

GAHC010070692019



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

Case No. : MACApp./50/2023

NEW INDIA ASSURANCE COMPANY LIMITED
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING, 87, MAHATMA GANDHI ROAD, FORT, MUMBAI- 400001 AND
REGIONAL OFFICE AT G.S. ROAD, GUWAHATI-5, REP. BY THE CHIEF
REGIONAL MANAGER.

VERSUS

SMTI. PURNIMA BHUYAN @ MAINI KHARGARIA AND 3 ORS
W/O- LATE KHURENDRA BHUYAN, C/O- BASHNAV KHARGHARIA, R/O-
DARANGI CHUK, NEAR JATIYA VIDYALAYA, P.O. AND P.S. JORHAT, DIST.-
JORHAT, ASSAM

2:SRI K. SUBRAMANIYAN
S/O- KANDASAMY
1/159
VATHALAIKADU
PERAVURANI
THANJAVUR
STATE- TAMIL NADU- 614804. (OWNER OF MARUTI SWIFT BEARING
REGISTRATION NO. TN- 49 AW-4514)

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent :

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. S. Dutta, Senior Advocate.
Mr. Sidhant Dutta, Advocate.

For the Respondents : Mr. K. Bhuyan, Advocate,

Date of Hearing : 20.02.2023

Date of Judgment : 20.02.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Dutta, learned Senior Counsel assisted by Mr. Sidhant Dutta, learned counsel for the appellant. Also heard Mr. K. Bhuyan, learned counsel for the claimants/respondents.

2. The present appeal under Section 173 of the Motor Vehicle Act, 1988 is directed against the Judgment and Order dated 05.06.2018, passed by the learned Member of Motor Accident Claims Tribunal, Jorhat in MAC Case No. 16/2012.
3. The case of the claimant in brief is that while the deceased was travelling by a motorcycle and was waiting at the crossing to go towards Pudukkottai Road, near Airport entrance, the vehicle bearing registration No. TN-49/AW-4514 driven in a rash and negligent manner came and hit him from behind and as a result, the victim sustained grievous injuries. It is also pleaded that the victim was immediately taken to KMC Speciality Hospital where he succumbed to his injuries on 07.11.2011, during the course of treatment. It is the further claim

that the deceased was aged about 43 years at the time of his death and he was earning Rs. 23,196/- per month as a CISF employee.

4. The claimant exhibited the pay slip as Exhibit-2 which is a computerised salary certificate issued by the Deputy Commandant, CISF. The deceased was working as a Head Constable which was proved by adducing evidence through one Sri R. Narayanasamy. The claimant exhibited as many as 12 (twelve) documents including post mortem report, death certificate, prescription etc. The owner of the offending vehicle did not contest the case and accordingly the same proceeded ex-parte against him.
5. The Insurance Company filed their written statement and had taken the usual pleas such as maintainability of the claim, want of cause of action etc. It was also claimed that the driver of the vehicle bearing registration No. TN-49/AW-4514 had no valid driving license and it was not duly insured. The respondent No. 4, who is the owner of a motorcycle, which was been driven by the deceased i.e. the vehicle bearing registration No. KA-19 S/3838, deposed that the deceased was his friend and he is the owner of the bike which was driven by the deceased on the fateful day.
6. The claimant examined herself as PW-1 and proved the exhibited documents. The learned Tribunal below after considering the evidence came to a conclusion that the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing registration No. TN-49/AW-4514 (Maruti Swift) and there was no contributory negligence on the part of the deceased in the alleged accident. After elaborate discussion, the learned Tribunal below came to a definite conclusion that the offending vehicle was insured at the time of the accident. Thereafter, relying on the last salary certificate of the deceased and taking note of the age of the victim and relying on the judgment of the Hon'ble Apex Court in ***National Insurance Company Limited –Vs- Pranay***

Sethi and Others reported in **(2017) 16 SCC 680**, awarded an amount of compensation of Rs. 33,73,552/- and also awarded Rs. 15,000/- each against funeral expenses and loss of estate and Rs. 40,000/- for loss of consortium.

7. Mr. S. Dutta, learned Senior Counsel has confined his argument to the ground that though the pay slip of the claimant was exhibited, the same is a computer generated document and there was no endorsement from the issuing authority nor did any one come to prove the pay slip and as such the learned Tribunal below ought not to have relied on such document. Mr. Dutta, learned Senior Counsel further contends that in view of the decision of a Coordinate Bench in ***Oriental Insurance Co. Ltd –vs- Smti Champabati Ray and 5 Ors. (MACApp./378/2017)***, the claimants are not entitled for interest on future prospect.
8. Coming to the first contention, it is established beyond doubt that the deceased was a Head Constable in CISF. It is a fact that the salary certificate is a computer generated document and same was not proved by the author of such document. However, the fact also remains that the Insurance Company during the course of trial has not doubted the veracity of such document by putting any question as to the veracity or genuineness of the same and has not objected exhibiting the said document by the claimant.
9. The Motor Vehicle Act, is a beneficial legislation and procedure followed there are summary procedure. Therefore, on the background of such beneficial legislation, when it is established beyond doubt that the deceased was a Head Constable under CISF and that he expired in the motor vehicle accident in question and that the salary certificate also contains the name, designation and details of the deceased and that the same was not doubted by the Insurance Company itself, this Court do not find any error on the part of the learned Tribunal below relying on the said salary certificate awarding the compensation.

Therefore, the contention of Mr. S. Dutta, learned Senior Counsel is rejected.

10. In the case of ***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 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).

11. 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, referring to the decision in ***Pranay Sethi*** (supra) 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.

12. In ***The Future General India Insurance Co. Ltd –Vs- Bobby Bora and Ors.*** (MACApp./202/2012) in its Judgment & Order dated 04.02.2022, a coordinate Bench 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 considering 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.
13. This Court is in total agreement with the aforesaid view. Accordingly, this Court is also of the view that though no cross objection or appeal has been preferred by the present respondent/claimant, the claimant shall be entitled for the compensation given under the dicta of ***Pranay Sethi*** (Supra), ***Magma General Insurance Co. Ltd.*** (Supra) and ***Sarla Verma*** (Supra).
14. In ***Champabati Ray*** (supra) while dealing with entitlement of interest on

the amount awarded under the head “future prospect” held the following:-

*“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)*

15. Such determination is binding upon this Court.
16. In the present case, the admitted fact is that the deceased was aged

about 44 years and had permanent job at CISF, ASG Trichy and had an established income of Rs. 23,170/- per month. It is also established that the deceased had left behind his wife.

17. In view of the above fact and settled proposition of law, the compensation payable would be as follows:-

SL No.	Head	Amount
1.	A. Annual Income	Rs.23,170/-X12 =Rs.2,78,040/-
	B. Future Prospect @ 30% of income.	Rs. 83,412/-
	C. Less 1/3 rd	Rs. 1,20,484/-
	D. Add Multiplier	14X 2,40,968/- = Rs. 33,73,552/-
	Total compensation Rs. 33,73,552/-	
2.	Loss of Estate	Rs. 16500/-
3	A. Spousal Consortium for wife	Rs. 44,000/-
	B. Funeral expenses	Rs. 16500/-
	Total = Rs.34,50,552/-	

18. While not interfering with the award of interest @ 5%, 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 terms of the decision in **Champabati Ray** (supra)

19. Consequently, the impugned Judgment and order dated 05.06.2018, passed in MAC Case No. 16/2012 by the learned Member of MACT, Jorhat, is hereby modified to the extent indicated above.

20. Statutory deposit if any 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