

GAHC010056082017



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

Case No. : MACApp./623/2017

THE RELIANCE GENERAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE and HEAD OFFICE AT RECTIFIER HOUSE
570, NIGAM CROSS ROAD RD, WADALA, MUMBAI 400031 AND ITS
BRANCH OFFICE AT ANIL PLAZA, ABC, G.S. ROAD, GUWAHATI 781005

VERSUS

SMTI RANJU CHOUDHURY and 7 ORS
W/O LATE DILIP CHOUDHURY, R/O HOUSE NO. 2, SOUTH SARANIA,
ULUBARI, BISHNU RABHA PATH, KUNTALA BHAWAN, P.O. ULUBARI, P.S.
PALTAN BAZAR, GUWAHATI 781007, DIST. KAMRUP M, ASSAM.

2:SMTI CHANDRAKALA CHOUDHURY
W/O LATE AKLU CHOUDHURY

3:VIJAY CHOUDHARY
S/O LATE AKLU CHOUDHURY

4:SMTI SUSHILA CHOUDHARY
D/O LATE AKLU CHOUDHURY
ALL ARE R/O KHANAPARA
P.O. KHANAPARA
P.S. BASISTHA
PIN 781022
DIST. KAMRUP M
ASSAM.

7:SANJIB RAJAK
S/O RAM KT. RAJAK
R/O HOUSE NO. 137
ULUBARI
BAZAR

ASHRAM ROAD
P.O. ULUBARI
P.S. PALTAN BAZAR
GUWAHATI 781007
DIST. KAMRUP M
ASSAM.

8:M/S NATIONAL INSURANCE CO. LTD.

G.S. ROAD
BHANGAGARH
GUWAHATI 781005
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MS. M SAIKIA

Advocate for the Respondent : MS. M MALLIK (R7)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. R. Goswami, Advocate.

For the Respondents : Mr. I. A. Talukdar, Advocate.
Ms. U. Das, Advocate.
Ms. R. D. Mozumdar, Advocate.

Date of Hearing : 06.01.2023

Date of Judgement : 06.01.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Mr. I. A. Talukdar, learned counsel for the respondent Nos. 1, 2, 3 and 4, Ms. U. Das, learned counsel for the respondent No. 7 and Ms. R. D. Mozumdar, learned

counsel for the respondent No. 8.

2. The present appeal is preferred against the Judgment dated 25.10.2016, passed in MAC Case No. 587/2011 by the learned Member of MACT, No. 3, Kamrup (Metro), Guwahati.
3. The claimant's case in brief is that while deceased victim Dilip Choudhary was riding a motor cycle bearing registration No. AS-01-AM-7274, from Khanapara side towards CRPF Group Centre, Amerigog, a Truck bearing registration No. AS-01-BC-2943 being driven in a very rash and negligent manner knocked him down from back side at about 07:30 PM, near Ganesh Mandir leading to his death. Accordingly, the claimants who are legal representatives of the deceased filed the claim petition.
4. The owner and driver of the truck filed their joint written statement and denied all the averments made in the claim petition. They further claimed that at the time of accident, the alleged offending vehicle was duly insured with opposite party No. 3/present appellant and that the driver of the vehicle was driving the vehicle with a valid driving license.
5. The insurance company of the offending truck admitted the issuance of the policy in respect of the truck, however, refuted the pleading made in the claim petition.
6. The claimant examined three witnesses and exhibited certain documents to prove their case. However, the opposite party in the claim petition had not examined any witnesses.
7. After conclusion of the trial, the learned Tribunal below came to the following findings:-
 - I. The fact of death in the road traffic accident was duly proved through

Police Report and Post Mortem Report.

- II. The road traffic accident was occurred due to rash and negligent driving of the offending vehicle in which Dilip Choudhury died.
 - III. On the date of the accident, the deceased was aged about 28 years which was proved through PW-3.
 - IV. On the date of the occurrence, the deceased was serving as Constable of CRPF and his last gross pay was Rs. 18,332/- and an amount of Rs. 1440/- was deducted for income tax. Accordingly, his monthly income was held to be Rs. 16,892/-.
 - V. The deceased left behind his wife, mother and a disabled dependent brother. Therefore, 1/3rd is required to be deducted.
 - VI. The deceased was permanent Govt. employee and was aged below 40 years. Therefore, future prospect should be 50% of the net salary. Loss of consortium was determined @ Rs. 1,00,000/- and funeral & Travelling expenses was determined @ Rs. 25,000/-.
8. The appellant/insurance company as urged by Mr. R. Goswami, learned counsel has challenged the impugned judgment on the following counts:-
- I. The claimant wife shall earn a monthly income of Rs. 22,318/- as income from interest on the principal amount awarded and accordingly it is an extravagant bonaza inasmuch as she can run her whole of life only on income from interest and principal amount shall remain intact.
 - II. The grant of addition of 50% towards future prospect is also in higher side inasmuch such large amount of money can easily be invested in banks yielding at least 7.5% more interest. Therefore, such award is also

bonaza to the claimant.

III. Thus the compensation is high and disproportionate inasmuch as such extravagant bonaza in the name of compensation will remain intact till eternity, even after the lifetime of the dependents.

IV. The compensation against loss of consortium and funeral expenses are on higher side in terms of the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited –Vs- Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***.

9. Mr. I. A. Talukdar, learned counsel for the respondent submits that the arguments advanced by the learned counsel for the appellant is having no legs to stand in view of determination made by the Hon'ble Apex Court in the case of ***Sarla Verma and Others –Vs- Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited –Vs- Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***.

10. Mr. Talukdar, learned counsel in his usual fairness submitted that the award of compensation against loss of consortium, funeral expenses and loss of estate may be determined in terms of the ***Pranay Sethi*** (Supra) and ***Magma General Insurance Company Limited –VS- Nanu Ram Alias Chuhru Ram and Others*** reported in ***(2018) 18 SCC 130***.

11. This Court has given anxious considerations to the submissions advanced by the learned counsels for the parties. Also perused the materials available on record including the oral and documentary evidences.

12. The factum of the death of the deceased in the road traffic accident is not under challenge. The determination of the learned Tribunal below that the accident occurred due to rash and negligent driving by the driver of the

offending vehicle is also not in dispute. The age of the deceased including the dependants and the income of the deceased are also not in dispute. Therefore, the learned Tribunal below as well as this Court are to determine the quantum of compensation in terms of the laid down formula under the Motor Vehicle Act, 1988, and also on the basis of determinations made by the Hon'ble Apex Court in the case of ***Pranay Sethi & Others*** (Supra), ***Magma General Insurance Co. Ltd.*** (Supra) and ***Sarla Verma & Others*** (Supra).

13. In view such determination, the learned Tribunal below has not committed any error determining the income of the deceased, fixing the multiplier and adding the future prospect @ 50% of the net income. Accordingly, the compensation awarded on the basis of such laid down formula cannot be said to be extravagant bonaza. Accordingly, the contention of Mr. R. Goswami, learned counsel for the appellant as regards the determination of compensation adding future prospects @ 50% is rejected inasmuch as the deceased was aged below 30 years and he was a salaried person.

14. In the case of ***Pranay Sethi & Others*** (Supra), the Constitution Bench of the Hon'ble Apex Court at paragraph 61 held as follows:-

“61. In view of the aforesaid analysis, we proceed to record our conclusion:-

(i) *The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*

(ii) *As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*

- (iii) *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 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
- (iv) *In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*
- (v) *For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the Courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinabove.*
- (vi) *The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.*
- (vii) *The age of the deceased should be the basis for applying the multiplier.*
- (viii) *Reasonable figures on conventional heads, loss of estate, loss of consortium and funeral expenses should be L 15,000/- L 40,000/- and L 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.*

15. In **Pranay Sethi** (Supra), the Apex Court has identified specific conventional heads for payment of compensation and held that the amount to be paid for funeral expense and loss of estate will be Rs. 15,000/- each. It has

also been held that Rs. 40,000/- should be paid for loss of consortium. The aforesaid amounts should be enhanced at the rate of 10% in every three years from the date of the judgment of ***Pranay Sethi*** (supra).

16. The Apex Court in ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors***, Civil Appeal No. 9581 of 2018 has held that the Constitution Bench in ***Pranay Sethi*** (supra) has dealt with the various heads under which compensation can be awarded in a death case, which includes loss of consortium. It was further held that 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.

17. In view of the established fact, discussed hereinabove and settled proposition of law, the claimants shall be entitled for Rs. 44,000/- each (to the wife and mother of the deceased) as consortium. The funeral expenses should

be Rs. 16,500/- and loss of estate should be Rs. 16,500/-. Accordingly, the award is modified to the following extent.

Loss of dependency Rs. 16,892/-X12X17	Rs. 34,45,968/-
Loss of consortium to wife	Rs. 44,000/-
Loss of consortium to mother	Rs. 44,000/-
Funeral Expenses	Rs. 16,500/-
Loss of Estate	Rs. 16,500/-
Total	Rs.35,66,968/-

18. Consequently, the impugned Judgment dated 25.10.2016, passed in MAC Case No. 587/2011 by the learned Member of MACT, No. 3, Kamrup, Guwahati is hereby modified to the extent indicated above. The interest awarded by the learned Tribunal below shall remain same.
19. 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.
20. Statutory deposit be released in favour of the Insurance Company after proper verification.
21. LCR be sent back forthwith to the learned tribunal below.

JUDGE

Comparing Assistant