

District - Ranchi

The Motor Vehicle Accident Claims Tribunal, Ranchi

Present :- Manish

Motor Vehicles Accident Claims Tribunal,
Ranchi.

Motor Accident Claim Case No. 188 of 2018

Manju Devi W/o Late Mahendra Ganghu

Resident of Village- Barwakher, P.S. Chandwa, District-
Latehar

.....Applicants

Versus

1. Mobile Agriculture Training Institute
I/c Prop. Mr. Vijay Bharat, R/o Parwati Kalasha,
Gari Gaon, Hotwar, P. S. Sadar, District- Ranchi
(Oner of Bus registration No. jH-01BQ-9971)
2. Manager,
Oriental Insurance Co. Ltd., T. P. Hub
3rd Floor, Prabodh Tower, S. N. Ganguly Road,
Ranchi

.....Opposite Parties

Ranchi, Dated the 19th day of May 2022

Application u/s 166 of the M. V. Act 1988

Valuation of the claim- Rs. 14,07,000/-

Interim compensation paid – Rs. 50,000/-

Court fee paid – Rs.7,500/- /-

For the applicants - Sri Shankar Narayan Sinha, Advocate

For the O. P. No. 1- Sri B. P. Barnwal, Advocate

For the O.P. No.2 - Sri S. K. Maity, Advocate

A W A R D

1) The above named applicants have filed instant claim application under section 166 of M.V. Act for compensation amount of Rs. 14,07,000/- on account of death of one Bablu Ganjhu.

2) The claim case of the applicants arises out of an accident dated 04.02.18. On the said date at about 11.00 A:M. one Bablu Ganjhu was going to Chandwa riding his Motorcycle along with his friend namely Mukesh Ganjhu as pillion rider. That while they reached near Sikini Middle School, Chandwa, District- Latehar, suddenly a vehicle Bus bearing registration No.JH-01BQ-9971 coming from Latehar side driven rashly and negligently dashed against the said Motorcycle. It is alleged that as result both the occupants of the said Motorcycle sustained grievous injuries upon their persons and removed to primary health hospital, Chandwa. Bablu Ganjhu died on same day at PHC Chandwa during course of treatment. FIR bearing Chandwa P.S Case No. 26/18 dated 04.02.18 U/s 279, 337, 338, 427 & 304A of I.P.C was registered against unknown driver of the alleged offending vehicle Bus bearing registration No. JH-01BQ-9971. Postmortem upon body of Bablu Ganjhu was conducted at Sadar Hospital, Latehar vide P. M. report dated 04.02.18 which discloses age of the deceased as about 20 years. The I. O. conducted investigation about the alleged offense and submitted Charge sheet No.77/18 dated 29.05.18 disclosing Vijay Tigga as driver of the offending vehicle Bus bearing registration No. JH-01BQ-9971 for committing offence punishable u/s 279, 338, 337, 427 and 304A of IPC.. The deceased died leaving behind his parents who are claimants in the instant claim application.

3) It is contended that the deceased Bablu Ganjhu was aged about 20 years, he was working as a labour and earning 9,000/- per month. The untimely death has caused mental trauma, agony, suffering and frustration to the dependents. In support of claim, relevant oral and documentary evidence has been placed on record.

4) Opposite Party No.1 namely Mobile Agriculture Training Institute I/c Prop. Mr. Vijay Bharat, registered owner of the alleged offending vehicle Bus bearing registration No. JH-01BQ-9971 has appeared through Vakalatnama but did not prefer to file written statement, therefore, he has been debarred filing written statement vide order dated 23.09.2021.

5) Opposite Party No. 2, Oriental Insurance Co. Ltd, insurer of the alleged offending vehicle Bus bearing registration No.JH-01BQ-9971- has appeared and file written statement u/s 166 of M. V. Act wherein admitted the facts of insurance and pleaded that the alleged offending vehicle Bus bearing registration No. JH-01BQ-9971 belonging to Mobile Agriculture Training Institute Hotwar, Ranchi was insured with this O. P. at the time of alleged accident vide Policy No. 332201/31/2017/3594 valid for the period from 18.02.17 to 17.02.18 subject to terms, conditions, restrictions, and limitations laid down in the policy. Further pleaded that the alleged accident occurred as head on collision between the Motorcycle bearing registration No.JH19B-1095 and Bus bearing registration No. JH-01BQ-9971. Both the vehicle equally contributed in the accident and thus it is a case of contributory negligence of driver of both the vehicles, therefore, if any compensation awarded it should be apportioned between both of them in ratio of 50:50. The claim amount is highly excessive and afterthought.

6) On the basis of pleadings of both the parties following **issues** have been settled for adjudication of the matter in controversy -

1. Whether the claim application as filed is maintainable ?
2. Whether applicants have valid cause of action for the case ?
3. Whether death of the victim namely Bablu Ganjhu resulted due to alleged vehicular accident caused due to rash and negligent driving of the alleged of the offending vehicle Bus bearing registration No. JH-01BQ-9971 and whether is case of contributory negligence ?
4. Whether the insured/owner of the alleged offending vehicle Bus bearing registration no. JH-01BQ-9971 has violated any of the terms and conditions of the insurance policy ?
5. Whether applicants are entitled for compensation as claimed, if yes, against whom and to what extent ?
6. To what relief or reliefs, if any, the applicants are entitled for ?

F I N D I N G S

7) On behalf of applicants following oral witnesses have been examined in support of the case: -

A. W.1- Maju Devi

8) On behalf of applicants following documents have been filed and marked as exhibits -

Ext. 1- Certified copy of FIR vide Chandwa P.S Case no. 26/18 dated 04.02.2018 against driver of the alleged offending vehicle bus bearing registration No. JH-01BQ-9971 for the offence punishable u/s 279, 337,338, 427 and 304A of IPC,

Ext.2- Certified copy of Charge sheet vide Charge sheet No. 77/18 dated 29.05.18 against driver Vijay Tigga for driving of the

alleged offending vehicle Bus bearing registration No.JH-01BQ-9971 for the offence punishable u/s 279, 338, 337, 427 and 304A of IPC.,

Ext.3 Photo copy of Postmortem report performed over body of Bablu Ganjhu conducted at Sadar Hospital, Latehar vide P. M. report no. JH 610674 dated 05.02.18

Ext.4- Photo copy of certificate of Registration for the offending vehicle Bus bearing registration No. JH-01BQ-9971 in the name of Mobile Agriculture training Institute I/c Prop. Mr. Vijay Bharat, O. P. No. 1

Ext. 5 Photo copy of Insurance policy of the alleged offending vehicle Bus bearing registration no. JH-01BQ-9971 in the name of Mobile Agriculture training Institute I/c Prop. Mr. Vijay Bharat, O. P. No. issued by Oriental Insurance Co. Ltd. Vide Policy No. 332201/31/2017/3594 valid for the period from 18.02.17 to 17.02.18.

Ext. 6- Photo copy of permit for the offending vehicle bus bearing registration No. JH-01BQ-9971 in the name of Mobile Agriculture training Institute I/c Prop. Mr. Vijay Bharat, O. P. No. 1,

Ext.- 7- Photo copy of Certificate of Fitness for the offending vehicle Bus bearing registration No JH-01BQ-9971 registration in the name of Mobile Agriculture training Institute I/c Prop. Mr. Vijay Bharat, O. P. No. 1

Ext-8- Photo copy of Driving license for the chare sheeted driver namely Vijay Tigga

9) The O. P. No. 2, insurer of the offending vehicle has not produced any witness nor has exhibited any documents in support of there contention-.

10) Issue No. 1, 2, & 3- All the three issues are inter se related with regard to maintainability, cause of action and about death of Bablu Ganjhu in a vehicular accident. In this regard **A. W. 1**, has deposed that she is one of the claimant and mother of the deceased. The accident took place on 04.02.18. That her son Bablu Ganjhu died in vehicular accident dated 04.02.18. He was unmarried. On the said date her son along with his friend Mukesh Ghanju were going to Chandwa on there motorcycle. That a vehicle Bus bearing registration No.JH-01BQ-9971 coming from Latehar side driven rashly and negligently dashed against the said Motorcycle. It is alleged that as result both the occupants of the said Motorcycle sustained grievous injuries upon their persons and removed to primary health hospital, Bablu Ganjhu died on same day at PHC Chandwa during course of treatment. Postmortem was performed over the body of deceased at Sadar hospital, Lathehar. Police case was instituted against the driver by the Latehar police. That her son was 20 years unmarried youth. He had earning of Rs.9000/- per month. She got all the document relating to accident and postmortem report exhibited. That his untimely death has caused suffering and frustration to the family. She has filed claim for Rs. 14,02,000/-. In cross-examination the witness admitted not to be eye witness. She has no document to prove the income of her son.

11) I have heard both the parties and considered the material on record. On the basis of the oral and documentary evidence on record, the contents of FIR, charge sheet, postmortem report, goes on to establish that on 04.02.18 an accident took place when the driver of a alleged offending vehicle Bus bearing registration No. JH-01BQ-9971 in the name of Mobile Agriculture Training Institute

I/c Prop. Mr. Vijay Bharat rashly and negligently dashed the motorcycle of the victim Bablu Ganjhu. The victim sustained fatal injuries and died as result of accident on the same day at Sadar Hospital, Latehar. Postmortem was performed over the body of the deceased. This fact has been corroborated by the documents on record. The documentary evidence by way of FIR, final form and postmortem report goes on to establish that death of victim Bablu Ganjhu was result of accident which took place due to rash and negligent driving of the alleged offending vehicle Bus bearing registration No. JH-01BQ-9971 in the name of Mobile Agriculture Training Institute I/c Prop. Mr. Vijay Bharat. The negligence has to be established as a fact. In the instant case, as stated earlier, the manner of the accident has not been disputed in cross-examination of the eye witnesses produced by the Claimants. It is also not in dispute that the claimants are heirs and legal representative of the deceased. Thus there is valid cause of action and the claim case is maintainable, the involvement of offending vehicle is not in dispute. I would like to discuss the plea of contributory negligence raised by Ld. Counsel for the insurance company. The question of contributory negligence arises when there has been some act or omission on the part of the claimant which has materially contributed to the damage caused and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a 'legal duty to care' but when it is used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an authority of his own wrong. A driver of a mechanically propelled vehicle is under bounden duty to observe necessary caution for avoiding striking other vehicles,

persons, the users of the road. Having failed to observe such necessary care and caution, being oblivious of said duty, Thus, the driver of the offending vehicle cannot escape culpable negligence if it is proved or material on record against him/her. The opposite parties on the other hand did not produce any evidence to disclose that the motorcyclist Bablu Ganjhu in any manner contributed in the accident. The evidence on record discloses and established that the offending vehicle had dashed the motorcyclist which caused his death. That merely involvement of two vehicle or for that matter every collusion of vehicle from front does not on itself establishes that the driver of both vehicle was rash and negligent and contributed in the accident. There has to be some material or evidence. The contention of the insurer company therefore, cannot be sustained. The basic foundation of claim under section 166 of M.V ACT is on rash and negligent driving. In the result, the issue No. 1,2 and 3 are accordingly decided in favour of the claimants and against the Opposite Party.

12) **Issue no. 4** : It has been contended on behalf of insurer that the insured owner of the alleged alleged offending vehicle Bus bearing registration No. JH-01BQ-9971 in the name of Mobile Agriculture Training Institute I/c Prop. Mr. Vijay Bharat O.P. No. 1, has violated terms and conditions of the insurance policy. It has been contended by the insurer (O.P No. 2), that at the time of accident the driver of offending vehicle namely Vijay Tigga, was not holding valid and effective licence to drive the offending vehicle and did not had valid papers. The claimant has filed relevant documents which includes, the registration certificate, the insurance policy, National Permit of the offending vehicle. The driving licence of the driver of the offending vehicle namely Vijay Tigga

has been exhibited as **Ext.8**: There is no contest to the driving licence. which makes it clear that the driver of the offending vehicle was holding valid driving licence. The driving licence of the driver of the offending vehicle has not been challenged by the opposite party insurer. There is no other ground to consider the contention of violation of terms and condition of insurance contract. Thus there is no violation of terms and conditions of insurance contract. The insurer has not placed on record any contrary evidence. The issue No. 4 is decided in favour of the claimants and against O.P No.2.

13) Issue No. 5 & 6- It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The opposite party as insurer filed written statement admitting the policy coverage of the alleged offending vehicle a vehicle Bus bearing registration No. JH-01BQ-9971 coming from Latehar side driven rashly and negligently dashed against the said Motorcycle. It is alleged that as result both the occupants of the said Motorcycle sustained grievous injuries upon their persons and removed to primary health hospital, Bablu Ganjhu died on same day at PHC Chandwa during course of treatment. The insurer contended that

the compensation claimed is highly excessive. In the claim petition it has been contended that deceased was 20 years old at the time of accident and death. He was a laborer and used to earn Rs.9,000/- per month. The claimants through evidence failed to prove the income of the deceased. There is absolutely no material to establish the income of the deceased as claimed. There is no material to establish the nature of job done by deceased. The only evidence is oral testimony of witness. In view of the facts discussed the tribunal is left with no other option to take the income of the deceased on notional basis. It must be kept in mind that if the deceased was a laborer as on the date of accident 04.02.18 then he must have been working for at least 20-25 days a month to earn Rs.300/- per day for his livelihood. Considering the deceased as a laborer and earning of Rs.300/- per day. That on the basis of the said consideration calculation of Award is based on the notional income of the deceased. The just and reasonable income for calculation of award is considered as Rs. 7000/- per month for calculation of claim.

14) It is apparent from the record that in this case the claimants are mother and father of deceased victim. The claimants have pleaded in the claim petition that the deceased was about 20 years old at the time of the accident. In support of their claim relating to age the claimants have not filed any document. The age of deceased as per the postmortem report where the doctor assessed the age of the deceased as about 20 years has been filed on behalf of the claimants. Thus the age of deceased is considered and taken as about 20 years as reasonable and acceptable. Keeping in view, the age of the deceased and income, the total income is calculated and is taken into account for which equals to amount Rs. 7000/-X

12 = Rs. 84,000/- per annum.

15) Since the deceased had income based as self employed person with about 20 years age, therefore, as per the Principles laid down by the Hon'ble Supreme Court in case of '**National Insurance Co. Ltd. Versus Pranay Sethi & Others'** [2017 (4) T.A.C. 673 (S.C.)], 40% of income of the deceased is to be added as future prospect for calculation of income of the deceased which equals to (40% of Rs. 84,000/-) = Rs.33,600/- after including future prospect income of the deceased equals to (Rs. 84,000/-+ Rs.33,600/-) = Rs. 1,17,600/- per annum.

16) The victim died leaving behind his mother as sole dependents he was unmarried (Bachelor) in this case. That as per Law laid down by the Hon'ble Supreme Court in Sarla Verma's case 50% of his income is to be deducted for his personal and living expenses which equals to (50% of Rs. 1,17,600/ = Rs.58,800/-, after its deduction remaining amount equals to [Rs. 1,17,600/) (-) Rs.58,800/] = Rs.58,800/- .

As per the Law laid down by the Hon'ble Supreme Court in Sarla Verma's case according to age of the deceased about 20 years multiplier applicable is 18. After applying multiplier, loss of dependency for death of the deceased calculated amount Rs.58,800/ X 18 = Rs.10,58,400/- Further applicants are entitled for General Damages of amount Rs. 15,000/- under the head of "Funeral Expenses", amount Rs. 15,000/- under the head of "Loss of Estate" & amount Rs. 40,000/- under the head of "Loss of Consortium". Total compensation amount equals to Rs.10,58,400/- + Rs. 15,000/- + Rs.15,000/-+ Rs. 40,000/-= **Rs.11,28,400/-** for which applicants are entitled. Since Rs. 50,000/- has been already paid as interim

compensation thus actual amount payable is Rs.11,28,400/- (-)
Rs.50,000/- = **Rs.10,78,400/-**

It is therefore,

O R D E R E D

that, O.P. No. 2, The Oriental Insurance Co. Ltd., to make payment of Compensation amount of **Rs.10,78,400/-** to the applicants through account payee cheque. That the sole claimant namely **Manju Devi** mother of deceased Bablu Ganjhu to receive the award amount for himself. The total payment be made within 30 days from the date of this Award along with interest @ 7.5% p.a. from the date of filing of claim case under M V. Act i.e. 19.07.2018 till its realization.

In result, Claim Application u/s 166 M. V. Act of the applicants is hereby allowed on contest against O. P. No. 1 and 2.

(Dictated and Corrected by me)

(MANISH)
P. O. M. A. C. T.,
Ranchi
Date 19.05.2022

(MANISH)
P. O. M. A. C. T.,
Ranchi
Date 19.05.2022