

GAHC010208172016



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

Case No. : MACApp./317/2016

SMT BONDITA DUTTA BORDOLOI and 2 ORS
W/O LATE TRIDEV @ TRIDIP BORDOLOI

2: MISS MANASHVI BORDOLOI
D/O LATE TRIDEV @ TRIDIP BORDOLOI AND BE REPRESENTED BY THEIR
LEGAL GUARDIAN
R/O BORKOTOKI ROAD
NA-ALI
P.O. JORHAT
P.S. JORHAT
DIST. JORHAT
ASSAM.

3: MISS MAYRAVI BORDOLOI
D/O LATE TRIDEV @ TRIDIP BORDOLOI AND BE REPRESENTED BY THEIR
LEGAL GUARDIAN
R/O BORKOTOKI ROAD
NA-ALI
P.O. JORHAT
P.S. JORHAT
DIST. JORHAT
ASSAM

VERSUS

UNITED INDIA INSURANCE CO. LTD and ANR.
REPRESENTED BY BRANCH MANAGER BRANCH OFFICE, GUWAHATI,
PANBAZAR

2:MONJIT DAS

S/O SUNIL KUMAR DAS
R/O ADABARI RAILWAY COLONY
P.O. PANDU

GUWAHATI (OWNER OF THE VEHICLE

Advocate for the Petitioner : MR. S P CHOUDHURY

Advocate for the Respondent : MS. M CHOUDHURY (R-1)

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants: Mr. S.P. Choudhury,
Advocate.

For the Respondent: Ms. M. Choudhury,
Advocate.

Date of Hearing: 29.08.2023.

Date of Judgment: 07.09.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. S.P. Choudhury, learned counsel representing the appellants as well as Ms. M. Choudhury, learned counsel appearing for the respondent.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 20.05.2016 passed by the learned Member, Motor Accident Claims Tribunal, Jorhat in MAC Case No.45/2013.

3. The factual matrix leading to filing of this appeal lies within a short campus. The claimant exhibited income tax returns of the deceased. In spite of that, the Tribunal did not rely upon those documents and notionally held the income of the deceased to be ₹10,000/- per month.

4. In order to buttress his point, Mr. Choudhury has relied upon a decision of the Supreme Court delivered in *Smt. Anjali and Ors. Vs. Lokendra Rathod & Ors.*, reported in AIR 2023 SC 44. Paragraph 9 of the judgment is quoted as under:

“9. The Tribunal and the High Court both committed grave error while estimating the deceased’s income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased’s annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in *Malarvizhi & Ors.* (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In *Malarvizhi* (Supra), this Court has laid as under:

“10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased.”

5. Income Tax returns are statutory documents and they are to be relied upon when assessing the compensation in a motor vehicles claim case. The claimant exhibited these documents as Ext.5(a) to 5(c). From these documents, it appears that the monthly income of the deceased was ₹30,000/-.

6. Therefore, the impugned judgment of the Tribunal must be interfered with. The deceased was 40 years old at the time of death. He left behind his wife and two children.

7. The assessment will be like this –

$\text{₹}30,000 \times 12 = \text{₹}3,60,000/- + 30\% \text{ of } \text{₹}3,60,000/- \text{ i.e. } \text{₹}1,08,000/- \text{ is } =$

₹4,68,000/-.

8. 1/3 of ₹4,68,000/- is deducted on personal expenses. Then, the amount comes to ₹3,12,000/-.

9. ₹3,12,000/- x 15= ₹46,80,000/-.

10. Therefore, loss of dependency will be ₹46,80,000/-. According to *National Insurance Company Limited vs. Pranay Sethi and Ors.*, reported in (2017) 16 SCC 680, for loss of estate; loss of consortium and funeral expenses, ₹70,000/- is awarded.

11. The claimants shall be entitled to receive a compensation of ₹47,50,000/-. The impugned judgment of the Tribunal is modified accordingly. The Insurance Company is directed to pay the aforesaid amount to the claimants.

12. The appeal is allowed and disposed of.

JUDGE

Comparing Assistant