

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

**MAC Case No.282/2012**

Parties:-

1.Mosstt. Nalbanu Begum  
W/O: Late Abdus Salam Sk  
2.Mosstt. Jholmoli Bewa  
W/O: Late Mahammad Ali  
Both R/O:  
VILL: Char Kasharipara  
P.S: Suckchar  
..Claimants

Vs.

1.Bokto Zaman  
S/O: Alhaj Kobat Hussain  
VILL: Halidayganj  
P.S: Phulbari  
Dist: West Garo Hills, Meghalaya  
(Owner of the vehicle No.ML-08-B/0163)

2.National Insurance Company Limited  
Dhubri Branch Office  
P.O. & Dist: Dhubri, Assam  
(Insurer of the vehicle No.ML-08-B/0163)

3.Hazrat Ali  
S/O: Late Sabdul Sk  
VILL: Namabila  
P.S: Phulbari  
Dist: West Garo Hills, Meghalaya  
(Owner of the vehicle No.ML-08-C/0971)

4.United India Insurance Company Limited  
Dhubri Branch  
P.O. & Dist: Dhubri, Assam  
(Insurer of the vehicle No.ML-08-C/0971)

..Opp.

Parties

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

Appearance:-

Sri Rezaul Karim, Advocate for the claimants

Sri B.N. Agarwal, Advocate for OP No.2

Smt. Prabha Jain, Advocate for OP No.4

Date of hearing : 27-11-2017

Date of judgment: 06-12-2017

#### Judgment

This is an application filed u/s.166 of the M.V. Act, 1988 by the claimant, Nalbhanu Begum and Mosst. Jholmoli Bewa, the wife and mother respectively of deceased Abdus Salam Sk who had died in a road traffic accident on 28-08-2012 at around 7:00 PM, claiming compensation for the death of said Abdus Salam Sk.

Claimants' case in brief is that on 28-08-2012 at about 7:00 PM the claimant No.1, Nalbhanu Begum along with her husband deceased Abdus Salam Sk were on their way to Hatsinghimari from Diara in an auto rickshaw bearing registration No.ML-08-C/0971. Having arrived at Kathalbari under Mankachar P.S. the said auto rickshaw, claimant No.1 and her husband were travelling in, had come into head on collision with a truck bearing registration No.ML-08-B/0163. Abdul Salam Sk had died on the spot due to injuries sustained by him in the said accident. Following the accident Mankachar P.S. Case No.392/12 u/s 279/337/338/304-A of IPC had been registered and the Charge Sheet had been filed against the drivers of the both vehicles. Hence this claim petition u/s 166 of the MV Act claiming compensation to the tune of Rs. 13,00,000/-.

OP No.1 and OP No.2, owner and insurer respectively of vehicle No.ML-08-B/0163 and the OP No.4, insurer of vehicle No.ML-08-C/0971 only had contested the case. The case proceeded ex-parte against Hazrat Ali, owner of the auto rickshaw bearing No.ML-08-C/0971.

The answering OP No.1 in his written statement inter-alia denied the contention raised by the claimant. The answering OP further contended that his vehicle had been driven by a driver holding a valid and effective driving license and his vehicle was insured with National Insurance Company Limited, Dhubri Branch bearing police No.200701/31/12/6300001190. Further the answering OP claimed that the insurance policy cover of his vehicle had been valid from 19-08-2012 to midnight of 18-08-2013 and as such compensation if any granted by the tribunal is to be borne by the insurer, National Insurance Company Limited.

Answering OP No.2, National Insurance Company Limited and answering OP No.4, United India Insurance Company Limited, insurers of the vehicle bearing registration No.ML-08-B/0163 and vehicle No.ML-08-C/0971 respectively in their respective written statements had denied the contention raised by the claimants. Further both answering Ops in their respective written statements had 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 Ops are not aware of any subsisting contract of insurance with respective owners of the offending vehicles as contract of insurance is subject to compliance of section 64 VB of Insurance Act, proof of payment of premium etc. Both answering Ops in their respective written statements claim to defend itself from payment of compensation on the ground of breach of specified conditions of policy envisaged in Section 149 (2) (a) (i) of the M.V. Act. Thus, the answering Ops claim exemption from payment of compensation to the third party.

Upon above pleadings following issues were framed:

- 1 Whether the accident had taken place due to rash negligent manner the vehicle No.ML-08-B/0163 and the vehicle No.ML08-C/0971 were being driven and the deceased husband and son of claimant No.1 and claimant No.2 respectively had died in the said accident?
- 2 Whether the offending vehicles No.ML-08-B/0163 and vehicle No.ML08-C/0971 were insured with M/s. National Insurance Company Limited and United India Insurance Company Limited respectively 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 No.1 examined herself as CW-1 and one another witness. None of the Ops adduced any evidence.

I have heard Sri Rezaul Karim, learned counsel for the claimants, Sri B.N. Agarwal, learned counsel for OP No.2 and Smt. Prabha Jain, learned counsel for OP No.4.

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.

CW-1, Nalbhanu Begum, wife of the deceased Abdus Salam Sk had deposed that on 28-08-2012 at around 7:00 PM she had accompanied her husband Abdus Salam Sk from Diara to Hatsinghimari

as passenger of auto rickshaw No.ML-08-C/0971. On the way said three wheeler came into head on collision with a truck bearing registration No.ML-08-B/0163 (709 truck). Her husband had died on the spot in the accident. CW-1 claimed that the post mortem of the dead body of her deceased husband had been conducted at Dhubri Civil Hospital and at the time of his death her deceased husband was 40 years old. She also claimed that her husband used to earn Rs. 9,000/- per month as cultivator. CW-1 further claimed that on the case registered the Police had submitted Charge Sheet against the driver of both vehicles involved in the accident. According to CW-1 her deceased husband had left behind herself, his widowed mother and following children, namely, Raju Sk, Sarjina Begum, Sajid Miah, Sarju Miah as his dependents. Her husband was the only earning member of the family. CW-1 had exhibited following documents; form No.54, certified copy of the FIR, certified copy of Seizure List, certified copy of the Charge Sheet, certified copy of MVI reports, certified copy of police report, certified copy of post mortem report. Ext-1 to ext-7 are those documents. According to CW-1 the accident had taken place due to rash and negligent driving of both vehicles.

In her cross examination the CW-1 reiterated to being in the company of her husband as passengers in the auto rickshaw at the time of the alleged occurrence. CW-1 further claimed that she had seen a mini truck coming from the opposite direction getting into head on collision with the auto rickshaw they were travelling in. As a result of the collision her husband was thrown off from his seat in the auto rickshaw on to the ground and had sustained injuries and later succumbed to his injuries in the hospital. She admitted not being able to recollect registration numbers of vehicles involved in the accident. She admitted not having produced the ration card and school leaving certificate of her deceased husband in the case. She denied the suggestion that her husband was 55 years old on the day of the alleged occurrence and age shown in the post mortem report is much less than the actual age of her husband. She also admitted not having

produced birth certificates of all her children in the case. She further stated that her husband was six years older to her.

CW-2, Shahjaman Sk deposed that on 28-08-2012 at around 7:00 PM at Kathalbari daily market while he was waiting for conveyance he has seen an auto rickshaw bearing registration No.ML-08-C/0971 getting into a head on collision with a truck bearing registration No.ML-08-B/0163. According to CW-2 in the said accident Abdus Salam Sk, the husband of claimant No.1 had died.

In his cross examination CW-2 reiterated to being an eye witness of the alleged occurrence at Kathalbari daily market. According to CW-2 it was a head on collision between the auto rickshaw and the mini truck.

In the light of the evidence of CW-1 and CW-2 both of whom are eye witnesses of the alleged occurrence it is evident that the husband of CW-1 Abdus Salam Sk had died due to composite negligence of drivers of auto rickshaw bearing registration No.ML-08-C/0971 and the driver of a 709 truck bearing registration NO.ML-08-B/0163. It is also evident that deceased Abdus Salam Sk was in no way involved in the accident. Ext-4 Charge Sheet, filed against drivers of both offending vehicles also gives credence to the fact that the accident in which the husband of claimant No.1 had died had resulted from the composite negligence of drivers of both auto rickshaw and the truck.

The legal principle behind composite negligence had been discussed in the decision of Hon'ble Justice - Ranjan Gogai while disposing the Civil Appeal No. 5906 of 2008 in para 6 of the decision. Which runs as such "6 The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15<sup>th</sup> Edition, 1998). It would be appropriate to notice the following passage from the said work:-

"WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no

special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous.....”

In another decision of Hon'ble Supreme Court, Khenyei - Vs- New India Assurance Co. Ltd. and others as reported in “2015(2) T.A.C. 677(S.C.) it was held in Para No. 14 as such” 6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong doers. In such a case, each wrong doer, is jointly and severally liable to the injured for the payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case the injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately.

In the light of the law laid down in above decisions it is clear that where the injuries sustained by the injured results from composite negligence of two or more wrong doers the injured is not required to establish the tortfeasor, for whose negligence he had received his injuries, he can claim compensation against both or any of them.

Thus in the light of the legal principle revolving the term composite negligence it is not necessary for the court determine the extent of liability of each wrongdoers separately and neither the claimants are required to establish the extent of liability of each wrongdoers separately. Thus this issue No.1 is decided accordingly in favour of the claimant.

Coming to issue No.2, the Seizure List reveals that on 28-08-2012 the three wheeler bearing registration No.ML-08-C/0971 had been seized along with relevant documents including the insurance certificate bearing policy No.130805/31/12/01/00001813 in the name of Hazrat Ali, the owner of the said three wheeler and the said insurance policy cover had been valid up to 22-06-2013. On the same day the truck bearing registration No.ML-08-B/0163 was seized along with relevant documents including the insurance policy certificate issued by National Insurance Company Limited, Dhubri Branch in the name of Piajush Marak that had been valid from 19-08-2012 to 18-08-2013 bearing certificate No.200701/31/126300001193. Ext-3 (i) and ext-3 (ii) respectively are those seizure lists. Ext-1 AIR in Form No.54 also reveals that the vehicles No.ML-08-B/0163 (709 Tata Truck) and Tempo No.ML-08-C/0971 had been insured with National Insurance Company Limited, Dhubri Branch and United India Insurance Company Limited, Tura Branch respectively and no evidence in rebuttal with regard to the above facts had been adduced by OP No.2, National Insurance Company Limited and United India Insurance Company Limited accordingly I am inclined to hold that both offending vehicles above had a valid and effective insurance policy cover. This issue is accordingly decided in affirmative.

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

Now, coming to determination of loss of dependency as a result of death of husband of the claimant No.1 in an accident on 28-08-2012 I come to the evidence of CW-1 who claimed that her husband

was a cultivator and a businessman who used to earn Rs. 9,000/- per month. Though I am not inclined to agree with CW-1 completely but asking for a certificate of income from the claimant in support of her husband's income again is a futile exercise as it would not have been possible for CW-1 to obtain a certificate of income of a cultivator and as such considering that the deceased was required to look after six dependents, holding the monthly income of the deceased as Rs. 4,000/- per month will be justified on the face of escalating cost of living.

Now, coming to total loss of dependency the learned counsel for the OP No.2, National Insurance Company Limited in course of his argument had claimed that CW-1 had voter identity card, ration card and school leaving certificate of her deceased husband in her possession but she had not produced those documents. Until and unless those documents are produced, the actual age of the deceased husband of the claimant No.1 will not come to light and the age that had been mentioned in post mortem report is much below the actual age of the deceased victim who was 52 years old and in that case the applicable multiplier would be 11. However, I am not inclined to agree with the claim of the OP No.2 since the standard of proof to be adopted in an enquiry in a MAC case is the touch stone of preponderance of probabilities and the tribunal is not required to strictly adhere to the CPC as is clear in Section 169 (i) of the MV Act, the suitable evidence on record is to be accepted. Besides the claim of the learned counsel of the OP No.2 as to the age of claimant No.1's deceased husband being 51 years is suggestion put to CW-1 which the CW-1 did not admit in her cross examination and is not supported by any document. Thus, I am inclined to hold the age of the deceased victim mentioned in the post mortem report as his actual age. In ext-7 the post mortem report the age is mentioned as 40 years. CW-1 also claimed that all her children on the date of the accident were minors and her mother-in-law was also dependent on the income of her husband. Though she has not produced any birth certificates with regard to her children. I am

not inclined to disbelieve CW-1 as her credibility in her cross examination has not been shaken.

Coming to loss of dependency the learned advocate for the claimant in his argument had put reliance on the decision of Sarla Verma and Others v. Delhi Transport Corporation Limited for applicable multiplier and also on the decision Rajesh and Others and Rajbir Singh by Hon'ble Supreme Court with regard to compensation to be paid on loss of future prospect, loss of consortium, loss of love and affection, funeral expenses to the tune of Rs. 1,00,000/-, Rs. 1,00,000/- and Rs. 25,000/- in that order. However, the compensations that had been allowed in pursuance of the legal principles laid down by Hon'ble Supreme Court in Rajesh v. Rajbir cannot be accepted in view of five judges constitutional bench judgment in Pranay Sethi v. National Insurance Company Limited dated 31-11-2017. In the said decision the compensation on loss of consortium has been reduced to Rs. 40,000/- and the funeral expenses had been reduced to Rs. 15,000/-. Considering the five judges constitutional bench decision in National Insurance Company Limited (Appellant) v. Pranay Sethi (Respondent) being in supersession of the earlier decision in Rajesh v. Rajbir, the law laid down in the later will prevail.

Coming to the future prospect of the deceased as the deceased had died at the age of 40 years 25% of his annual income is to be added on the annual income of the deceased as per five judges constitutional bench decision of our Apex court in Pranay Sethi v. National Insurance Company Limited. 25% of Rs. 48,000/- is Rs. 12,000/-. Now, adding Rs. 12,000/- to Rs. 48,000/- it comes to Rs. 60,000/-.

Now, deducting Rs. 15,000/- from Rs. 60,000/- ( $\frac{1}{4}$ <sup>th</sup> of Rs. 60,000/-, number of dependents six in numbers, deduction being made as per Sarla Verma v. Delhi Transport Corporation Limited) it comes to Rs. 45,000/-. Now, coming to loss of total dependency it comes to Rs. 45,000/- X 15 (appropriate multiplier as per Sarla Verma v. Delhi

Transport Corporation Limited, the age of deceased being 40 years on the day of his death) = Rs. 6,75,000/-. Further I am inclined to allow Rs. 15,000/- on the head of funeral expenses, Rs. 40,000/- on the head of loss of consortium and Rs. 40,000/- on the head of loss of love and affection.

In total, the claimants are entitled to Rs. 6,75,000/- + Rs. 15,000/- + Rs. 40,000/- + Rs. 40,000/- = Rs. 7,70,000/-.

Now coming to the issue with regard to whom the liability to pay the compensation rest I am first inclined to discuss the law laid down by Hon'ble supreme court with regard to injury or death as the case may be that had resulted to the victim in an accident that had been due to composite negligence of two or more wrong doers and the victim was not a party to the cause as discussed above. This being the position of law OP No.2 and 4, insurers of the truck and the three wheeler respectively are jointly and severally liable to pay the compensation as the claim has been made against insurers of both vehicles involved in the accident. Apportionment of share of compensation to be paid by each insurer not being contemplated, the claimant can claim the total compensation from one of the insurers.

#### ORDER

In the result, claim petition is allowed awarding Rs. 7,70,000/- (Rupees Seven Lakhs Seventy Thousand) only to the claimants to be paid through an account payee cheque by both OP No.2 and OP No.4, National Insurance Company Limiter and United India Insurance Company Limited, insurers of offending truck and offending three wheeler jointly and severally. The claimant may recover the award from one of the insurers. An interest at the rate of 9% per annum is allowed on the total compensation from the date of filing of claim petition i.e. 21-12-2012.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.282/2012

Claimant's witness : CW-1 Nal Banu Begum  
CW-2 Shahjamn Sk

Exhibits

Ext-1 No.54	Accident Information Report in Form
Ext-2	Certified copy of FIR
Ext-3 to 3 (II)	Certified copies of Seizure List
Ext-4	Certified copy of Charge Sheet
Ext-5 & 5 (I)	MVI reports
Ext-6	Certified copy of Police report
Ext-7	Certified copy of Post Mortem report

Member: MACT: Dhubri.

