

GAHC010148052022



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

Case No. : MACApp./430/2022

THE ORIENTAL INSURANCE CO. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT, REPRESENTED
BY THE REGIONAL MANAGER, GUWAHATI , ULUBARI, KAMRUP M
ASSAM

VERSUS

MAYANTI DEKA AND ANR.
W/O SRI SUREN DEKA
RESIDENT OF KALITAPARA, PO KHAKAIPARA, DIST DARRANG, ASSAM

2:SRI SAMEER DEV NATH
S/O DHIREN DEV NATH

RESIDENT OF HOUSE NO. 121
BISHNUPUR MAIN ROAD
BISHNUPATH
BYE LANE 2
GOPINATH NAGAR
PS BHARALUMUKH
DIST KAMRUP M ASSAM 78101

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : MS D D ROY

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 15-06-2023

Heard Mr. S. K. Goswami, learned counsel for the appellant. Also heard Ms. D. D. Roy, learned counsel for the respondents.

2. This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Award dated 28.04.2022, passed by the learned Member, Motor Accident Claims Tribunal (in short 'MACT') No.1, Kamrup (M), Guwahati in MAC. Case No.812/2015.

3. Mr. S. K. Goswami, learned counsel for the appellant has submitted that the learned Trial Court had passed the order dated 28.04.2022 in MAC. Case No.812/2015, and as per order awarded a compensation of Rs.5,37,833/- (Rupees Five lakhs thirty-seven thousand eight hundred thirty-three) only, by directing the present appellant/Company to pay the awarded amount with interest @ 9% per annum from the date of filing of claim petition. The only issue raised in the present appeal is that the learned Member, MACT No.1, Kamrup (M), has considered only 1/3rd towards personal expenses of the deceased though it is an admitted fact that the deceased was unmarried at the time of his death.

4. It is submitted that the claim has been filed under Section 163(A) of the Motor Vehicle Act, 1988, therefore, the compensation should be awarded on the basis of the structured formula and same cannot be awarded, without following the structured formula indicated in the Second Schedule. But, the learned

Member, MACT No.1, Kamrup (M), while assessing compensation did not follow the formula prescribed in the second Schedule of this Act.

5. More so, it is an admitted fact that the age of the deceased was 27 years at the time of death and deceased comes under the age group of 26-30 years. So, multiplier would have been 17, as per view expressed by the **Hon'ble Apex Court in Sarla Vermal Case**. But, the learned Trial Court applied 18 as multiplier. As such the assessment made by the Court is not tenable and same is liable to be set aside and quashed.

6. In this context, Ms. D. D. Roy, learned counsel for the respondents raised no objection in the prayer made by the learned counsel for the appellant.

7. So considering the submissions made by the learned counsel for both sides, and also considering the fact that the deceased was unmarried at the time of incident, I find it justified to deduct the 50% from the income of the deceased and also to assess the award by considering the multiplier as 17.

8. Accordingly, considering the multiplier as 17 years and after deducting 50 % of his income along with other expenditure, the claimant/respondent is entitle for loss of estate of Rs.2,500/- and funeral expenses including other incidental expenses is Rs.2,000/-. The calculation is shown below:-

50% of the income	- Rs.20,000/- (40,000/2)
Multiplier	- 17 x 20,000/-

Loss of estate	- Rs.2,500/-
Loss of Funeral expenses	- Rs.2,000/-
<u>Total loss of dependency</u>	<u>- Rs.3,40,000/- (Rs.20,000 x 17)</u>
Total	- Rs,3,44,500/-

Hence, the total award amount will be 3,44,500/-.

9. In terms of above, this present appeal is allowed.

10. The present appellant is hereby directed to pay the amount of Rs.3,44,500/-(Rupees three lakhs fouty-four thousand five hundred) only to the present respondent along with the interest @ of 9% per annum w.e.f. the date of filing of the claim petition. Further, the appellant is also directed to fixed deposit a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand) only, in any nationalized Bank for 5(five) years and the interest accrued on the deposited amount will be paid to the claimant/respondent. The appellant is hereby directed to make the payment within 2(two) months.

11. The Statutory deposit of amount of Rs.25,000/-(Rupees Twenty thousand) only be released in favour of the appellant/Company.

JUDGE

Comparing Assistant