

GAHC010003372017



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

Case No. : MACApp./23/2018

UNITED INDIA INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 24 WHITES
ROAD, CHENNAI AND ITS REGIONAL OFFICE AT G.S. ROAD, DISPUR,
GUWAHATI.

VERSUS

HANNA LOGUN
R/O VILL. NO. 1, PODUMONI GAON, SARUPATHAR, P.O. SARUPATHAR, P.S.
SARUPATHAR

2:PRANJAL KACHOP
R/O NAGABAT CHRISTAN GAON
P.O. BORHULLA
P.S. KHETR

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : S KHANIKAR

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER

Date : 27.02.2023

Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Ms. P. Baruah, learned counsel for the respondents.

2. This appeal has been preferred by the appellant/insurance company under Section 173 of Motor Vehicles Act, 1988 against the judgment and order dated 13.06.2017 passed by the Id. Member, MACT, Golaghat in MAC Case No. 83/2013.

3. The brief facts of the case is that on 13.01.2013, at about 6 p.m., Prodip kr. Logun(deceased) was travelling in a vehicle bearing registration No. AS-01-AW-6178(ford figo car) from Dimapur to Guwahati along with his friend Shri Jeramiah Kachop and the said vehicle was driven by its owner-cum-driver Shri Pranjal Kachop. On their way, while they reached Salbagan Forest under Dabaka Police Station, the driver of the said vehicle lost his control due to its high speed and dashed against a road side tree with a great force. As a result, Prodip Kr. Logun sustained injuries on his person and died on the spot. The other co-passengers also sustained injuries on their persons and the vehicle was also damaged badly.

4. In connection with the accident, one case was registered vide Dabaka P.S. case No. 17/2013 under Sections 279/338/304(A)/427 IPC. At the relevant time of accident, the alleged offending vehicle was duly insured with the United India Insurance Company Ltd.

5. The claimant, who is the wife of the deceased filed a claim case before the Member, MACT, Golaghat, claiming compensation for death of her husband and after completion of trial, the Id. Member, MACT, Golaghat awarded compensation in favour of the claimant amounting to Rs.63,85,032/-.

6. Being highly aggrieved and dissatisfied with the award of the Tribunal, the appellant has preferred this appeal only on quantum of compensation.

7. It is submitted by learned counsel for the appellant that as per evidence adduced by the claimant before the tribunal exhibiting the Income Tax Return in Form 16, the learned Member ought to have deducted Rs.63,836/- from the annual salary of the deceased but the non-deduction of such substantial amount of Income Tax which is a statutory deduction has resulted in excessive compensation.

8. It is also the submission by the learned counsel for the appellant that the learned Member, MACT, Golaghat, ought to have appreciated the fact that since less than four persons in the family of the deceased can be considered as dependents upon the deceased then deduction towards personal expenses ought to have considered as one-third instead of as one-fourth. Hence, deduction of $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ towards personal and living expense of the deceased appears to be erroneous.

9. Learned counsel for the appellant also submitted that the Id. Member, MACT came to a finding that an amount of Rs.11,470/- which was a part of the salary, was non-specific and without ascertaining the amount, the awarded compensation is liable to be set aside.

10. It is further contended that the deceased was just 15 days short of 60 years and the learned tribunal ought not to have mechanically allowed the benefit of 15% enhancement on account of future prospect without consideration of the fact that as per the settled law regarding future prospect in the case of National Insurance Company Ltd. –vs- Pranay Sethi & Others, future prospect was awarded only on the established income.

11. On the other hand, the learned counsel for the respondents/claimants has argued that her husband was a salaried person having monthly salary of around Rs.68,000/-. Hence, the learned tribunal has rightly awarded the compensation in favour of her which needs no interference.

12. I have considered the submissions made by the learned counsel for the parties. In the case in hand, the factum of accident has not been challenged. The insurance company has preferred this appeal only on quantum of compensation showing some irregularities in calculation on the compensation awarded by the tribunal.

13. It is an admitted fact that the deceased was working as a Manager, Community Based Disaster Management under the department of Humanitarian & Emergency Affairs, World Vision, India, 16 VOC, Main Road Chennai and his monthly salary was Rs.68,896. To prove

the salary of the deceased, the claimant has exhibited the salary certificate vide Exhibit 6 which shows that the gross salary of the deceased was Rs.68,896/- for the month of December, 2012 and deduction of Rs.833/- was shown as fixed allowance held. Hence the monthly income of the deceased was Rs.68,063/- which is taken into consideration in this case.

14. As per the claim petition, the deceased was 59 years of age when the accident took place. The claimant/respondent has exhibited the PAN Card bearing No. AASPL7286K wherein, date of birth of the deceased has been shown as 25.07.1953. The accident took place on 13.01.2013. It transpires that the age of the deceased was around 59 years at the time of the accident.

15. The Hon'ble Apex Court in the case of *National Insurance Company Ltd. vs Pranay Sethi and Ors.* reported in *SLP(Civil) no 25590 of 2014* has held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30% if the age of the deceased was between 40-50 years. In case the deceased was between the age of 50-60 years, the addition should be 15%.

16. In the present case, the age of the deceased was around 59 years when the accident took place. Hence, 15% be added to the established income of the deceased i.e. Rs. 68,063/- +Rs.10,209/-=Rs.78,272/-

17. As per the case of *Sarla Verma vs DTC* reported in *AIR 2009 (6) SC 121*, the multiplier would be 9.

18. In the present case, it appears that the deceased had left behind his wife and two sons and one unmarried daughter but both the sons are major as such, they cannot be considered as dependent. Only the wife and unmarried daughter are considered to be dependent and as

such, the standardized deduction towards personal and living expenses of the deceased is applicable as stated in the case of *Sarla Verma (supra)*. Considering the aforesaid mandate in the instant case, one-third of the income of the deceased is required to be deducted with a presumption that had the deceased been alive, he could have spent two-third for his personal and living expenses.

19. As per ***SLP(Civil) No. 25590 of 2014 (National Insurance Co. Ltd. Vs- Pranay Shethi & Ors.)*** the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.15,000/- and Rs. 40,000/- respectively. As per the impugned judgment, the aforesaid amount should be enhanced at the rate of 10% in every three years. Hence, amount of funeral expenses comes to Rs.16,500/-, consortium Rs.44,000/- and loss of estate Rs.16,500/-.

20. In view of the above discussion, the computation of compensation is awarded as follows-

(a) Annual income of the deceased=Rs.78,272/-X12=Rs. 9,39,264/-

(b) After deducting the income tax(Rs.63,836/-), the annual income of the deceased comes to Rs. 8,75,428/-.

(b) After deducting 1/3 of the income of the deceased the amount comes to
=Rs.5,83,619/-

(c) After multiplying with multiplier the amount
comes to =Rs. 5,83,619/-X9=Rs.52,52,571/-

(d) Funeral expenses=Rs. 16,500/-

(e) Spousal consortium= Rs.44,000/-

(f) Loss of Estate= Rs. 16,500/-

Total = Rs.53,29,571/- (Rupees Fifty Three Lacs Twenty Nine Thousand Five Hundred Seventy One) only.

21. In the result, the appeal is partly allowed. The compensation and award is modified as described above. The United India Insurance Company Ltd. is directed to deposit Rs. 53,29,571/- to the wife of the deceased in her savings account in any nationalized bank through NEFT. The claimant No.1 is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment. The compensation so awarded shall carry an interest @6% per annum from the date of filing of the case till full and final realization. Any amount, if paid earlier, be adjusted accordingly.

22. Statutory amount in deposit be refunded to the Insurance Company.

23. With the above observation, the appeal stands disposed of.

24. Send down the LCR.

JUDGE

Comparing Assistant