

GAHC010060882020



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

Case No. : MAC App. 144/2020

1. Binu Ray

Wife of Late Ananga Ray,
R/o Village Pasduar, Abhayapuri Town
W/No. 3, P.S. Abhayapuri
Dist. Bongaigaon, Assam.

.....**Appellant**

-VERSUS-

1. The Oriental Insurance Company Ltd.

represented by the Divisional Manager,
Bongaigaon Divison, Bongaigaon,
P.O. & Dist. Bongaigaon, Assam
PIN- 783380.

2. Hemonta Kr. Ray,

S/o P.C. Ray, R/o Vill- Pakhriguri,
Abhayapuri, Dist. Bongaigaon, Assam
PIN 783383.

3. Sri Pankaj Kr. Ray,

S/o Late Prafulla Kr. Dey,
R/o Vill- Abhayapuri Town

Ward No.-3, Dist. Bongaigaon, Assam

PIN- 783383.

.....**Respondents**

**BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Advocate for the appellant : Mr. M. Khan

Advocate for the respondents : Ms. M. Choudhury (R1)

Date of hearing : 29.11.2022

Date of Judgment/ Order : 23.02.2023

JUDGMENT & ORDER

Heard Mr. M Khan, learned counsel for the appellant and Ms. M Choudhury, learned counsel for the respondent No. 1/Insurance Company.

2. This appeal under Section 173(1) of the Motor Vehicles Act, 1988 has been filed for enhancement of the amount of award passed by the learned Member, MACT Bongaigaon vide Judgment and Award, dated 20.12.2019 in MAC Case No. 145/2013.

3. The case of the appellant/claimant, in brief, is that on 25.11.2008 at about 3:15 am., a bus bearing registration No. AS-01-7513 driven by the respondent No. 3 was proceeding from Bijni towards Abhayapuri and when the vehicle reached Gerukhabari Chowk on National Highway No.31, a truck coming from eastern side towards Dhubri in rash and negligent manner, knocked down the

bus due to which the bus rolled down and the handyman (Dhananjay Ray), who was the son of the claimant, sustained grievous head injury and died on the spot.

4. The appellant/claimant filed MAC Case No. 145/13 before the Court of learned Member, MACT, Bongaigaon, claiming compensation for an amount of Rs.5,75,000/- (Rupees Five Lakhs Seventy Five Thousand) only for the death of her son due to rash and negligent driving of the offending vehicle.

5. Upon receipt of notice, the opposite parties appeared and filed their written statement denying the claims of the appellant and prayed for dismissal of the claim petition.

6. The claimant side examined two witnesses including the claimant and exhibited 7 documents and the opposite party neither examined any witness nor exhibited any documents in their defence.

7. Accordingly, after due adjudication of the claim petition, the learned Tribunal vide Judgment and Award, dated 20.12.2019 in MAC Case No. 145/2013, awarded compensation of Rs.3,11,920/- (Rounded off to Rs.3,12,000/-) (Rupees Three Lakhs Twelve Thousand) only to the claimant/appellant as compensation, however, with 6% interest from the date of filing the claim petition.

8. Being aggrieved by the aforesaid impugned judgment and award, the claimant/appellant has preferred the instant appeal claiming enhancement of the awarded sum on the grounds, *inter-alia*, as follows-

“1. That the learned Tribunal was not justified at all in assessing the compensation of Rs.3,12,000/-. The learned Tribunal is required to award such

compensation which the facts of the case is just, fair and reasonable.

2. *That the learned trial Court has failed to consider the statutory provision of Section 171 of the MV Act, which postulates that where any Claims Tribunal allows a claim for compensation made under the Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf;*

3. *That the learned Tribunal has not considered the evidence on records and thereby arrived at erroneous finding and judgment."*

9. In the instant appeal the grievance of the appellant is that the learned Tribunal erred in assessing the income of the deceased and resultantly, appropriate compensation has not been awarded for the death of the claimant's son in motor vehicular accident. It may pertinently be pointed out that the strict procedure of the Code of Civil Procedure is not applicable to a claim proceeding under the Motor Vehicles Act. The Tribunal is, therefore, free to follow any procedure which it considers expedient to achieve the requirement of natural justice and fair play in determining the compensation. The onus lies on the claimant to prove the income of the deceased and as such, a bare assertion in the claim petition in that behalf is not sufficient to discharge that onus. A perusal of the impugned judgment and award, it is noticed that **admittedly** the deceased was a handyman of the offending bus bearing registration No. AS-01-7513. Although the claimant claimed that the deceased's monthly salary was Rs.4,500/-, the claimant however, adduced no evidence and no income certificate. On the other hand, as the opposite party No. 1, the owner of the vehicle and opposite party No. 2, the driver thereof stated in the written statement that the monthly salary of the deceased was Rs.1,600/- per month, the learned Tribunal was therefore persuaded to accept it as notional income.

10. A perusal of the joint written statements filed by the respondent Nos. 1

and 2 reveal that in Para No. 7, it has been averred that the deceased being the handyman was paid an amount of Rs.1,600/- per month as salary including all allowances. The opposite party No. 3, the Insurance Company in para No. 12 of the written statement, *inter-alia*, denied the monthly income of the deceased as claimed. P.W. 1, the claimant mother of the deceased in her examination-in-chief deposed that her deceased son, who worked as a handyman of the offending vehicle No. AS-01-7513 (bus) used to get Rs.4,500/- per month as his salary and Rs.50/- per day as his daily allowance. In her cross-examination, denied the suggestion of the respondent No.3/the Insurance Company that her son was not working as handyman in the bus and not drawing Rs.4,500/- as his monthly salary. As stated above, neither the respondent Nos. 1 and 2 nor the respondent No. 3 examined any witness to prove their pleadings and as such, mere suggestion made in the cross-examination of the claimant (PW 1) carries no significance for having not rebutted the claimant's plea of having earned a monthly income of Rs.4,500/- plus a daily allowance @Rs.50/-. Therefore, this Court is of the considered opinion that for failure to discharge the onus of proof by the opposite party/respondents the claim of the claimant as regards the income of the deceased ought to have been accepted. To speak it differently, the claimant was not challenged or contradicted by the Insurance Company when she stood in the witness box and claimed of her deceased son earning the aforesaid monthly income. Added to it, the deceased was being a self employed as handyman of the offending bus he was belonged to the unorganized workers' sector and as such, the claimant cannot, reasonably be expected to produce documents to prove her deceased son's monthly income. Accordingly, even if the daily additional allowance of Rs.50/- is not taken into account, the income of the deceased is taken @Rs.4,500/-, per month with 40% future prospect

considering his age. As he was a bachelor, 50% of the income is to be deducted towards his living and personal expenses. At the time of death, the deceased was 20 years of age and therefore, multiplier 18 is applicable for ascertaining the loss of income and dependency.

11. Situated thus, the compensation is computed as hereunder-

Sl. No.	HEADS	Amount awarded
1.	Monthly income of the deceased (A)	Rs. 4,500/-
2.	Add-future prospect (B) @40%	Rs.1,800/-
3.	50% less towards personal expenses of the deceased (C)	Rs.3,150/-
4.	Monthly loss of dependency [A+B-C=D]	Rs.3150/-
5.	Annual loss of dependency (Dx12=E)	Rs.37,800/-
6.	Multiplier '18' (F) (Age group 21-25)	---
7.	Total loss of dependency (E x 18=G)	Rs.6,80,400/-
8.	Compensation for loss of consortium (H)	Rs.40,000/-
9.	Compensation towards funeral expenses (I)	Rs.15,000/-
10.	Loss of estate (J)	Rs.15,000/-
Total Compensation (G+H+I+J=K)		Rs.7,50,400/-

12. Accordingly, appeal stands partly allowed enhancing the quantum of compensation from 3,12,000/- (Rupees Three Lakhs Twelve Thosand) to

Rs.7,50,400/- (Rupees Seven Lakhs Fifty Thousand Four Hundred) only on account of death of the claimant's son. The Insurance Company shall deposit the aforesaid amount with the Office of the Member, MACT, Bongaigaon within a period of 6(six) weeks minus the amount already paid to the claimant, if any. The other conditions of the impugned award passed by the learned Tribunal shall remain unmodified.

The appeal stands disposed of.

JUDGE

Comparing Assistant