

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL : : : :**

**TINSUKIA : : : : ASSAM**

District: Tinsukia

Present: **Sri P.J. Saikia,**  
Member,  
Motor Accident Claims Tribunal,  
Tinsukia

**M.A.C.T. Case No. 54 of 2017**

Sri Ratneswar Gogoi,  
S/o Late Durna Gogoi,  
R/o 2 No. Kachari Maithong,  
P.O. Dorok Maithong, P.S. Kakopathar,  
District: Tinsukia (Assam).....Claimant

- Versus -

1. The Commanding Officer,  
99 A.P.O. Dinjan,  
Tinsukia (Assam)  
(Owner of vehicle No.02P14330W (Recovery van)
2. Hav. Ranjit Kumar,  
S/o Late Mahabir Mahatoo,  
Of 205 Field Workshop of Laipuli,  
Dist: Tinsukia (Assam)  
(Driver of vehicle No.02P14330W (Recovery van).....O.Ps

Appearance:

Sri A. C. Bora,  
Advocate.....For the Claimant

Sri A.K. Karmakar,  
Advocate.....For the O.P. Nos.1 & 2

Date of Argument: 03.07.2019

Date of Judgment: 31.07.2019

### **J U D G M E N T**

This is an application u/s.166 of the Motor Vehicles Act, filed by the claimant Sri Ratneswar Gogoi, claiming compensation on account of death of his son Palash Gogoi, in a motor vehicle accident.

2. The brief fact of the case, is that on 30.6.2017 at about 11 A.M., Palash Gogoi was proceeding towards Namsai with one Debojit Chetia and Raju Khen in a Tata Ace vehicle bearing No.AS-23-BC-3374 and at that time, suddenly one Army vehicle being No.02P-14330W, coming from opposite direction in a rash and negligent manner, knocked down the Tata Ace vehicle at Bordirak Hospital Tiniali. As a result, the owner and driver of Tata Ace vehicle Debojit Chetia died on the spot and Palash Gogoi died on the way to the hospital and the other occupant Raju Khen sustained severe injuries on his person and shifted him to Dibrugarh. The vehicle also got damaged in the said accident.

3. After the incident, a case was registered vide Kakopathar P.S. Case No.36/17 u/s.279/304(A)/427 I.P.C. against the driver of the offending vehicle bearing No.02P-14330W. At the time of the incident, the deceased was 19 years of age and he was working as a carpenter and his monthly income was Rs.13,000/-. Through this claim petition, the claimant claimed compensation of Rs.23,14,000/-.

4. Against the claim petition, O.P. No.1 and 2 filed a joint written statement wherein it is stated that the claim is false, frivolous and speculative and the claimant has filed this case for illegal gain and hence, the claimant is not entitled to get any relief. It is also stated that the accident occurred due to fault and rash and negligent driving of the Tata Ace vehicle bearing No.AS-23-BC-3374, driven by one Debojit Chetia. It is further stated that the claim is without any basis and is excessive and as such, it is liable to be dismissed.

The O.Ps have prayed to dismiss the claim with cost.

5. On the pleadings, following issues were framed:

(i) Whether deceased Polash Gogoi died in a motor vehicle accident that occurred on 30.6.2017 as a result of rash and negligent driving of the vehicle bearing registration No.02P-14330W (Army vehicle)?

(ii) Whether there was contributory negligence of both the vehicles involved in the accident?

(iii) Whether the claimant is entitled to get compensation?  
If so, to what extent and from whom?

6. **Issue No.(i) & (ii):** In this case, the claimant examined two witnesses, including himself. The claimant reiterated the same facts, what have been narrated in the claim petition. CW1 has also exhibited some documents, which are marked as Ext.1 to Ext.5.

7. CW2 is Badan Moran, who claims to be the eyewitness to the accident. He deposed in his evidence that on 30.6.2017 at about 11 A.M., he was going to bring medicines for his younger child, namely Master Shaktim and when he arrived at Dirak Hospital Tiniali, he saw that one Army vehicle, coming from Arunachal Pradesh side in a rash and negligent manner, knocked down one Tata Ace vehicle, which was proceeding towards Arunachal Pradesh and as a result, the driver of the Tata Ace vehicle died on the spot and the other two occupants, namely Palash Gogoi and Raju Khen sustained severe injuries and they were immediately shifted to the hospital. Later on, he came to know that Palash Gogoi died on the way to the hospital.

8. From the evidence of CW1 and CW2 and in the absence of contrary evidence, it is apparently clear that the accident occurred due to rash and negligent driving by the driver of the offending vehicle i.e. Army vehicle bearing No.02P-14330W. At this stage, I have sufficient reasons to hold that there was no contributory negligence on the part of the driver of Tata Ace

vehicle. So, issue Nos.(i) and (ii) are decided accordingly.

9. **Issue No.(iii):-** It is seen from the record that the offending vehicle belonged to O.P. No.1. So, O.P. No.1 is liable to pay the compensation to the claimant.

10. It is seen from the record that the claimant, who is the father of the deceased, cannot be said to be dependent upon the deceased. Hence, he is only entitled to no fault liability amount of Rs.50,000/-. Besides this, he is also entitled to filial consortium amounting to Rs.1,50,000/-. He is also entitled to Rs.20,000/- towards funeral expenses.

11. In total, the claimant is entitled to receive Rs.2,20,000/- as compensation.

#### **O R D E R**

12. The claim petition is accordingly disposed of. The O.P. No.1 is directed to pay an amount of Rs.2,20,000/- (Rupees Two lakh twenty thousand) to the claimant through the Tribunal within two months, failing which, the amount of compensation will carry interest @ 6% per annum from the date of filing of the claim petition and till realisation.

Given under my hand and seal of this Tribunal on this the 31<sup>st</sup> day of July, 2019.

Dictated and corrected by me.

Member, MACT  
Tinsukia

(P. J. Saikia)  
Member, MACT  
Tinsukia