

BEFORE THE MEMBER ::::::::::: MACT ::::::::::: DHUBRI

MAC Case No.171/2015

Parties:-

1.Md. Monjur Ali
S/O: Late Dur Box
2.Minara Bibi
W/O: Md. Monjur Ali
Both R/O:
VILL: Chotogirairpar
P.S: Bilasipara
Dist: Dhubri, Assam
..Claimants

Vs.

1.New India Assurance Company Limited
Represented by its
Divisional Manager, Bongaigaon
Chapaguri Road, Bongaigaon
P.O. & Dist: Bongaigaon, Assam

2.Pradip Paul (Owner)
S/O: Paritosh Paul
Ward No.4, Bilasipara
P.O. Bilasipara
Dist: Dhubri, Assam

3.Habib Karaishi @ Kureshi (Driver)
S/O: Jabbar Karaishi
Ward No.3, Bilasipara
P.O: Bilasipara
Dist: Dhubri, Assam

..Opp.

Parties

Present: - Sri Rajib Goswami, Member, MACT, Dhubri

Appearance:-

Sri Ejaz Ahmed, Advocate for the claimants

Sri Sujit Kumar Saha, Advocate for OP No.1

Date of hearing : 18-12-2017

Date of judgment: 22-12-2017

Judgment

This is an application filed u/s.166 of the M.V. Act, 1988 by the claimants, Md. Monjur Ali & Minara Bibi claiming compensation for death of their minor daughter, Sarjina Khatun in a road traffic accident.

The claimant's case in brief is that on 12-12-2014 at about 4:15 PM the minor daughter of the claimants, Sarjina Khatun was standing by the side of NH-31 at village Chakchoka near Kamala Brick Kiln when a Scorpio bearing registration No.AS-01-AV/2175 moving towards Bilasipara hit the minor daughter of the claimants. The claimant's minor daughter, Sarjina Khatun had died on the way to Salkocha CHC. Following the accident Chapar P.S case No.74/2015 u/s 279/304-A IPC had been registered.

OP No.1, New India Assurance Company Limited, OP No.2, Pradip Paul, OP No.3, Habib Karaishi @ Kureshi, insurer, owner and driver respectively of the Scorpio vehicle had filed their respective written statements.

The answering OP No.1, New India Assurance Company Limited, the insurer of the offending vehicle in its written statement inter-alia denied the contention raised by the claimant. The answering O.P. further contended that as documents regarding the insured were not made available to them either by the insured as required u/s 134 (c) of the MV Act or by the I.O. of the criminal case within 30 days of recording of the FIR as required u/s 158 (6) of the MV Act, the answering O.P. is not aware of any subsisting contract of insurance with the owner of the offending vehicle as contract of insurance is subject to compliance of section 64 VB of Insurance Act, proof of payment of

premium etc. Further, the answering OP claims protection u/s 170 of the MV Act and the defence of exemption on the proof of breach of specified conditions of policy envisaged in Section 147 and 149 (2) (a) (i) of the M.V. Act. Thus, the answering O.P. is not liable to indemnify the insured in payment of compensation to the third party.

OP No.2 and 3, owner and driver of the offending four wheeler in their joint written statement had contended that despite their vehicle not being involved in the accident on 12-12-2014, the police at Salkocha Out-Post seized the vehicle and a false case had been registered against the driver of the said vehicle who had a valid and effective driving license to drive the said vehicle and the vehicle No.AS-01-AV/2175 is duly insured with OP No.1, New India Assurance Company Limited, Bongaigaon Branch and the insurance policy cover in respect of the said vehicle had been valid from 28-07-2014 to 05-07-2015 and as such the concerned insurer is liable to indemnify the risk of the answering OP No.2 with regard to compensation to be paid to third party.

Upon above pleadings following issues were framed:

- 1 Whether the accident had taken place due to rash negligent driving of the vehicle No.AS-01-AV/2175 (Scorpio) and the claimants' minor daughter had died in the said accident?
- 2 Whether the offending vehicle was insured with M/s. New India Assurance Company Limited at the time of accident?
- 3 What shall be the just and proper compensation and by whom payable?
- 4 Whether the claimant is entitled to get the relief as prayed for?

During the course of the enquiry, the claimant examined himself and one another witness. OP No.1 did not adduce any evidence.

I have heard Sri Ejaz Ahmed, learned counsel for the claimant and Sri Sujit Kumar Das, learned counsel for OP No.1.

I have also carefully gone through the case record including the evidence, both oral and documentary.

DECISION AND REASONS THEREOF

ISSUE NO. 1 AND 2 : Both these issues are taken up together as both these issues are inter-related.

PW-1, Manjur Ali, father of the deceased Sarjina Khatun aged 12 years claimed that on 12-12-2014 at around 4:15 PM his minor daughter Sarjina Khatun who was standing by the side of NH-31 at village Chakchoka, a vehicle bearing registration No.AS-01-AV/2175 (Scorpio) due to rash and negligent manner it was being driven had hit his daughter. His daughter had died on the way to Salkocha CHC on the same day. The PW-1 had exhibited following documents in support of his claim in evidence; certified copy of the post mortem report, certified copy of the FIR, certified copy of the Charge Sheet, certified copy of the School Leaving certificate. Ext-1 to ext-5 are those documents. PW-1 claimed to have spent Rs. 25,000/- on the funeral of his daughter.

In his cross examination PW-1 admitted to have lodged the FIR two months after the alleged occurrence. He also admitted not having produced the driving license, the registration certificate of the offending vehicle, the permit, the MVI report along with his affidavit in his evidence. PW-1 denied the suggestion that the vehicle shown involved in the accident causing the death of his daughter is not the vehicle that had caused the accident and as such he is not entitled to claim compensation from the insurer of the present vehicle.

PW-2 is Mofijul Hoque & Mofijol Hoque is an eye witness to the alleged occurrence on 12-12-2014 he had seen that at around 4:15 PM Sarjina Khatun the minor daughter of the claimant standing by the side of NH-31 at village Chakchoka when suddenly the vehicle No.AS-

01-AV/2175 (Scorpio) hitting Sarjina Khatun. On the way to Salkocha CHC Sarjina Khatun had died.

In his cross examination PW-2 claimed to have been interrogated by the police on the case and denied the suggestion that the vehicle that had caused the accident has not been impleaded in the case as respondent. PW-2 in his cross examination by Insurance Company attributed the cause of accident to high speed the offending vehicle was being driven at the relevant point of time. PW-2 denied the suggestion that the accident had taken place due to negligence of deceased Sarjina Khatun.

Now, it is evident from the evidence of PW-2, an eye witness and ext-4 the Charge Sheet that had been filed against Habib Kureshi, the driver of the vehicle No.AS-01-AV/2175 a black colour Scorpio that the accident in which the minor daughter of the claimant had died had taken place due to rash and negligent manner the offending vehicle was being driven at the relevant point of time. It is also evident from the evidence of PW-2 that no other vehicle was involved in the accident. Issue No.1 is accordingly decided in favour of the claimant.

Coming to issue No.2, ext-6 reveals that offending vehicle No.AS-01-AV/2175 (Scorpio) had been insured with New India Assurance Company Limited, the insurance policy cover number being 53030331140100000455 and same had been valid up to 05-07-2015. The insurer of the offending vehicle, New India Assurance Company Limited, respondent No.1 did not dispute the validity of the contract of insurance with the insured the owner of the offending Scorpio, Pradip Paul and also did not adduce any evidence seeking exemption on the ground of violation of specified conditions of policy envisaged in Section 149 (2) of the MV Act. The issue No.2 is also accordingly decided in favour of the claimants.

ISSUE NO. 3 AND 4 : Both these issues are taken up together as both these issues aim at the same objective, relief.

It is admitted by PW-1, claimant Manjur Ali the father of the deceased Sarjina Khatun that on the day of the alleged occurrence his daughter was minor, around 12 years old and she was a student of class-IV of 1099 Bamunigaon LP School. Thus the deceased having a income of her own is remote. Ext-5 (proved in original) reveals that she was borne on 16-04-2005. Thus I am inclined to accept the age as mentioned in ext-5 reliable. In the three judge constitutional bench judgment in Resma Kumari Vs. Modanmohan as reported in 2013 (2) T.A.C. 369 (SC) it was decided by the Hon'ble Supreme Court to follow an uniform process in ascertaining the compensation to be allowed to victims who are below 15 years of age and do not have any income.

Now, as per Resma Kumari Vs. Modanmohan reported in 2013 (2) T.A.C. 369 (SC) several guidelines have been provided for determination of compensation in case of death of minor up to the age of 15 years. It was held by the constitutional bench of the Hon'ble Supreme Court in this regard in paragraph No.40 (ii) as such "In case where the age of the deceased is up to 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed."

Now, coming to the present case and in the light of the above legal principles for determination of compensation for the death of Sarjina Khatun, a 12 year old student and who had died in a road traffic accident, the multiplier of 15 is to be used for determination of compensation. Thus, taking the notional income of deceased to be Rs. 15,000/- per annum as per Second Schedule to Section 163-A of MV Act, 1988 and the multiplier as 15, the compensation payable comes to Rs. 15,000/- X 15 = Rs. 2,25,000/-. Further, the amount of Rs. 15,000/- is allowed as funeral expenses in view of five judges constitutional bench judgment in National Insurance Company Limited (petitioner) Vs. Pranay Sethi and Ors (respondents) in SLP (Civil) No.25590 of 2014 the recommendations of compensation made in this judgment is in

supersession of the judgment in Rajesh Vs. Rajbir of this court. In addition I am inclined to allow Rs. 10,000/- on the head of loss of love and affection.

Thus, in total, the claimant is entitled to Rs.2,25,000/- + Rs. 15,000/- + Rs.10,000/- = **Rs.2,50,000/-** as compensation.

ORDER

In the result, claim petition is allowed awarding Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) only to the claimants payable by OP No.1, M/s New India Assurance Company Limited through an account payee cheque. An interest at the rate of 9% per annum is allowed from the date of filing of claim petition i.e. 02-05-2015.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.171/2015

Claimant's witness : PW-1 Mojur Ali

PW-2 Mofjol Hoque @ Mofijul Hoque

Exhibits

Ext-1 Certified copy of Post Mortem Report

Ext-2 Certified copy of FIR

Ext-3 Seizure List

Ext-4 Certified copy of the Charge Sheet

Ext-5 School Certificate

Ext-5 (1) Signature of the Head Master

Member: MACT: Dhubri.