

GAHC010002832015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./324/2018

THE ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED
Having its registered and head office at ICICI Bank Towers, Bandra Kurla Complex,
Mumbai 400051 and one of the Regional Office at Apeejay House, Park Street,
Kolkata-700016 and one of the branch office at G. S. Road, Rukminigaon, Guwahati
-22, Assam.

VERSUS

SMTI REENA KONWAR and 4 ORS
Wife of Late Ajudhya Konwar
Ro Kalibari Housing Area,
Bungalow No 3260 IOC (AOD)
P. O. and P. S. Digboi,
Dist-Tinsukia, Assam. Pin 786171

2:DEBASISH KONWAR
S/O LATE AJUDHYA KONWAR
R/O KALIBARI HOUSING AREA
BUNGLOW NO 3260 - IOC (AOD)
P. O. AND P. S. DIGBOI

DIST. TINSUKIA
ASSAM
PIN 786171

3:KIMI KONWAR
D/O LATE AJUDHYA KONWAR
R/O KALIBARI HOUSING AREA
BUNGLOW NO 3260 - IOC (AOD)
P. O. AND P. S. DIGBOI

DIST. TINSUKIA

ASSAM
PIN 786171

4:NIKHIL MOHANTA
S/O OF KALA CHAND MOHANTO
R/O PWD PARA

P. S. KARANDI GHAI
DIST. UTTAR DINAJPUR
WEST BENGAL PIN 733215

5:DHANANJAY KUMAR
S/O OF LATE VIJENDRA SINGH
R/O 39
VANSHAT
SAIDPUR
P. S. GANDAHA
DIST. VAISHALI
BIHAR PIN 84311

Advocate for the Petitioner : MR. A J SAIKIA

Advocate for the Respondent : MR. M DUTTA (R1 TO 3)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the appellant : Mr. A. J. Saikia.
Advocate.

For the Respondents : Mr. M. Dutta.
Advocate.

Date of Hearing : 12.05.2023

Date of Judgment : 12.05.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. A. J. Saikia, learned counsel for the appellant. Also heard Mr. M. Dutta, learned counsel for the respondents.

2. The appellant has challenged the impugned Judgment and Order dated 16.05.2015 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup, Guwahati, Assam in MAC Case No. 2496/2012, by which the appellant has been directed to pay the compensation amount of Rs. 27,31,100/- to the respondents/claimants with interest @ 6% per annum from the date of filing the claim petition till final payment.
3. The brief facts of the case is that an accident was occurred on 26.12.2011 near Puwai Centre Tea Estate under Digboi P.S. The story of the claimants/respondents is that on the day of accident on 26.12.2011, the deceased Ajudhya Konwar was going by driving his own Maruti Car (A-Star) by the extreme left side of the road towards his office, and on the way, when he reached near Puwai Centre tea Estate, he was knocked down by the offending vehicle vide No. JH-02-M-7944 (Truck) coming from the front side in a rash and negligent manner as a result of that he sustained grievous injury on his person and died on the spot. At the time of accident the deceased Ajudhya Konwar was a Head Assistant, under Govt. of Assam, in the office of Sub-Divisional Officer, Margherita and his monthly salary was Rs.35,000/- and he was aged about 55 years and accordingly a claim petition was preferred by the respondents/claimants. The learned Member, Motor Accident Claims Tribunal No.2, Kamrup, Guwahati, Assam in MAC Case No. 2496/2012, directed to pay the compensation amount of Rs. 27,31,100/- to the respondents/claimants with interest @ 6% per annum from the date of filing the claim petition till final payment
4. The learned counsel for the appellant submits that the Insurance Company is not raising any dispute regarding the other part of the award that has been made by the learned Tribunal below. However, Mr. Saikia, learned counsel submits that the claimant is not entitled for interest on future

prospects. In support of such submission, Mr. Saikia relies on a judgment of a Coordinate Bench of this Court passed in MACApp./378/2017 vide order dated 01.10.2019 in the case of Oriental Insurance Co. Ltd –vs- Smti Champabati Ray and 5 Ors. The relevant portion of the aforesaid judgment is extracted herein below:-

*“Another ground of challenge to the impugned judgment is that the learned Tribunal had awarded interest on future prospects, which could not be done. In the case of **Khusboo Chirania @ Kanta Chirania v. Kamal Kumar Sovasaria**, reported in **2018 0 Supreme (Gau) 966** and in the case of **Nasima Begum V. Keramat Ali**, reported in **2019 0 Supreme (Gau) 507**, this Court has stated no interest on future prospects should be given. Though no reasons have been enunciated in the above judgments, the reasons for the same seems to be due to the fact that future prospects is relatable to an income to be received in the future and as such, there could not be any loss to the claimants for the payment of future prospects, at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future prospects is due to the fact that though the loss of dependency starts from the date of the accident and the compensation amount is computed on the date of the Award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects is with regard to the probable income to be received in the future and as such there is no requirement to compensate the claimant by way of future interest, for the loss that is to occur in the future, as the future is yet to happen. Further, **future prospects is given for the entire future and as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event/s. Thus, with regard to future prospects, this Court is also of the view that there cannot be any interest on future prospects, as the same relates to an income to be***

given in the future". (Emphasis supplied)

5. This Court is in total agreement with same view.
6. Learned counsel for the respondent submits that the claimant is entitled for just compensation as determined in ***Pranay Sethi & Others*** (Supra) and ***Magma General Insurance Co. Ltd*** (supra), that no appeal has been filed by the claimant.
7. A coordinate Bench of this Court in MACApp./202/2012 in its Judgment dated. 04.02.2022, while dealing with an issue whether the claimants are entitled to an enhanced compensation in absence of a cross appeal or a cross objection, after elaborately discussing different judgment of the Hon'ble Apex Court and taking note of the provisions of Order 41 Rule 33 of the Code of Civil Procedure held that while Order 41 Rule 33 of the Code of Civil Procedure empowers an appellate court to pass appropriate order to do justice but subject to certain limitation as judicially formulated whereas Section 168 of MV Act imposes a statutory obligation upon the tribunal as well as the appellate court sans way any appeal or cross objection filed to award a compensation which is just and reasonable. Accordingly, it was held that the appellate court is bound to maintain the balance while exercising power under Order 41 Rule 33 of the Code of Civil Procedure within the limitation imposed and also keeping in mind the statutory duty imposed upon it by Section 168 of MV Act, 1988. After holding such, the learned Bench held in that case that though there was no cross objection however, the benefit of ***Pranay Sethi & Others*** (Supra), ***Magma General Insurance Co. Ltd.*** (Supra) and ***Sarla Verma & Others*** (Supra) can be made applicable keeping in

mind the statutory duty imposed upon the appellate court under Section 168 of the MV Act, 1988 to award the just and reasonable compensation.

8. This Court is in total agreement with the aforesaid view of the Coordinate Bench. Accordingly, held that though there is no cross objection or appeal has been preferred by the present appellant, the appellant shall be entitled for the benefit given under the dicta of ***Pranay Sethi & Others*** (Supra), ***Magma General Insurance Co. Ltd.*** (Supra) and ***Sarla Verma & Others*** (Supra).
9. In the case of ***Pranay Sethi & Others*** (Supra), the Apex Court has awarded compensation only for specific conventional heads and held that the amount to be paid for funeral expense and loss of estate will be Rs. 15,000/- each. It has also held that Rs. 40,000/- should be paid for loss of consortium. No other compensation amount has been reflected in respect of other conventional heads in ***Pranay Sethi & Others*** (Supra).
10. The Apex Court in the case of ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors***, Civil Appeal No. 9581 of 2018 has held that the Constitution Bench of the Apex Court in ***Pranay Sethi & Others*** (supra) has dealt with the various heads under which compensation can be awarded in a death case, which includes loss of consortium. In the above case of ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors*** (supra), the Apex Court has further held the word "consortium" encompasses the following:- (1) Spousal consortium (2) Parental consortium and (3) Filial consortium.

(1) Spousal consortium is generally defined as rights pertaining to the

relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

(2) Parental consortium is granted to the child upon the premature death of parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

(3) Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection companionship and their role in the family unit.

11. However, at the same regarding the payment of interest on future prospect, this Court is in total agreement with the decision of the Coordinate Bench made in MACApp./378/2017 (***The Oriental Insurance Co. Ltd. –Vs- Smti Champabati Ray and Ors***).

12. In view of the above reason, the compensation payable would be as follows:-

SL No.	Head	Amount
1.	A. Annual Income	Rs.33,564/- X 12= 4,02,768/-
	Less Profession Tax.	Rs. 208 X 12 = (-) 2496/-
	Less Yearly Income Tax.	Rs. =(-)24,027/-
	Total Income	Rs. = 3,76,245/-

	B. Future Prospect @ 15% of income.	Rs. 56,437/-
	C. Less 1/3 rd	Rs. 2,88,455/-
	D. Add Multiplier	9 X 2,88,455/- = Rs. 25,96,095/-
	Total compensation Rs. 25,96,095/-	
2.	Loss of Estate	Rs. 16500/-
3	A. Spousal Consortium for wife	Rs. 44,000/-
	B. Filial Consortium for children's	Rs. 44,000/- X 2 = Rs. 88,000/-
	C. Funeral expenses	Rs. 16500/-
	Total = Rs.27,61,095/-	

13. While not interfering with the award of interest @ 6%, awarded by the learned Tribunal, it is made clear that the interest awarded must not be calculated on the amount of compensation awarded against future prospects in view of the decision of Coordinate Bench in **MACApp./378/2017 (The Oriental Insurance Co. Ltd. Vs- Smti Champabati Ray and ors)**.

14. Consequently, the impugned Judgment dated 16.05.2015 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup, Metro in MAC Case No. 2496/2012 is hereby modified to the extent indicated above. Appeal is accordingly disposed off. Send back the LCR.

15. The statutory deposit if any be returned back to the Insurance Company. The awards be satisfied within a period of three months from today.

JUDGE

Comparing Assistant