

GAHC010263082018



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

Case No. : MACApp./989/2018

ABDUL AWAL @ AUWAL AND 3 ORS
S/O ABDUL MALIK,
RESIDENT OF NO.1 JAINAGAR, PS DHEKIAJULI,
DIST SONITPUR, ASSAM,

2: SAFI ALAM
S/O ABDUL AWAL @ AUWAL

RESIDENT OF NO.1 JAINAGAR
PS DHEKIAJULI

DIST SONITPUR
ASSAM

TO BE REPRESENTED BY HIS FATHER APPELLANT NO. 1

3: MISS ALFINA ALAM
D/O ABDUL AWAL @ AUWAL

RESIDENT OF NO.1 JAINAGAR
PS DHEKIAJULI

DIST SONITPUR
ASSAM

TO BE REPRESENTED BY HERFATHER APPELLANT NO. 1

4: SIMRAN ALAM
D/O ABDUL AWAL @ AUWAL

RESIDENT OF NO.1 JAINAGAR
PS DHEKIAJULI

DIST SONITPUR
ASSAM

TO BE REPRESENTED BY HERFATHER APPELLANT NO.

VERSUS

M/S UNITED INDIA INSURANCE CO. LTD AND 2 ORS
REGIONAL OFFICE GS ROAD, GUWAHATI, DIST KAMRUP M ASSAM 781005

INSURER OF THE OFFENDING VEHICLE,

Advocate for the Petitioner : MR. S SINGH

Advocate for the Respondent : MR SISHIR DUTTA (R1)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. A. Bhattacharyya, Advocate.

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

Date of Hearing : 02.03.2023

Date of Judgment : 02.03.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Bhattacharyya, learned counsel for the appellant. Also heard Ms. M. Choudhury, learned counsel for the respondent No. 1, Insurance Company.

2. The present appeal under Section 173 of the Motor Vehicle Act, 1988 is preferred by the claimant in MAC Case No. 1438/2014 against the Judgment and Order dated 29.09.2018, passed by the learned Member of Motor Accident Claims Tribunal, No. 1, Kamrup (M) at Guwahati in MAC Case No. 1438/2014 for enhancement of award.
3. The appellant claims enhancement on the ground that the learned Tribunal

below has wrongly determined the income of the deceased ignoring the materials available on record inasmuch as the income of the deceased has been determined notionally at Rs. 4,000/- per month. The other grievance is that the learned Tribunal below has failed to appreciate the settled proposition of law and failed to award just compensation against future prospect and multiplier.

4. In addition to that the learned counsel for the appellant further contends that though no specific ground is taken, however, in view of the change in the settled proposition of law in the shape of ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors***, reported in ***(2018) 18 SCC 130***, the consortium should also be enhanced and three children's shall be entitled for additional compensation of Rs. 44,000/- each.

5. The factum of accident, negligence on the part of the driver of offending vehicle and entitlement of compensation are not under any dispute. However, for proper appreciation, the facts are described in a nutshell which are as follows:-

I. It is the case of the claimant No. 1 that while he along with his deceased wife was standing on the left side of the road near Robortola Centre, on National Highway, all of a sudden, the offending vehicle bearing registration No. AS-12/F-4384 (Wagon R), coming from Tezpur side towards Guwahati side in a very high speed, knocked both of them from backside. As a result of which, both of them sustained grievous injuries. Though his wife was taken to the hospital, she succumbed to her injuries.

II. The owner and driver of the offending vehicle did not contest the claim by filing written statement and as such the case proceeded ex-parte against them. The Insurance Company of the offending vehicle i.e. the

respondent No. 1 contested the case by filing written statement and took the usual plea like non acceptance of liability, in case there was any violation of terms and conditions etc.

- III. The claimant examined himself as PW-1 and exhibited certain documents such as charge-sheet, seizure list, medical prescription and cash memo along with post mortem report etc. However, the Insurance Company did not cross examine the said witness. Though the Insurance Company filed written statement, however, they did not lay any witness in proof of their pleas.
- IV. After the trial, the learned Tribunal below held that the offending vehicle was driven in a rash and negligent manner and out of the said accident, the wife of the claimant expired.
- V. While dealing with income of the deceased, the learned Tribunal below held that though the deceased was working as a silk winder and a house-maker looking after entire responsibility of the claimant and the children, however, no documentary evidence regarding occupation and income of the deceased was filed. Accordingly, the learned Tribunal below assumed her income to be Rs. 4000/- per month. However, no amount was awarded for future prospect. Finally the following award was passed:-

“Loss of dependency – 32,000 X 16 – Rs. 5,12,000.00

Funeral expenses - Rs. 15,000.00

Loss of Consortium. - Rs. 40,000.00

Medical expenses - Rs. 18,500.00

Total Rs. 5,85,500.00/- "

6. Mr. Bhattacharyya, learned counsel for the appellant relying on the judgment of the Hon'ble Apex Court in the case of ***Kirti & Anr Etc. –Vs- Oriental Insurance Company Ltd.*** reported in ***(2021) 2 SCC 166***, contends that the ground of compensation, on a pecuniary basis with respect to a homemaker, is a settled proposition of law and taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. He further contends that the Hon'ble Apex Court held that it becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. However, the learned Tribunal below has ignored such settled proposition of law and awarded only Rs. 4,000/- per month as income ignoring the evidence available on record.
7. Per contra, Ms. M. Choudhury, learned counsel for the respondent Insurance Company submits that though a proceeding under Motor Vehicle Act is summary in nature, however, the burden of a claimant to establish the income of the deceased or in a case income of the injured lies upon the claimant. When the same relates to the income, there must be some cogent evidence to prove such income. Ms. Choudhury, learned counsel further contends that the claimant has only examined himself and adduced oral evidence in proof of income of his deceased wife and therefore, the learned Tribunal below has rightly discarded such statement and awarded Rs. 4,000/- per month as notional income which is to be done in a case where no material evidence is available. Therefore, such finding cannot be faulted with.
8. So far coming to the other contentions, Ms. M. Choudhury, learned counsel in her usual fairness submits that in the absence of any proof of age, the learned Tribunal below has rightly determined the age of the deceased to be 30 years on the basis of post mortem report, however, the multiplier ought to have

been 17 instead of 16.

9. Coming to the future prospect, Ms. M. Choudhury, learned counsel fairly submits that as income was determined to be Rs. 4,000/-, the learned Tribunal below ought to have awarded compensation against future prospect @ 40% in terms of the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited –Vs- Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***. However, Ms. M. Choudhury, learned counsel further contends that in view of the decision of a Coordinate Bench in ***Oriental Insurance Co. Ltd –vs- Smti Champabati Ray and 5 Ors. (MACApp./378/2017)***, the claimants are not entitled for interest on future prospect.

10. Coming to the determination of the income of the deceased wife of the claimant by the learned Tribunal below, this Court is of the view of the while determining the income of a deceased/injured, in the absence of any documentary evidence, the Courts and Tribunals is to have some guess work inasmuch as in the given facts of each case, the income fixed by the respective State under Minimum Wages Act can be considered. Therefore, this Court straightway cannot find fault with the learned Tribunal below in assuming the monthly income to Rs. 4,000/- corresponding to the year 2014. However, this Court cannot be also oblivious of the fact that the deceased's income needs to be determined as practicable as possible, even if guess work is done. Therefore, this Court in exercise of its appellate power, has looked into the notification issued by the Government of Assam, Labour and Employment Department in exercise of power conferred by Sub Section 2 of Section 5 read with Clause B of Sub Section (1) of Section 3 of the Minimum Wages Act, 1948 issued on 3rd of November, 2015. At the relevant point of time as to the minimum wages under the Minimum Wages Act, the State of Assam had notified the minimum wages of

an unskilled labour to be Rs. 169 per day and therefore, the monthly income of an unskilled labour will be Rs. 5,070/-.

11. Coming to the case in hand, a statement has been made that the deceased was a skilled person working as a silk winder. However, such evidence is merely an oral statement of the husband and the claimant has not brought any other independent witness or other person including the neighbour to show that the deceased was a skilled person working as a silk winder. However, in absence of any cross examination or any suggestion that she was not a silk winder, such evidence of the PW-1 remains unshaken. In the absence of any material to show whether she was a skilled worker or not, this Court is of the view that the income of the deceased shall be determined in terms of notification as discussed hereinabove considering her to be an unskilled worker. Accordingly, the income of the deceased is to be treated as Rs. 169 per day and therefore, the monthly income will be Rs. 5070/- as unskilled worker.
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***, reported in ***(2018) 18 SCC 130*** referring to the decision in ***Pranay Sethi*** (supra) 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. Order 41 Rule 33 of the Code of Civil Procedure empowers an appellate court to pass appropriate order to do justice but subject to certain limitation as judicially formulated, whereas Section 168 of MV Act imposes a statutory obligation upon the tribunal as well as the appellate court sans way any appeal or cross objection filed to award a compensation which is just and reasonable. Accordingly, it was held that the appellate court is bound to maintain the balance while exercising power under Order 41 Rule 33 of the Code of Civil Procedure within the limitation imposed and also keeping in mind the statutory duty imposed upon it by Section 168 of MV Act, 1988. Therefore, this Court is also of the view that the benefit of ***Pranay Sethi & Others*** (Supra), ***Magma General Insurance Co. Ltd.*** (Supra) can be made applicable in the present case keeping in mind the statutory duty imposed upon the appellate court under Section 168 of the MV Act, 1988 to award the just and reasonable compensation.

15. In **Champabati Ray** (supra) while dealing with entitlement of interest on the amount awarded under the head "future prospect" held the following:-

*“Another ground of challenge to the impugned judgment is that the learned Tribunal had awarded interest on future prospects, which could not be done. In the case of **Khusboo Chirania @ Kanta Chirania v. Kamal Kumar Sovasaria**, reported in **2018 0 Supreme (Gau) 966** and in the case of **Nasima Begum V. Keramat Ali**, reported in **2019 0 Supreme (Gau) 507**, this Court has stated no interest on future prospects should be given. Though no reasons have been enunciated in the above judgments, the reasons for the same seems to be due to the fact that future prospects is relatable to an income to be received in the future and as such, there could not be any loss to the claimants for the payment of future prospects, at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future prospects is due to the fact that though the loss of dependency starts from the date of the accident and the compensation amount is computed on the date of the Award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects is with regard to the probable income to be received in the future and as such there is no requirement to compensate the claimant by way of future interest, for the loss that is to occur in the future, as the future is yet to happen. Further, **future prospects is given for the entire future and as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event/s. Thus, with regard to future prospects, this Court is also of the view that there cannot be any interest on future prospects, as the same relates to an income to be given in the future**”. (Emphasis supplied)*

16. Such determination is binding upon this Court.

17. In the present case, the admitted fact is that the deceased was aged about 30 years and was an unskilled worker and had an income of Rs. 5,070/- per month in terms of notification issued under Minimum Wages Act. It is also established that the deceased had left behind his husband along with three children.
18. In view of the above fact and settled proposition of law, the compensation payable would be as follows:-

SL No.	Head	Amount
1.	A. Annual Income	Rs.5,070/-X12 =Rs.60,840/-
	B. Future Prospect @ 40% of income.	Rs. 24,336/-
	C. Less 1/3 rd	Rs. 28,392/-
	D. Add Multiplier	17X 56,784/-= Rs. 9,65,328/-
	Total compensation Rs. 9,65,328/-	
2.	Medical expenses	Rs. 18,500/-
3	A. Spousal Consortium for husband	Rs. 44,000/-
	B. Parental consortium for childrens	Rs. 44,000 X 3= Rs. 1,32,000/-
	C. Funeral expenses	Rs. 16500/-
	Total = Rs.11,76,328/-	

19. While not interfering with the award of interest @ 5%, awarded by the learned Tribunal, it is made clear that the interest awarded must not be calculated on the amount of compensation awarded against future prospects in terms of the decision in **Champabati Ray** (supra)

20. Consequently, the impugned Judgment and Order dated 29.09.2018, passed by the learned Member of Motor Accident Claims Tribunal, No. 1, Kamrup (M) at Guwahati in MAC Case No. 1438/2014, is hereby modified to the extent indicated above.
21. Statutory deposit if any be released in favour of the Insurance Company after proper verification.
22. LCR be sent back forthwith to the learned tribunal below.

JUDGE

Comparing Assistant