

GAHC010137442016



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

Case No. : MACApp./129/2019

SRI GIRINDRA MALAKAR and 3 ORS,
S/O LATE RAM CHARAN MALAKAR

2: SMTI SABITA MALAKAR
D/O SRI GIRINDRA MALAKAR

3: MISS BONOLATA MALAKAR
D/O SRI GIRINDRA MALAKAR

4: NEPAL MALAKAR
S/O SRI GIRINDRA MALAKAR
ALL ARE R/O VILL. RANGABAK PART-II
P.O. RANGABAK
P.S. KATLICHERRA
DIST. HAILAKANDI
ASSAM

VERSUS

THE DIVISIONAL MANAGER, UNIVERSAL SOMPO GENERAL INSURANCE
CO. LTD
UNIT 401, 4th FLOOR, SANGAM COMPLEX, 127 ANDHERI KURLA ROAD,
ANDHERI EAST, MUMBAI 400059

Advocate for the Petitioner : MS. D KALITA

Advocate for the Respondent : MR. S BHUYAN

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellants : Mr. M Talukdar, Advocate

For the Respondents : Mr. R Goswami, Advocate

Date of Hearing : 09.01.2023

Date of Judgement : 09.01.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. M Talukdar, learned counsel for the appellants. Also heard Mr. R Goswami, learned counsel for the Insurance Company.
2. The present appeal is preferred by the claimant assailing the judgment and award dated 09.12.2015 passed in MAC Case No. 45/2013 by the learned Member, Motor Accident Claims Tribunal, Hailakandi, Assam.
3. The basic challenge relates to quantum and the Insurance Company has not preferred any appeal or cross-objection against the impugned judgment and there is no dispute as regards the accident, the validity or violation of the insurance policy, validity of driving licence etc. and accordingly, this court is of the opinion that it is not necessary to go the details into the pleading and determination.
4. The case of the claimants/ appellants in a nutshell is that the deceased victim was the son of the claimant No. 1 and brother of the claimant Nos. 2,3 and 4. He was unmarried and was a Govt. employee.
5. The claimants during the proceeding have proved the following facts,

which are also not challenged by the Insurance Company:

- I. The deceased was a constable under 14 AP IRPN.
- II. His gross salary was Rs. 16,456/-.
- III. The deceased was a bachelor at the time of his death and his date of birth is 28.01.1987. He was aged of 25 years 9 months and 27 days on the date of his death i.e. on 25.11.2012.

6. In the backdrop of the aforesaid fact, the learned counsel for the appellants urges the followings:

- I. As the monthly salary of the deceased at the time of his death was proved to be Rs. 16,456/- by way of exhibiting the salary certificate, contents of which was duly proved by the employer, the learned Tribunal below ought not have deducted the amount deposited against the provident fund and group insurance. The salary of the deceased ought to have been determined as Rs. 16,248/- after deduction of professional tax from the gross salary of Rs. 16,456/-.
- II. The future prospect has been determined erroneously by the learned Tribunal to be 30% instead of 50% considering the fact that the deceased was aged 28 years and was a Government employee.
- III. The learned Tribunal below had committed serious error of law by deducting 30% from the total compensation holding that the deceased had contributed to the accident inasmuch as there is no iota of evidence on record to come into such conclusion.
- IV. The claimants are also entitled for compensation against the loss

of consortium, loss of estate and funeral expenses as determined by the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***.

7. Mr. R Goswami, learned counsel for the Insurance Company submits that the learned Tribunal below has not committed any error in reducing the total compensation to the extent of 30% considering the contributory negligent on the part of the deceased inasmuch as the claimants in their claim petition pleaded the accident to be result of head on collision between the motorcycle ridden by the deceased and in evidence on affidavit it is stated that the offending vehicle hit the deceased from the behind. The DTO's report on the offending vehicle, which was exhibited by the claimants goes to show that there are some damages in the back side of the offending vehicle. In the aforesaid backdrop, there is every possibility that the motor cycle wherein the deceased was travelling hit the truck from behind.
8. This court has given anxious consideration to the material available on record. Coming to the monthly income of the deceased, the claimants have established and proved that the gross monthly income of the deceased was Rs. 16,456/- and he used to pay professional tax of Rs. 208/- per month and therefore the learned Tribunal below ought to have determined the income of the deceased victim to be Rs. 16,248/-.
9. As the deceased was below 40 years and was a Government salaried person in term of the judgment of the Hon'ble Apex Court in ***Pranay Sethi (supra)***, the future prospect would have been determined at the 50% not at the 30%.

10. Coming to the contributory negligence, the insurance company has not pleaded any contributory negligence on the part of the motor cycle. No evidence or witnesses were brought to the witness box to show that there was contributory negligence on the part of the deceased. The law by now is well settled that to prove contributory negligence, there must be cogent evidence. As discussed hereinabove, in the present case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased. The DTO's report was exhibited by the claimants themselves, however, the author of such document was not brought to the witness box by the insurance company to show that there was contributory negligence on the part of the motor cycle and did not prove the contents of the document. Mere exhibiting of the document will not prove its contents. Further, until and unless there is cogent evidence, only for the reason that there were some damages in the back side of the truck, it cannot be presumed that those damages were caused by motor cycle. Situation may so arise that after meeting with the accident, the truck might turn around and got damaged its backside hitting other object. Therefore, only on such presumption and without there being cogent evidence, the learned Tribunal below has committed serious error by presuming that there is contributory negligence to the extent of 30% on the part of the deceased. Therefore, such determination is interfered with.

11. 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.*

12. 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).

13. 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 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.

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

Annual Income: {Rs. 16,456/- (monthly income) -Rs. 208/-(professional tax)
X12= Rs. 1,94,976/-.

Future Prospect 50% of income: Rs. 97,488/-.

Less 50% :Rs. 1,46,232/-.

Add Multiplier 16 :Rs. 1,46,232 X 16= Rs. 23,39,712/-.

Loss of consortium :Rs. 44,000/-

Loss of estate :Rs. 16,500/-

Funeral expenses :Rs. 16,500/-

Total :Rs. 24,16,712/-

15. Consequently, the impugned Judgment dated 09.12.2015 passed in MAC Case No. 45/2013 by the learned Member, Motor Accident Claims Tribunal, Hailakandi, Assam is hereby modified to the extent indicated above.

16.Send back the LCRs.

JUDGE

Comparing Assistant