

GAHC010084982021



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 164 of 2021

Oriental Insurance Company Limited,
Having its registered office at Oriental
House, A-25/27, Asaf Ali Road, New Delhi-110002,
And Regional Office at Guwahati-7, represented
By the Regional Manager

.....Appellant

-Versus-

1. Mojira Khatun,
Wife of Abul Asad,
- 2: Abul Asad,
S/o Abdul Rahman,
Both are residents of Village- Fofonga Part-1,
P.O.-Balbala, P.S.- Agia, District- Goalpara, Assam.
3. Nur Md. Ahmed,
S/o Rahimuddin,
Village – Kismatpur, P.O.- Baladmari,
P.S. & District- Goalpara, Assam.

[Owner of the offending vehicle bearing
Registration No. AS-18C-7700 (Tata Magic)]

4. Najmul Hussain,
S/O Sahadat Hussain,
VILL. –Bhalukdubi (Barpahar),
P.S. & District – Goalpara, Assam.
[Driver of the offending vehicle bearing
Registration No. AS-18C-7700 (Tata Magic)]

.....Respondents.

Advocates for the appellant : Mr S Dutta,
Advocate for the respondents : Mr H Das.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 09.02.2023

JUDGEMENT AND ORDER (CAV)

Heard Mr S Dutta, learned counsel appearing for the appellant and Mr H Das, learned counsel for the respondent Nos. 1 and 2.

2. The Insurance Company has filed the appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Award dated 05.01.21, passed by the learned Member, MACT, Goalpara, in MAC Case No. 39 of 2018.

3. The brief facts of the case is that on 11.01.2018, at about 01:00 am, one Abdul Aziz, son of the claimants was travelling from Balbala towards Krishnai through NH-37 in a vehicle bearing Registration No. AS-18C-6625 (Auto Tempo) as a passenger and when they reached

near the weaving centre at Fofonga Part-II, another vehicle bearing No. AS-18C-7700 (Tata Magic) being driven in a rash and negligent manner, knocked down the Auto Tempo, as a result of which, Abdul Aziz, died on the spot. Accordingly, his Post-Mortem Examination was conducted.

4. Notices were issued upon which all the opposite parties entered their appearance before the Tribunal and contested the case by filing their respective written statements and denying their liabilities.

5. In support of the case, the claimants' side examined one witness, while the opposite parties did not adduce any witness in support of their case. After hearing both sides, the learned Tribunal, Goalpara, had delivered the judgment dated 05.01.2021, awarding a total sum of Rs. 11,55,280/- (Rupees Eleven Lacs Fifty Five Thousand Two Hundred and Eighty) Only, along with interest @ 9% per annum in favour of the claimants.

6. Being highly aggrieved and dissatisfied with the Judgment and Award dated 05.01.2021, the Insurance Company has preferred this appeal under Section 173 of the MV Act, 1988.

7. The learned counsel for the appellant has argued that the claimants are not entitled to future prospects on the income of the deceased since the income of the deceased was not substantiated by any evidence. Therefore, the learned MACT fixed the income of the deceased as notional income of an unskilled worker. As there is no certainty of the avocation of the deceased, there cannot be any question of awarding any compensation under the head- 'Future Prospect'.

8. It is also the submission of the learned counsel for the appellant that the claimants are

not entitled to any interest on future prospect of the income of the deceased. The learned Member, MACT, fixed a very high rate of interest, i. e, 9% per annum on the Award. According to the learned counsel for the appellant, the Award passed by the Tribunal is liable to be set aside. In support of his submission, learned counsel has placed reliance on the following caselaws:

- 1) (2001) 2 SCC 9; (*Kaushnuma Begum & Ors. Vs. New India Assurance Company Limited. & Ors.*)
- 2) 2020 ACJ 2409; (*Oriental Insurance Company Ltd. vs. Champabati Roy & Ors*)
- 3) Madhya Pradesh High Court Gwalior Bench; MA No. 979/2015 (*Vinita & Others vs. Anil Kumar Dubey & Ors.*)

9. On the other hand, learned counsel for the claimants/respondents has submitted that any compensation awarded by a Court ought to be just, reasonable and undoubtedly be guided by the principles of fairness, equity and good conscience. Granting of future prospects on notional income calculated in such case is a component of just compensation. And 9% interest awarded by the Tribunal is quite reasonable.

10. It is also submitted by the learned counsel for the claimants/respondents that it is unfair on the part of the appellant insurer to contest grant of future prospects, considering their submission before this Court that such compensation ought not to be paid, pending outcome of *Pranay Sethi* reference. Nevertheless the law on this point is no longer res integra and stands crystallized as is clear from the following extract of the constitutional Bench judgment, i.e. ***National Insurance Company Limited –Vs- Pranay Sethi & Ors.,***

Reported in SLP (Civil) No. 25590/2014–

“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.”

11. The learned counsel for the respondents/claimants has cited the following caselaws:

- 1) (2021) 2 SCC 166; (*Kirti and Another vs. Oriental Insurance Company Limited*)
- 2) (2013) 16 SCC 711 (*Josphine James Vs. United India Insurance Company Limited & Another*).

12. I have considered the submissions made by the learned counsel for both the parties. I have gone through the Judgment and Order dated 05.01.2021 as well as the record of MAC Case No. 39 of 2018.

13. In the instant case, the Insurance Company has stressed his argument on the point of income of the deceased. The factum of accident has not been challenged in this case. The Tribunal has fixed the income of the deceased as unskilled labour, amounting to Rs. 7,600/-, as per Government of Assam notification No. MWC.3/93/Pt-II/13405-07 dated 13.12.2018. As the claimant has failed to prove the income of the deceased by producing any documents or adducing any evidence, the income of the deceased be considered as Rs. 9,246/- as unskilled

labour, vide latest Government of Assam notification No. GLR.503/81/Pt-I/252 dated 16th March, 2022.

14. Regarding age of the deceased, except Post-Mortem Report, no any document has been available before the Tribunal. Hence, Tribunal has taken the age of the deceased as 28 years on the basis of the Post-Mortem Report, which was not agitated by the appellant. Hence, an addition of 40% should be added along with his established income of Rs. 9,246/-. As such, monthly income of the deceased is considered as Rs. 9,246/- + Rs. 3,698/- (40%) = Rs. 12,944/-.

15. As the age of the deceased was 28 years at the relevant time of accident, as per the Judgment of ***Sarala Verma –Vs- DTC;*** reported in **(2009) 6 SCC 121**, the multiplier would be 17.

16. In the instant case, the deceased was a bachelor at the time of accident. As such, the standard deduction towards personal and living expenses is applicable as stated in the case of ***Sarala Verma (supra)***, and 50% income is required to be deducted with the presumption that had the deceased been alive, he could have spent 50% for her personal and living expenses.

17. In the case of ***Magma General Insurance Company Limited –Vs- Nanu Ram reported in (2018) ACJ 2782***, Hon'ble Supreme Court has held that MV Act is a beneficial legislation aimed at providing relief to the victims or their families in cases of genuine claims. In case, where a parent has lost their minor child or unmarried son or daughter, the parents are entitled to be awarded for loss of consortium under the head of filial consortium.

18. In the said case, Hon'ble Supreme Court awarded a sum of Rs. 40,000/- each, towards loss of filial consortium to the father and sister of the deceased.

19. In the case in hand, the respondent No. 1/claimant, Mojira Khatun, is the mother of the deceased, Abdul Aziz. As such, she is entitled to get the filial consortium for the death of her son.

20. As per the case of ***Pranay Sethi (supra)***, the Hon'ble Supreme Court has fixed the compensation in case of death reasonable figures on conventional heads, namely, loss of estate, and funeral expenses should be Rs. 15,000/- and Rs. 15,000/- respectively. As per the impugned judgment, the aforesaid amount shall be enhanced @ 10% in every 3 years. Hence, the amount of loss of estate and funeral expenses would come to Rs. 16,500/- on each count.

21. In view of the aforesaid discussions, the computation of compensation is awarded as follows-

A. Annual income of the deceased- Rs. 12,944/- x 12 = Rs. Rs. 1,55,328/-

B. After deducting 50 % of the income of the deceased, the amount comes to = Rs. 77,664/-

C. After multiplying with multiplier, the amount comes to Rs. 77,664/-x 17= Rs. 1,3,20,288/-.

D. Funeral expenses = Rs. 16,500/-

E. Loss of Filial Consortium = Rs. 40,000/-

F. Loss of Estate = Rs. 16,500/-

Total – Rs. 13,93,288/- (Rupees Thirteen Lakhs Ninety Three Thousand Two Hundred and Eighty Eight) Only.

22. In the result, appeal is disposed of, with the aforesaid modification, awarding Rs. 13,93,288/- (Rupees Thirteen Lakhs Ninety Three Thousand Two Hundred and Eighty Eight) Only, along with interest thereon @ 9% per annum, from the date of filing of the case till full and final realization. The Oriental Insurance Company Limited is directed to discharge the liability of the award within a period of 30 days from the date of receipt of the order.

23. The Insurance Company is directed to make payment of the amount of compensation to the savings account of the respondent No. 1/ claimant, Mojira Khatun, through NEFT. She is directed to furnish her bank details of any nationalized bank to the Oriental Insurance Company Limited for necessary payment.

24. The amount already paid be adjusted accordingly.

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

26. Send down the LCR.

JUDGE

Comparing Assistant