

GAHC010033452018



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

Case No. : MACApp./241/2018

NATIONAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 3, MIDDLETON
STREET KOLKATA AND ITS REGIONAL OFFICE AT G.S. ROAD,
BHANGAGARH, GUWAHATI

VERSUS

SMTI ARPANA TALUKDAR AND 5 ORS
W/O LATE AMARENDRA TALUKDAR, R/O VILL. JEBRAVITTA,
(BHAWANIPUR), P.S. BARPETA, PIN 781301, DIST. BARPETA, ASSAM.

2:SRI BIKI TALUKDAR

S/O LATE AMARENDRA TALUKDAR
R/O VILL. JEBRAVITTA
(BHAWANIPUR)
P.S. BARPETA
PIN 781301
DIST. BARPETA
ASSAM.

3:MISS MAUSUMI TALUKDAR
D/O LATE AMARENDRA TALUKDAR
R/O VILL. JEBRAVITTA
(BHAWANIPUR)
P.S. BARPETA
PIN 781301
DIST. BARPETA
ASSAM.

4:SRI BHARGAV TALUKDAR
S/O LATE AMARENDRA TALUKDAR

R/O VILL. JEBRAVITTA
(BHAWANIPUR)
P.S. BARPETA
PIN 781301
DIST. BARPETA
ASSAM

RESPONDENT NOS. 2 TO 4 BEING MINORS ARE REPRESENTED BY THEIR
LEGAL SUARDIAN I.E. MOTHER RESPONDENT NO.

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : MR. B K JAIN (R1-R4)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. R Goswami, Advocate

For the Respondents : Mr. BK Jain, Advocate

Date of Hearing : 04.01.2023

Date of Judgement : 04.01.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. R Goswami, learned counsel for the appellant and Mr. BK Jain, learned counsel for the claimant/ respondent Nos. 1,2,3 and 4.
2. The present appeal is preferred by the Insurance Company against the judgment and award dated 05.08.2017 passed in MAC case No. 79/2014 by the learned MACT, Barpeta. The claim petition has been filed for grant of compensation on the death of Amarendar Choudhury, who died in a motor vehicular accident on 06.12.2013 at Haripur Chowk on the National

Highway No. 31.

3. The claimant's case in brief is that on the fateful day i.e. on 06.12.2013, husband of the claimant No. 1, along with another person was coming from Bhawanipur Chowk Bazar towards their home by riding a bike bearing registration No. As-15/G-2393 and when they reached the place of occurrence, one speeding truck bearing registration No. NL-01/G-9536 hit them from the front side and as a result, both of them fell down under the truck. They got severely injured, were taken to Barpeta Medical College & Hospital for treatment. Subsequently, they were referred to Gauhati Medical College & Hospital, Guwahati considering the seriousness of injury but the said Amarendar died on the way to GMCH, Guwahati. The claimant further claims that the deceased was a pensioner and used to earn an amount of Rs. 10,192/- as his pension and also earned from cultivation and fishery farming of Rs. 15,000/- per month.
4. The Insurance Company filed written statement, took the usual pleas. The claimant led evidence in support of her claim. However, the Insurance Company did not adduce evidence in support of their pleadings. After consideration of material available on record the learned Tribunal passed the following award.

“Just Compensation

Pecuniary damages (special damages):-

Computation of multiplicand:-

(i) *Monthly income of deceased Rs. 10,192/-*

(ii) *30% of the above income added as future prospect*

(Rs. 10,192/-+Rs. 3,057/-) =Rs. 13,249/-

(iii) $1/4^{th}$ of (ii) deducted as personal expenses of deceased (Rs. 13,249/-Rs. 3,312/-) = Rs. 9,937/-

(iv) Compensation after multiplier of 13 is applied to the above multiplicand (Rs. 9,937/-X12X13)=Rs. 15,50,172/-

Non Pecuniary damages (general damages):-

(i) For Consortium = Rs. 1,00,000/-

(ii) For Love and Affection of three children (Rs. 50,000 X 3)
=Rs. 1,50,000/-

(iii) Loss of Estate =Rs. 15,000/-

(iv) Funeral expenses including other incidental expenses =Rs. 20,000/-

Total =Rs. 18,35,172/-"

5. Mr. Goswami while assailing the aforesaid judgment submits that the pension cannot be treated as an income and therefore the learned Tribunal has wrongly calculated the compensation on the basis of pension received by the deceased inasmuch as the family will continue to have a portion of pension even after the death of pensioner. Further contention of Mr. Goswami is that in view of the settled law laid down by the Apex Court in the case of **National Insurance Company Limited Vs Pranay Sethi and Others** reported in **(2017) 16 SCC 680** the amount of compensation paid for loss of consortium and funeral expenses should be reduced and be paid in term of the aforesaid judgment.

6. Per contra, Mr. BK Jain, learned counsel for the claimant submits that the

claimant has duly proved the amount received monthly by the deceased as pension and as the family was run by such income, even if the same is pension that is always an income and income can either be from pension or from other sources. Therefore, the learned Tribunal has not committed any error while taking the pension as monthly income of the deceased.

7. Mr. Jain further contends that as the Insurance Company has not led any evidence in support of their claims and has not been able to shake the evidence of the claimant as well as the evidence of the bank official, who came and deposed regarding the pension, the contention of Mr. Goswami that some amount is deducted after his death from the pension is not acceptable inasmuch as 1/4th of the pensionary income has been deducted while calculating the pension.
8. Mr. Jain also relies the decision of this court in ***Lakhmi Baruah @ Lakhshi Baruah vs Suchil Kumar Thakuria & Ors*** reported in ***(2019) 5 GLR 104*** to contend that pension can be treated as income for the purpose of calculation of compensation under MV Act.
9. Mr. Jain in his usual fairness concedes that while determining the compensation as on date the ratio laid down in ***Pranay Sethi (supra)*** and in ***Magma General Insurance Company Limited Vs Nanu Ram alias Chuhru Ram and Others*** reported in ***(2018) 18 SCC 130*** shall be applicable.
10. This court has given anxious consideration to the argument advanced by the parties. Perused the material on record including the deposition and exhibits exhibited before the learned Tribunal.
11. As Mr. Goswami has urges only on the point of determination

of compensation treating the pension to be income let this court first decide the said issue.

12. A Co-ordinate bench in case of ***Lakhmi Baruah (supra)*** held that the benefit received by dependant/ widow of the deceased which is not strictly connected with the accidental death will not constitute pecuniary advantage within the meaning of Motor Vehicle Act, 1988 and therefore shall not be deductible from the amount of compensation and accordingly calculated the compensation taking the pension as well as other income.
13. In the case of ***Helen C. Rebello vs Maharashtra State Road Transport Corporation reported in (1991) 1 SCC 90***, the Hon'ble Apex Court held that provident fund, pension, insurance and similarly any cash, bank balance and shares, fix deposit etc. are all pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute, occasioned only on account of accidental death. It was further held that such an amount will not come within the periphery of the Motor Vehicle Act to be termed as a pecuniary advantage liable for deduction.
14. Thus, for determining the compensation payable to the heirs of the deceased accident victim, this court cannot find fault with the learned Tribunal below in considering the pension received by the victim to be the basis of calculating the pension. Therefore, the contention of Mr. Goswami is rejected.
15. Further, the pension received by the pensioner is taxable under Finance Act under the head 'salaries' beyond the exemption limit. The

pension is taxable under the head 'salaries'. Therefore, for that reason also, this court cannot accept the contention of Mr. Goswami that pension could not have been considered as income of the family.

16. In view of the determination made by the Hon'ble Apex Court in ***Pranay Sethi (supra)***, the award is modified to the following extent:

Just Compensation

Pecuniary damages (special damages):-

Computation of multiplicand:-

- (i) Monthly income of deceased Rs. 10,192/-
- (ii) 30% of the above income added as future prospect
(Rs. 10,192/-+Rs. 3,057/-) =Rs. 13,249/-
- (iii) $\frac{1}{4}^{\text{th}}$ of (ii) deducted as personal expenses of deceased (Rs. 13,249/--Rs. 3,312/-) = Rs. 9,937/-
- (iv) Compensation after multiplier of 13 is applied to the above multiplicand (Rs. 9,937/-X12X13)=Rs. 15,50,172/-

Non Pecuniary damages (general damages):-

- (i) Consortium for wife = Rs. 44,000/-
- (ii) Parental consortium for three children
(Rs. 44,000 X 3) =Rs. 1,32,000/-
- (iii) Loss of Estate =Rs. 16,500/-
- (iv) Funeral expenses =Rs. 16,500/-

Total =Rs. 17,59,172/-

17. Consequently, the impugned judgment 05.08.2017 passed in MAC case No. 79/2014 by the learned MACT, Barpeta is hereby modified to the extent indicated above.
18. It is directed to the Insurance Company to pay the compensation within a period of 90 days from today. However, it is also made clear that if the payment is not made within the period as stipulated, the same shall carry an additional interest @2% from expiry of such period till payment.
19. Statutory deposit be released in favour of the Insurance Company after proper verification.
20. LCR be sent back forthwith to the learned Tribunal below.

JUDGE

Comparing Assistant