

GAHC010123432014



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

Case No. : MACApp./83/2014

NATIONAL INSURANCE CO.LTD.
HAVING ITS REGD. OFFICE AT KOLKATA AND ONE OF THE REGIONAL
OFFICE S AT G.S. ROAD, GUWAHATI.

VERSUS

BAKUL RANI SARKAR and 2 ORS
W/O LATE MRITUNJANY SARKAR, VILL. DIBONGPHAKIAL, P.S.
MARGHERITA, DIST. TINSUKIA, ASSAM.

2:GONESH GOGOI

S/O SRI PURNESWAR GOGOI
R/O @ NO. GOLIA
P.S. DIGBOI
OWNER OF THE VEHICLE NO. AS-23-E-7010

3:DIPAK GOGOI

S/O SRI CHANDRA GOGOI
JAGUN BAZAR
P.S. LAKHAPANI
DRIVER OF THE VEHICLE NO. AS-23-E-701

Advocate for the Petitioner : MS.L SHARMA

Advocate for the Respondent : MR.S P UPADHAYA

**BEFORE
HONOURABLE MR. JUSTICE K. SEMA**

JUDGMENT & ORDER (CAV)

Date: 21.03.2023

Heard Mr. H. Buragohain, learned counsel for the appellant and Mr. B. Pushilal, learned counsel for the claimant/respondents.

2. The present statutory appeal under section 173 of the Motor Vehicle Act, 1988 has been filed by the appellant/National Insurance Co. Ltd. challenging the judgment & award dated 28/09/2010 passed by the learned Member, Motor Accident Claims Tribunal, Kamrup in MAC Case No. 716/2007.

3. The facts relevant for adjudicating the present appeal is that on 26/01/2007 late Mritunjany Sarkar was hit by the vehicle bearing Regd. No. AS 23-E-7010 and as a result, the victim succumbed to the injury on the way to the hospital. At the time of death, the deceased was 72 years old and was having a monthly income of Rs. 3000/-.

4. The claim petition was filed by the wife of the deceased and upon adjudication of the claim, the learned Tribunal, after deducting 1/3rd of the income towards personal expenses awarded a sum of Rs. 2,31,000/-(Rupees Two lakh thirty one thousand) only to the claimant under the following heads;

Loss of dependency 24000 x 9	= Rs. 2,16,000/-
Funeral expenses	= 5,000/-
<u>Loss of consortium</u>	<u>= 10,000/-</u>

Total = Rs.2,31,000/-

5. The appellant has impugned the judgment & award dated 28/09/2010 primarily on the ground that the wrong multiplier of 9 was applied by the Tribunal for calculating the compensation payable to the claimant/respondent. It

is submitted that the deceased was 72 years of age at the time of his death and therefore, the multiplier of 5 as held by Hon'ble Supreme Court in the case of **Sarla Verma (SMT) & Others -versus- Delhi Transport Corporation & Another**, reported in **(2009) 6 SCC 121** should have been applied. The multiplier of 9, it is submitted, is therefore erroneous and the award is liable to be interfered with. It is further the case of the appellant that the deceased being 72 years of age at the time of his death his notional income ought to have been fixed at Rs. 10,000/- p.a and by applying the multiplier of 5, the compensation payable to the claimant/respondent should have been worked out adding Rs. 5,000/- as funeral expenses. The learned counsel therefore submits that the amount of Rs. 2,31,000/- awarded in favour of the claimant/respondent by the learned Tribunal is excessive, without any proper basis and is liable to be interfered with.

6. Mr. B. Pushilal, the learned counsel for the claimant/respondent, on the other hand, fairly admits that in the instant case, the learned Tribunal should have applied the multiplier of 5 and not 9 as held in Sarla Verma (supra), the deceased husband of the claimant being 72 years old. The learned counsel however contends that no proper award was given to the claimant under the conventional head. In the impugned judgment & order dated 28/09/2010, the learned Tribunal had awarded only a sum of Rs. 5,000/- against funeral expenses and Rs. 10,000/- for loss of consortium. This, the learned counsel submits is not in accordance with the reasonable figures on conventional heads as held by the 5(five) Judge Bench of the Hon'ble Supreme Court in the case of **National Insurance Company Limited -versus Pranay Sethi & Others**, reported in **(2017) 16 SCC 680**. On the appellant disputing the annual income of Rs. 36,000/- of the deceased, the learned counsel for the

claimant/respondent submits that the appellant did not led any evidence to dispute the same before the learned Tribunal and therefore, the appellant cannot be allowed to dispute the annual income of the deceased in the appellate stage.

7. Heard the learned counsel for the parties and perused the judgment dated 28/09/2010 passed by the learned Member, Motor Accident Claims Tribunal, Kamrup, Guwahati. In the judgment dated 28/09/2010, the learned Tribunal while discussing the Issue No.2 has worked out the yearly income of the deceased to Rs. 36,000/- p.a on the basis of the evidence adduced by the claimant and the same not having been controverted by the appellant by leading evidence, this Court is inclined to accept that the yearly income of the deceased is Rs. 36,000/- p.a. Insofar, as the application of the multiplier by the learned Tribunal is concerned, it appears that the multiplier of 9 for the deceased aged 72 years is on the higher side and not in accordance with multiplier as adopted by the Hon'ble Apex Court in Sarla Verma (supra). In Sarla Verma (supra), the Hon'ble Apex Court in paragraph-42 has held that;

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Susamma Thomas³, Trilok Chandra⁴ and Charlie⁹), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

8. This Court accordingly holds that the multiplier of 5 shall be applied while determining the compensation payable to the claimant/respondent for the death of her husband aged 72 years.

9. Insofar, as the award made by the learned Tribunal under the conventional

head, this Court has perused the judgment dated 28/09/2010 where the Tribunal has awarded Rs. 5,000/- under funeral expenses and Rs. 10,000/- for loss of consortium. In the case of National Insurance Company Limited -versus- Pranay Sethi & Others (supra), the Hon'ble Supreme Court has held that the reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses respectively should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- and the aforesaid amount should be enhanced at the rate of 10% in every three years. This Court accordingly holds that the award under the conventional heads in the present case should also be in tune with the award made by the Hon'ble Supreme Court.

10. The award passed by the learned Tribunal is accordingly modified as under;

1. Loss of dependency after deducting $\frac{1}{3}^{\text{rd}}$ on the personal expenses of the deceased	
24000 x 5	: Rs. 1,20,000/-
2. Loss of estate	: Rs. 16,500/-
3. Loss of consortium	: Rs. 44,000/-
4. <u>Funeral expenses</u>	: Rs. <u>16,500/-</u>
Total	=Rs. 1,97,000/-

11. The appeal is accordingly disposed with a direction to the appellant/company to pay the compensation amount of Rs. 1,97,000/- (Rupees One lakh ninety seven thousand) only with interest @ 6% p.a from the date of filing of the claim petition till final realization. The sum of Rs. 1,15,500/- (Rupees One lakh fifteen thousand five hundred) only which is 50% of the awarded amount by the Tribunal which has been deposited by the appellant and received by the claimant/respondent shall be deducted from the award passed

by this Court with effect from the date it was deposited and the claimant/respondent shall be entitled to the balance amount with the interest as aforesaid.

12. Appeal disposed. No cost.

13. Send back the LCR forthwith.

JUDGE

Comparing Assistant