2016. 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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17. In the result, the claim petition is allowed on contest. Opposite party No.1 is directed to pay the amount of Rs. 4,62,000.00 (Rupees Four lac Sixty two thousand) only to the claimant No.2 the mother of the deceased along with interest @ 6% p.a. from the date of filing of the claim petition, i.e. 06.02.2016 till its realization. The opposite party No.1 is directed to pay the said amount through this Tribunal within 2 (two) months from the date of passing of the order.

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 16th day of **December, 2017**.

(I. Barman)
Member, MACT
Bongaigaon.

Dictated and corrected by me,

(I. Barman)
Member, MACT
Bongaigaon.

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