

GAHC010250872019



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

Case No. : MACApp./481/2019

CHAPALA MEDHI
W/O LT. DILIP MEDHI, VILL. CHANDAKUCHI BISHNUPUR, P.O.
CHANDAKUCHI, P.S. and DIST. NALBARI, ASSAM

VERSUS

THE UNITED INSURANCE CO. LTD. and 2 ORS
A PUBLIC SECTOR UNDERTAKING HAVING ITS REGD. OFFICE AT
CHENNAI AND REGIONAL OFFICE AT G.S. ROAD, CHRISTIANBASTI,
GUWAHATI-5, REPRESENTED BY THE REGIONAL MANAGER, UNITED
INDIA INSURANCE CO. LTD., G.S. ROAD, CHRISTIANBASTI, GUWAHATI-5

Advocates for the petitioner : Mr. S. C. Pandit, Adv.

Advocates for the respondent : Mr. K. K. Bhatta, R-1.

:::BEFORE::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 15.06.2023

Date of Judgment & Order : 26.06.2023

JUDGMENT & ORDER (CAV)

Heard Mr. S. C. Pandit, learned counsel for the appellant. Also heard Mr. K. K. Bhatta, learned counsel for the respondent No.1.

1. This is an application filed under Section 173 of the Motor Vehicle Act, 1988 praying for enhancement of compensation awarded by challenging the judgment dated 03.01.2014 passed by the learned Member, MACT, Nalbari in MAC. Case No.245/2011.

3. The brief facts of the case is that on 30.10.2011 at about 8.30 A.M a 709 bus bearing Regn.No.AS-01/K-8112 coming from Bharalumukh side towards Panbazar in rash and negligent manner dashed against the husband of the present appellant, who was walking along the left side of the road at Machkhowa near Idgah field, which caused grievous injuries on his person. The injured person was immediately shifted at Down Town Hospital, Guwahati. But, the injured succumbed to his injuries on the same day. On receipt of the information, the Police of Bharalumukh police station registered a Bharalumukh P.S. Case No.427/2011, under Section 279/304(A) IPC and thereby investigated accordingly.

4. The present appellant/claimant/wife of the deceased filed the claim petition being Case No.245/2011 seeking compensation before the learned Member, MACT, Nalbari. After issuance of notices, the opposite parties/Insurance Company entered into appearance and submitted their written statement denying the case of the claimant. However, the owner and driver of the vehicle did not turn up in the Court to contest the case.

5. The appellant/claimant adduced her evidence as PW-1 along with two other witnesses as PW-2 and PW-3 and exhibited some documents in this regard.

6. As per PW-3, the income of the deceased was proved as Rs.16,000/- (Rupees Sixteen thousand) only as a Music Director-cum-Singer of Ramdhenu Theatre. But, the learned Member, MACT, Nalbari had not considered his monthly salary as Rs.16,000/-(Rupees Sixteen thousand) only and accordingly calculated the compensation considering his monthly salary as Rs.3,000/- (Rupees Three thousand) only. Thus, the deceased was awarded with a compensation of Rs.3,37,000/-(Rupees Three lakhs thirty-seven thousand) only with 7.5% interest per annum against the opposite party/respondent No.1.

7. On being highly aggrieved and dissatisfied with judgment and order dated 03.01.2014 passed by the learned Member, MACT, Nalbari, in MAC. Case No.245/2011, the appellant has preferred this present appeal on the following grounds:-

7.1. The learned Member, MACT, Nalbari has failed to appreciate various contentions raised on behalf of the claimant/appellant and passed the judgment without considering the evidence and exhibits produced by the

claimant/appellant in its true perspective. Hence, the judgment and award passed by the learned Member, MACT, Nalbari is liable to be set aside.

7.2. The learned Member, MACT, Nalbari also failed to consider the evidence of PW-3 and also failed to consider the exhibits 3 and 4, which the claimant/appellant had produced to prove the monthly income of the deceased as Rs.16,000/- (Rupees sixteen thousand) only as a Music Director cum Singer of Ramdhenu Theatre.

7.3. While computing the award, the learned Member, MACT, Nalbari also failed to deduct his personal expenses in proper ratio. Rather the Ld. Member also failed to consider different conventional heads towards loss of love and affection, loss of consortium, loss of estate, funeral expenses etc. and other appropriate conventional heads for assessment of amount of compensation of the deceased.

7.4. Thus, the judgment and order passed by the learned Member, MACT, Nalbari is liable to be set aside and proper assessment is to be done by computing on the basis of the evidences and materials furnished before the said Court.

8. The learned counsel for the appellant has submitted that the learned Member, MACT, Nalbari has passed the judgment and award mechanically without considering the actual income, prospect of the deceased, other conventional heads as well as without deducting the personal expenses in proper ratio. The only issue raised in this present appeal is for enhancement of

the compensation amount as per entitlement to the claimant/appellant. He also submitted that the appellant/claimant has produced the evidence of the employer's, i.e PW-3, the Secretary of Ramdhenu Theatre and also submitted exhibit No.3, where it has been stated that as per the agreement the deceased was paid a salary of Rs.16,000/-(Rupees Sixteen thousand) only. But, inspite of the evidence of the PW-3, the learned Member, MACT, Nalbari has considered his monthly salary as Rs.3,000/-(Rupees Three thousand) only and accordingly, the awarded compensation was only Rs.3,37,000/-(Rupees Three lakhs thirty-seven thousand) only with 7.5% interest per annum against the opposite party/respondent No.1.

9. The learned counsel for the appellant/claimant has also relied on the following judgments of the Hon'ble Apex Court as well as of this Court:-

i. In the case of Savita and Ors. Vs. Divisional Manager reported in 2017 Legal Eagle (SC) 1282,

ii. In the case of Rani and Ors. Vs. National Insurance Company reported in 2018 Legal Eagle (SC) 591 and

iii. In the case of Biakthuami vs. United India Insurance Co. Ltd. reported in 2017 Legal Eagle (Gau) 533.

10. In this context, Mr. K. K. Bhatta, the learned counsel for the respondent No. 1 has submitted that the learned Trial Court has rightly deducted the 1/3 towards his personal expenses, considering the number of dependency. Thus, the learned Member, MACT, Nalbari, while computing the award had committed no error. However, he admitted that the learned Member, MACT, did not assess the future perspective of the deceased and also admitted that in regards to the

other conventional heads, i.e, the loss of estate, loss of consortium and funeral expenses etc., the compensation should have increased.

11. Further, it is also submitted by the learned counsel for the respondent that in absence of proof any proper income of the deceased, the learned Member, MACT, considered the income at Rs.3,000/-(Rupees Three thousand) only towards the deceased. And, thus committed no error or mistake. He also submitted that the Theatre company work's only for 6(six) months in a year, and hence, the certificate is not at all sufficient to assess his monthly salary, as the agreement was for only 6(six) months and for temporary basis. However, he admitted that there be some enhancement in awarding entitle by the claimant/appellant.

12. After hearing the submissions made by the learned Advocates of both sides, it is seen that the learned Member, MACT, Nalbari has taken Rs.3,000/- as income of the deceased in absence of any proof of the income. It is a fact that one certificate was issued by the PW-3, the Secretary of Ramdhenu Theatre but, only on the basis of the said certificate, the award cannot be decided and in absence of other documents, thus, the learned Member held Rs.3,000/-(Rupees Three thousand) only towards the income of the deceased. Further, it is also seen that the learned Member MACT, after deducting 1/3 towards his personal expenses awarded a sum of Rs.3,12,000/-(Rupees Three lakhs twelve thousand)) only for a loss of income. Further given Rs.5,000/-(Rupees Five thousand) only towards funeral expenses, Rs.10,000/-(Rupees Ten thousand) only for loss consortium and amount of Rs.10,000/-/-(Rupees Ten thousand) only for loss of Estate. Nevertheless, the learned Member, MACT did not

consider the future perspective of the deceased and accordingly awarded the amount. It is a fact that, the deceased was not a permanent employee in any institution nor he was not an employee, under the Government institution, but, the evidence of the PW-3 reveals that he was a Music Director-cum-singer and he entered into a contract with Ramdhenu Theatre, wherein his monthly salary was fixed at Rs.16,000/-(Rupees Sixteen thousand) only per month. In the same time, it cannot be denied that he was an employee of Ramdhenu Theatre as a temporary one, which is very likely to be continued for 6/7 months in a year. But, as he was a Music Director-cum-Singer of the Theatre and also had a burden of family, thus, I find that atleast Rs.6,000/-(Rupees Six Thousand) only can be considered towards the income of the deceased.

13. So considering the income of the deceased as Rs.6000/-(Rupees Six Thousand) only as well as by deducting 1/3 of his personal income, and considering the multiplier as 13, it comes to Rs.6,24,000/-(Rupees Six lakhs twenty-four thousand) only. Further, considering the view of the Hon'ble Apex Court in the case of ***National Insurance Company Vs. Pranay Sethi reported in 2017 16 SCC 680*** and also considering the age of the deceased, the additional 25% can be given towards his future prospects, which comes to Rs.15,000/-(Rupees Fifteen thousand) only per month, and after deducting 1/3 towards his personal expenses, and the loss of income towards future prospects will come to Rs.1,56,000/-(Rupees One lakh fifty-six thousand) only (1000x12x13). Apart from that the claimant is also entitle to compensation towards the other conventional heads namely loss of Estate, loss of consortium, and funeral expenses and as per the view of the Hon'ble Apex Court, it will come to Rs.15000/-, 40,000/- and 15,000/- respectively. Thus, the total enhancement amount of compensation assessed as under:-

Loss of income	-Rs.6,24,000/-(13x12x4000)
Loss of future prospects	-Rs.1,56,000/-(1000x12x13)
Loss of estate	- Rs.15,000/-
Loss of consortium	- Rs.40,000/-
<u>Loss of Funeral expenses</u>	<u>- Rs.15,000/-</u>
Total	- Rs,8,50,000/-

Hence, the total enhanced awarded amount will be Rs.8,50,000/-.

15. The present respondent is hereby directed to pay the amount of Rs.8,50,000/-(Rupees eight lakhs fifty thousand) only to the present appellant/claimant along with the interest @ of 7.5% per annum w.e.f. the date of filing of the claim petition. The respondent/Insurance Company is hereby directed to deposit the awarded amount before the learned Member, MACT, Nalbari within 2(two) months.

16. In terms of above, this present appeal stands allowed and disposed of.

17. LCR be sent back.

JUDGE

Comparing Assistant