



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

KOHIMA BENCH

MAC Appeal No. 01/2020.

THE ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED AND HEAD OFFICE AT ORIENTAL HOUSE
A - 25/27, ASAF ALI ROAD, NEW DELHI - 110002 AND REGIONAL
AND DIVISIONAL OFFICE IN SEVERAL PLACES, INCLUDING A
REGIONAL, OFFICE AT GUWAHATI, ASSAM AND DIVISIONAL
OFFICE AT DIMAPUR IN
THE STATE OF NAGALAND.

.....APPELLANT

VERSUS

1. OMENCHIBA
S/O MERANGBA(FATHER OF THE DECEASED), R/O H/NO. 62,
AKHUYA VILLAGE, MOKOKCHUNG, NAGALAND AND DULY
REPRESENTED BY THE CLAIMANT NO.1.
2. WATIKUMBA
S/O OMENCHIBA(BROTHER OF THE DECEASED)
R/O H/NO.62, AKHUYA VILLAGE
MOKOKCHUNG
NAGALAND.
3. AO BAPTIST ARGO MUNGDANG
IMPUR MOKOKCHUNG
NAGALAND(OWNER OF THE VEHICLE NO.NL 02/C 1558)
4. I. LANUCHIBA AIER
R/O H/NO.66A
ALEMPANG WARD
MOKOKCHUNG
NAGALAND(DRIVER OF VEHICLE NO.NL.02/C 1558)

..... RESPONDENTS.

Advocates for the appellant :- Mr. V. Devnath,
For the respondent No.1 & 2 :- Mr. T. Pongener
Respondent No.3 :- Mr. Toshi O. Longkumar

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Date of Hearing :- 23.11.2023
Date of Judgment :- 08.12.2023.

JUDGEMENT AND ORDER

Heard Mr. V. Debnath, learned counsel for the appellant; Mr. T. Pongener, learned counsel for the respondent Nos. 1 & 2; and Mr. T.O. Longkumer, learned counsel for the respondent No. 3.

2. In this appeal, under Section 173 of the Motor Vehicles Act, the appellant - Oriental Insurance Company Limited has put to challenge the correctness or otherwise of the judgment and order, dated 17.07.2019, passed by the learned member, Motor Accident Claims Tribunal, Mokokchung, Nagaland in MAC Case No. 24/2015.

3. It is to be noted here that vide judgment and order dated 17.07.2019, the learned Tribunal has directed the appellant to pay a sum of Rs. 21,14,520/- to the respondent Nos. 1 and 2.

4. The background facts, leading to filing of this revision petition, are briefly stated as under:-

"On 09.04.2015, at about 6:30 PM, while Imtiyanger, since deceased, was walking on the road, then one vehicle bearing registration No. NL-02-C-1558, driven by its driver, Lanuchiba Aier in rush and negligence manner knocked down Imtiyanger at Changtongya NH2. As a result, Imtiyanger sustained grievous injuries on his person and he succumbed to his injuries and died on the same day at Dr. I.M. District Hospital Mokokchung. Thereafter, the claimants have filed one claim petition before the learned Motor Accident Claims Tribunal, Mokokchung, Nagaland and the learned Tribunal has registered a case, being MACT Case No. 24/2015 and thereafter issued notice to the respondents, the appellant and the owner of the vehicle and accordingly they have entered appearance before the learned Tribunal and thereafter, hearing both the parties the learned Tribunal has ordered the appellant to pay a sum of Rs. 19,27,300/- along with the interest of 9% per annum, to the claimant, from the date of filing the claim petition. Against the said judgment and award, the present appellant preferred an appeal before this Court, which was registered as MAC Appeal 11[K]/2018 and this court was pleased to depose of the same by setting aside the impugned award and remanding the matter back to the learned Tribunal to decide the matter afresh by allowing the appellant to contest the claim on all grounds. Thereafter, allowing the appellant to contest the claim on all grounds, the learned Tribunal freshly directed the appellant to pay a sum of Rs.

21,14,520/- to the respondent Nos. 1 & 2 and also directed to pay interest @ 7% per annum, from the date of filing the claim petition, till payment is made.”

5. Being highly aggrieved, the appellant has preferred the present appeal contending to set aside the impugned judgment and order dated 17.07.2019, passed by the learned Motor Accident Claims Tribunal, Mokokchung, Nagaland in MAC Case No. 24/2015, and to allow the appeal on the following grounds:-

- [i] That, the claimant has failed to prove the rash and negligence driving of the offending vehicle and ignoring the same the learned Tribunal has awarded the aforesaid amount with interest @ 9% per annum, from the date of filing of the claim petition;
- [ii] That, the police report, which is exhibited before the learned Tribunal as Exhibit-P/1 is not acceptable, as it has not been exhibited by the author of it and the same also failed to disclose the outcome of police investigation;
- [iii] That, the medical certificate, which is exhibited as Exhibit-P/5 (wrongly exhibited as Exhibit-P/4, by the learned Tribunal) also failed to prove that the death of the deceased was due to road traffic accident and the same has not been exhibited by the Medical Officer, who had issued the same; the learned Tribunal has relied upon the Exhibit-P/3, the salary certificate of the

deceased, but, the same also failed to disclose the income of the deceased and as the learned Tribunal has taken the salary as gross income of the deceased to determine the quantum of compensation, the same is also not acceptable;

[iv] That, in view of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma vs. D.T.C.**, reported in **[2009] 6 SCC 121**, only the mother of the deceased ought to have been considered as dependant, but the learned Tribunal has considered the father and brother of the deceased as the dependant and as such, the learned Tribunal has committed error while determining the quantum of compensation;

[v] That, the learned Tribunal while determining the quantum of compensation has considered the age of the deceased, but as per the decision of **Sarla Verma [Supra]**, the learned Tribunal ought to have been considered the age of the mother instead of the deceased;

[vi] That, the learned Tribunal has taken consideration of the age of the deceased while selecting the multiplier 16, but it ought to have been 15; and

[vii] That, there is no evidence of road traffic accident in the present case, but in spite of absence of evidence, the learned Tribunal has determined the quantum of compensation in favour of the respondent Nos. 1 & 2."

6. Mr. Devnath, learned counsel for the appellant reiterating the grounds mentioned herein above and relying upon the aforementioned case law, submits that the impugned judgment and award dated 17.07.2019, passed by the learned Motor Accident Claims Tribunal, Mokokchung, Nagaland in MAC Case No. 24/2015, suffers from manifest illegality and the same failed to withstand the legal scrutiny and therefore, it is contended to allow the petition, by setting aside the aforesaid impugned judgment and award. Mr. Devnath has referred following case laws to bolster his submission:-

(i) Sarala Verma (Smti) And Another vs. Delhi Transport Corporation and Another (2009) 6 SCC 121,

(ii) Amrit Bhanu Shali And Others vs. National Insurance Company Limited Limited And Others, (2012) 11 SCC 738,

(iii) Reshma Kumari And Others vs. Madan Mohan And Another, (2013) 9 SCC 65,

(iv) Joseph John Peter Sandy vs. Veronica Thomas Rajkumar And Another, (2013) 3 SCC 801,

(v) M/S Ramnath Exports Pvt. Ltd. vs. Vinita Mehta & Anr, 2022 LiveLaw (SC) 564,

7. On the other hand, Mr. Pongener, learned counsel for the respondent Nos. 1 & 2 submits that the impugned award suffers from no illegality or infirmity requiring any interference of this Court. Mr. Pongener further submits that the learned Tribunal, after considering all the facts and circumstances, has determined the quantum of compensation, which is in accordance with law. Mr. Pongener also submits that there are sufficient materials on the record to show that the offending vehicle was involved with the offence and the same

was being driven in rash and negligence manner, which caused the death of the deceased. Mr. Pongener also submits that the documents referred by the appellant have duly been proved before the learned Tribunal and the salary certificate of the deceased discloses only the gross income of the deceased and the same does not indicate what was the gross salary or the net salary of the deceased and as such, the learned Tribunal has taken into account the quantum of compensation on the basis of salary certificate, which is exhibited as Exhibit-P/3, and therefore, it is contended to dismiss the appeal. Mr. Pongener also submits that if this Court finds that while calculating the award the learned Tribunal has committed some mistakes, then he has no objection in rectifying the same by this Court.

8. Mr. Longkumer, learned counsel for the respondent No. 3 also adopted the submission of Mr. Pongener, learned counsel for the respondent Nos. 1 & 2.

9. Having heard the submissions of learned counsel for both the parties, I have carefully gone through memo of appeal as well as the grounds mentioned therein and also gone through the impugned judgment and order dated 17.07.2019, and also the case law referred by Mr. Devnath, learned counsel for the appellant.

10. It appears that the learned Tribunal in the impugned award has framed 4 issues :-

[i] Whether the deceased was involved in the accident on 09.04.2015? If so, whether the vehicle bearing registration No. NL-02-C-1558 was driven in rush and

negligence manner by the driver? Also whether the claim can be defeated by delay in lodging the FIR?

[ii] Whether the said vehicle having requisite documents and the driver was possessing effective driving license?

[iii] What was the income of the deceased at the time of the accident?

[iv] Whether the claimant is entitle to any compensation? If so, what amounts can be payable and by whom?

11. Further, it appears that after hearing both the parties and after perusal of the documents, the learned Tribunal has decided all the issues in favour of the claimant. It also appears that while deciding the issue No. 1, learned Tribunal has arrived at the finding that the vehicle was driven in rash and negligence manner, resulting death of the deceased.

12. Having carefully gone through the evidence on the record I find that the claimant (P.W.1), in his evidence categorically stated that the driver could not control the speed of the vehicle due to rash and negligent driving for which the accident took place and his evidence remained un-rebutted in cross-examination. It also appears that P.W.2 is the eye witness to the accident and he also categorically stated that the accident took place due to rash and negligent driving of the vehicle by the driver. The evidence of the I.O.(P.W.3) also reveals that in course of investigation it was found that due to rash and negligent driving of the vehicle by the driver, the accident took place wherein the deceased sustained grievous injuries. The Doctor (P.W.-4), who has examined the deceased in the Dr. I.M. District

Hospital, Mokokchung, also categorically stated that the cause of death of the deceased was vehicular injury. Thus, the evidence on the record is overwhelming to establish that the accident took place due to rash and negligent driving of the vehicle.

13. Though the appellant has contended that the police report, which is exhibited before the learned Tribunal as Exhibit-P/1 and Exhibit-P/5 are not acceptable, as the same have not been exhibited by the author of the same, yet, it appears from the evidence of P.W.3 and P.W.4 that they are the author of the same and though the same have not been exhibited by them, yet, sum and substance of the content of the same stands established from their evidence. Though Mr. Devnath, the learned counsel for the appellant, referring to a case law **Joseph John Peter Sandy (supra)** submits that contents of a document has to be proved, yet, it is well established that in an enquiry under motor accident claim cases, strict rule of evidence is not followed and the standard of proof is not beyond all reasonable doubt. Therefore the ratio laid down in the said case law, would not advance the case of the appellant.

14. It is well settled that in a claim petition under Section 166 of the MV Act, the claimant is bound to prove rash and negligent driving on the part of the driver of the offending vehicle. Referring to **(para-13.4)** in the case of **Reshma Kumari (supra)**, Mr. Devnath, the learned counsel for the appellant has rightly pointed this out during hearing. But, in the case in hand the evidence of the claimant, and of P.W.2 and of the Police Officer (P.W-3), being overwhelming, to establish that the accident took place due to rash and negligent

driving. Therefore, this court is unable to record concurrence to the submission of Mr. Devnath, learned counsel for the appellant that there is no material to establish rash and negligent driving.

15. It is also a fact that in the present case, the Police Report, Exhibit-1 was not proved by the person who authored the same, yet, the evidence of PW-3 is clear and cogent enough to show that he had received a written complaint from the brother of the deceased, wherein it is clearly stated that his brother died in a vehicular accident, caused by a vehicle, bearing registration No. NL-02-C-1558, and the driver of the vehicle was responsible for the same. Thereafter, he [PW3] had conducted inquiry and examined the witnesses and ascertain that the accident took place due to rash and negligence driving of the driver of the vehicle bearing registration No. NL-02-C-1558, which he had categorically stated before the learned Tribunal and the same, was not disputed by the appellant side.

16. It also appears that Exhibit-P/2, the Death Certificate and Exhibit-P/5 - the OPD Ticket of the deceased, was not proved by the person who authored the same. But, the evidence of PW-4, the Doctor is clear and cogent enough to show that he examined the deceased at Dr. I.M. District Hospital Mokokchung and where he has issued the death certificate in the name of the deceased and ascertain that the death of the deceased was due to vehicular injury over his chest and the same also remain unrebutted in the cross-examination by the appellant side.

17. It is also a fact that Exhibit-P/3 is the Salary Certificate of the deceased, issued by the Head Master of Govt. High School,

Changtongia, where the deceased was serving since 1991 and in his evidence as PW-5 - the Head Master has also categorically stated that he has issued the Salary Certificate of the deceased as an employee of the said school at the time of his death and his last pay was Rs. 21,870/- and he identified his signature as Exhibit-P(a) over the Exhibit-5 and the same also remain unrebutted in the cross-examination by the appellant.

18. It also appears that while assessing the quantum of compensation, the learned Member had selected 16 as the multiplier. But, in view of the decision of Hon'ble Supreme Court in the case of **Sarla Verma [Supra]**, at para 42, the multiplier ought to have been 15, as the age of the deceased was 36 years 2 months at the time of his death. Mr. Devnath, the learned counsel for the appellant, has rightly pointed this out at the time of hearing. And we record concurrence to the same.

19. Thus, having considered the submissions learned counsel for both the parties, and also considering the facts and circumstances on the record, now an endeavor will be made to assess the quantum of compensation here in this case.

20. It appears from the evidence of the claimant- P.W.1, that the date of birth of his son was 09.02.1979. He had exhibited Birth Certificate of his son as Exhibit- P/8. Perusal of the same also shows that the date of birth of her son was 09.02.1979. And as such, the age of his son- Imtiyanger Akhuya, at the material time of accident was **36 years 2 months**. Notably, the appellant side has not disputed the date of birth of the deceased and also Exhibit-P/8.

21. The evidence of P.W.-1 also reveals that at the time of accident his son was unmarried and was working as a regular Carpenter Helper in Govt. High School, Changtongya and was drawing salary @ Rs. 21,870/ per month, and he was the sole bread winner of his family. The Salary Certificate of his deceased son, issued by the Head Master was exhibited as Exhibit- P/3 by the P.W.1. The claimant has examined the Head Master of Govt. High School, Changtongya as P.W.5, who also confirmed that he had issued the Last Pay Certificate of the deceased, who was working as Carpenter Helper of his School and his last pay was Rs.21,870/ as per office record and he also confirmed his signature-Exhibit-P/a, over the same. Perusal of Exhibit-P/3 reveals that it was issued by the Head Master of Govt. High School, Changtongya. It also reveals that Late Imtiyanger Akhuya was a regular Carpenter Helper in Govt. High School, Changtongya and was drawing salary @ Rs. 21,870/ per month, per month.

22. But, the Salary Certificate does not indicate the gross salary and net salary of the deceased. The learned member, however, while assessing the compensation, had taken into account the income indicated therein. In absence of any indication as to whether the income indicated in the Salary Certificate is the gross or net salary, no fault can be found with the course adopted by the learned member, though usually the take home salary is taken into account while assessing the compensation. It is to be noted here that the evidence of the claimant/P.W.1 and of P.W.-5, have not been disputed by the appellant side. It also did not try to elicit from the

P.W.5 as to what was the gross and net salary of the deceased, nor had it adduced any rebuttal evidence. Therefore, the income of the deceased, as indicated in the Salary Certificate, has to be taken into account as his income and we are inclined to accept the same.

23. Having decided the age, avocation and income of the deceased now, the quantum of compensation, which the claimant is entitled to, is being assessed as under:-

23.1. Since the age of the deceased, at the relevant time of accident, was 36 yrs. 2 months, we would like to add 50% to the actual income of the deceased, being the future prospect, as the deceased had a regular permanent job, in view of the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680.** And after addition of the aforesaid amount, the total amount would be **[Rs.21,870+10,935]=Rs. 32,805/.**

23.2. It appears from the impugned judgment (at page No.6) that the learned Tribunal had not added the future prospect to the actual income, without assigning any reason, which appears to be contrary to the proposition of law, so laid down in catena of decisions, including the case of **Pranay Sethi (supra).** Therefore, we are unable to endorse the view of the learned Tribunal. Instead, we would like to add the same to the total income of the deceased. Since the deceased was 36 years 2 months old and also bachelor at the time of accident and death and he left behind his father and other siblings, who were dependent on his income, we would like to deduct **50%** of his total income towards his personal and living expenses,

following the principle laid down in **Sarala Verma(supra) and Amrit Bhanu Shali (supra)**. Thus, after deduction of 50% of the amount from the total income, the amount would be- **Rs. 32,805/ - Rs. 16,402.5/ = Rs.16,402.5/**. And in view of the principle laid down in **Sarala Verma's case (supra)** and in **National Insurance Co. Ltd. Vs. Pranay Sethi and Others (supra)**, the multiplier to be applied here in this case would be **15**, since the deceased was **36 years 2 months** old at the material time of accident and death. Thus, the total amount would be **Rs.16,402.5 x 12 x 15 = Rs.29,52450/**. Besides, there should be an addition of **Rs. 15,000/** for loss of estate, and, further, there should be addition of **Rs. 15,000/**, towards the funeral cost in view of the principle laid down in **National Insurance Co. Ltd. Vs. Pranay Sethi and Others (supra)**. Further, we would like to add a sum of **Rs.25,000/-** as the cost of litigation as per judgment of the Hon'ble Supreme Court in **Boloram Prasad Vs. Kunal Saha & others (2014) 1 SCC 384**. Thus, the total amount of compensation is assessed at **Rs. 30,07,450/**, (**Rupees thirty lacs seven thousand four hundred and fifty**) only, and to our considered opinion this amount will be "just and proper amount of compensation" here in this case. It also provided that the said amount will carry interest at the rate of **9% p.a.** in view of the law laid down in the case of **Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy(2011) 14 SCC 481**.

23.3. The total amount of compensation, which the claimants are entitled to, after application of the principle laid down by the Hon'ble

Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi and Others(supra)**, **Sarala Verma's case (supra)**, and in **Boloram Prasad's (supra)** is shown as under:-

Sl. No.	Heads	Compensation
(i)	Income	=21,870/
(ii)	50% of (i) has to added as future prospect	Rs.21,870+10,935]=Rs. 32,805
(iii)	50% of (ii) has to be deducted as personal expenses	32,805/ - 16,402.5/ = Rs.16402.5/.
(iv)	Compensation after multiplier 15 is applied	16,402.5/ x 12 x 15 = Rs. 29,52,450/
(v)	Loss of estate	=15,000/
(vi)	Funeral expenses	=15,000/
(vii)	Cost of litigation	=25,000/
Total amount of compensation		Rs. 30,07,450/,

24. Admittedly, the vehicle bearing registration No. NL-02-C-1558, was insured with the appellant Insurance Company vide Policy No. 322290/31/2015/1089, (Exhibit-P/8), and it was valid from 11.12.2014 till 10.12.2015. The accident took place on 09.04.2015, and on that day the policy was in force. It also appears from the Driving Licence, Exhibit-6, that the driver of the offending vehicle – namely, I. Lanuchiba Aier had possessed a valid driving licence, bearing DL NO. NL. 02200600001356, and it was valid up to 04.07.2026. This being the position, it is the appellant Insurance Company, who is liable to pay the aforementioned amount of compensation i.e. **Rs. 30,07,450/, (Rupees thirty lacs seven thousand four hundred and fifty)** to the claimant.

25. In the result, I find no merit in this appeal and accordingly the same stands dismissed. It is provided that the appellant Company shall pay the aforesaid amount to the claimant/respondent, within a period of one month from today, after adjusting the amounts already paid by it. Send down the record of the learned Tribunal forthwith with a copy of this judgment and order. The parties have to bear their own costs.

JUDGE

Comparing Assistant