

GAHC020001102021



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

Linked Case : MACApp./6/2021

THE BRANCH MANAGER
CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.
ASHA PLAZA COMPLEX

7TH FLOOR
OPPOSITE S.D DEORAH COLLEGE

BORA SERVICE
ULUBARI

GUWAHATI- 781007
ASSAM

VERSUS

SHRI JITU BURA GOHAIN AND 3 ORS
S/O SHRI DULESWAR BURA GOHAIN

R/O KUDA MILL

DIMAPUR
NAGALAND

2:MRS. ANJU BURA GOHAIN
W/O SHRI DULESWAR BURA GOHAIN

R/O KUDA MILL

DIMAPUR
NAGALAND

3:LACHIT SHG
C/O

DWIPEN BORAH

4:RAJIV KAMAN
HAMARA VILLAGE

Advocate for : MOA JAMIR

Advocate for : B. N. SARMAH appearing for SHRI JITU BURA GOHAIN AND 3
ORS

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (CAV)

Date : 07-06-2023

The present appeal has been filed under section 173 of the Motor Vehicles Act, 1988 challenging the judgment dated 13/05/2020 passed by the learned Member Motor Accident Claims Tribunal, Dimapur, Nagaland, in MAC Case No. 67/2017.

2. The facts relevant for adjudicating the present appeal is that on 04/02/2017 at about 12:00 Noon the injured/claimant No.1 and one Dharma Kanta Borah @ Dharma Borah was requested by the driver of the Tractor B/R No. AS-07-AC/1373 to accompany him for threshing mustard seeds at Singia village. The tractor was pulling a threshing machine to thresh the mustard seeds. As the claimant No.1 and the said Dharma Kanta Borah were walking on foot besides the tractor, the thresher machine pull over the stem of a tree as a result of which the thresher machine overturned on the claimant No.1 and the said Dharma Kanta Borah causing grievous injuries to the claimant No.1 and instantly causing the death of the said Dhrama Kanta Borah.

3. The MAC Case No. 67/2017 was accordingly filed by the injured/claimant No.1 and his wife Smti. Anju Bura Gohain as the claimant No.2 claiming a compensation of Rs. 30 lakhs which included pecuniary loss and non-pecuniary special damages.

4. The opposite party No.1 & 2 i.e. the owner and the driver of the offending vehicle (tractor) contested the claim petition by filing a joint written

statement. So also the opposite party No. 3 & 4 i.e. the insurer of the offending vehicle contested the claim petition by filing a joint written statement.

5. That the following issues were framed by the learned Tribunal for deciding the claim petition;

i) Whether the claim petition is maintainable in the present form?

ii) Whether the claimant sustained injuries out of the accident dt. 4.2.17 due to rash and negligent driving of the driver of the offending vehicle No. AS-07/AC-1373 (tractor)?

iii) Whether at the time of accident the vehicle was possessing valid and effective documents including driving license?

iv) Whether the injured claimant was 45 years old and was earning Rs. 15000/- per month?

v) Whether the claimants are entitled to any compensation? If so, what amount and payable by whom?

6. That upon adjudication of the claim petition, the learned Tribunal by the judgment dated 13/05/2020 held as follows;

“In view of the findings in the Issues (i) to (iv), this Tribunal is of the view that the claimants are entitled to compensation for the injuries sustained by the claimant 1 and the loss of earning capacity. The injured was 45 years of age and the relevant multiplier is 14. The monthly income of the injured claimant is taken as Rs. 10,000/- per month. The extent of permanent disability according to the disability certificate issued by the District Medical Board, Lakhimpur (Exhibit P-15) is 75%. Accordingly, the compensation to which the claimants are entitled as per NIC Ltd. -vrs- Pranay Sethi & Ors., AIR 2017 SC 5157 is assessed as under:-

Loss of future earning on account of permanent disability : Rs. 12,60,000/-

{ i.e. 75% of Rs. 10,000 x 12 x 14 (multiplier) }

Pain, shock, suffering etc.: Rs. 25,000/-

Loss of amenities in future/future medical expenses : Rs. 50,000/-

Medical expenses (cash memos) : Rs. 1,01,124/-

Total = Rs. 14,36,124/-

Interim award of Rs. 25,000/- has already been awarded and paid to the claimant. Therefore, the amount of Rs. 25,000/- is deducted from the total compensation amount.

*Accordingly, Rs. 14,36,124/- minus Rs. 25,000/- = **Rs. 14,11,124/- (Rupees Fourteen lakhs eleven thousand one hundred and twenty four) only.***

The awarded amount shall be paid to the claimant with interest thereon at the rate of 9% per annum from the date of filing the claim petition till full satisfaction of the award. The O.P No. 3 & 4/insurer is directed to pay the award within one month from the date of this order.”

7. That being aggrieved by the judgment dated 13/05/2020 passed by the learned Tribunal, the appellant/insurer has filed the present appeal on the following grounds;

i) The first ground of appeal is that the Tribunal did not afford any opportunity to the appellant/insurer to defend the case before fastening the liability on the insurance company.

ii) The second ground of appeal is that the accident did not occur due to the rash and negligent driving of the driver of the offending vehicle and the claimant/respondent No.1 did not suffer any injuries out of the alleged accident.

iii) The third ground of appeal is that since the claimants did not adduce any documentary evidence to substantiate that the injured claimant was engaged in farming and in the business of buying and selling bamboo handicrafts, the monthly income of the injured claimant of Rs. 10,000/- as worked out by the Tribunal is not only exorbitant but speculative and without any basis.

iv) The fourth ground of appeal is that the notification dated 30/05/2017 which was issued by the Government of Assam, Office of the Labour Commissioner, Assam, fixing the wages/VDA payable to different categories of workmen was not taken into consideration while computing the income of the injured claimant. The notification has fixed the daily wage/income of an un-skilled workmen at Rs. 257.40/- per day and the

monthly wage/income to Rs. 7722.00/-. The Tribunal however without taking the notification dated 30/05/2017 into consideration has fixed the daily wage/income of the injured claimant, an un-skilled workmen, at Rs. 333/- per day and the monthly income at Rs. 10,000/- without any basis.

v) The fifth ground of appeal is that the Tribunal erred in law in granting 9% interest on the compensation amount.

8. Heard Mr. Moa Jamir, learned counsel for the appellant/Insurer and Mr. B. N. Sarmah, learned counsel for the claimant/respondent No. 1 & 2. None appears for the respondent No. 3 & 4.

9. In regard to the first ground of appeal, the records called for, from the Tribunal has been perused by this Court and it is observed that the opposite parties in the claim petition which also includes the present appellant/insurer has contested the claim petition by filing their respective written statements and also by cross-examining the injured claimant/respondent No.1 and his wife, the claimant No.2. The judgment dated 13/05/2020 was also passed by the learned Tribunal after hearing all the parties in the case. This Court is therefore not inclined to accept the contention of the appellant/insurer that the claim petition was decided without giving any opportunity to the appellant/insurer to defend the case.

10. The second ground of appeal raised by the appellant/insurer has been dealt with and answered by the learned Tribunal while deciding the Issue No.(ii) of the claim petition. The deposition of the claimant/respondent No.1 and the claimant/respondent No.2 as recorded by the learned Tribunal clearly reveals that on 04/02/2017 at about 12:00 Noon, the driver of the offending vehicle (tractor) B/R No. AS-07-AC/1373 requested the injured claimant and one Dharma Kanta Borah for threshing mustard seeds at Singia village. The injured claimant and the said Dharma Kant Borah accordingly proceeded to Singia village on foot. The offending tractor was pulling one threshing machine to thresh the mustard seeds and on the way before Singia village due to rash and negligent driving of the driver, the threshing machine ran over the stem of a tree and overturned on the claimant/respondent No.1 and Dharma Kanta Borah

and as a result of which the claimant/respondent No.1 sustained serious injuries and Dharma Kanta Borah died on the spot. The evidence of the claimants remains un-impeached during the cross-examination by the appellant/insurer. The appellant/insurer had in fact not led any evidence to disprove the factum of the accident as deposed by the claimant/respondents. The learned Tribunal had also recorded the evidence of one Dipankar Hazarika, an eye witness to the accident as follows;

“On the day of accident I was working along with some labour at my paddy field at Singia village. Just nearby my paddy field there is one kutcha road with bushes and stem of wood/tree. The driver of the offending tractor was pulling one thresher machine for threshing of mustard seeds; he was in high speed and suddenly one wheel of the thresher machine rammed on a stem of a tree; resultantly the thresher machine overturned on two pedestrians wherein one died on the spot and other one sustains grievous injuries. Having seen the accident we were helping the victims in front of police. The accident took place about 25 to 30 distance from me which I have seen clearly. What I have seen in the accident dated 04/02/2017 was the resulted of sole negligence of the offending tractor”.

The evidence of the said Dipankar Hazarika, the eye witness, remains un-impeached during the cross-examination by the appellant/insurer and there is nothing on record to discredit the evidence of the eye witness. The law is also well settled that in a case relating to motor accident claims, the claimant are not required to prove the factum of the accident as it is required to be done in a criminal trial. The claimant is to merely establish his/her case on the touchstone of preponderance of probability. The strict proof of accident beyond reasonable doubt is not applicable to accident cases.

In the case of **Kusum Lata & Others** -versus- **Satbir & Another**, reported in **(2011) 3 SCC 646**, the Hon'ble Supreme Court has held as follows;

“9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar

was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

10. Reference in this connection may be made to the decision of this Court in Bimla Devi v. Himachal RTC¹, in which the relevant observation on this point has been made and which is very pertinent and is quoted below: (SCC p.534, para-15)

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

So also in the case of **Janabai WD/O Dinkarrao Ghorpade & Others -versus- ICICI Lambord Insurance Co. Ltd.**, reported in **(2022) 10 SCC 512**, the Hon'ble Supreme Court has held as follows;

"11. We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable".

In view of the discussions made above, this Court is inclined to hold that the accident involving the offending vehicle (tractor) bearing Registration No. AS-07-AC/1373 occurred due to the rash and negligent driving of the driver i.e. the respondent No.4.

Further, on the contention raised by the appellant/insurer that the injured claimant/respondent No.1 did not suffer any injuries from the said accident and is therefore, not entitled to receive any compensation, it is relevant to reproduce the deposition of the injured claimant recorded by the

learned Tribunal;

“.....In the accident I sustain grievous injuries and also the accompanied Dharma Kanta Borah died instantaneously on the spot. Due to the accident I am suffering from grievous injuries of burst fracture of L1 vertebrae with retropulsed vertebral body causing secondary spinal canal stenosis, hemorrhagic contusion of cord conus complex. Discal injury, flaval tear, PLC tear distraction of facet joint at L-1-L-2 level. Osseus and non osseus injuries. Immediately on the day of accident I was admitted at Ghilamara PHC who referred me to the North Lakhimpur Civil Hospital. However, due to non-availability of seat I was compelled to admit in the Saumerpith Nursing (P) Ltd. on the same day i.e. on 04/02/2017. However, Saumerpith Nursing (P) Ltd., also without giving me adequate treatment referred to take better treatment at Guwahati. As advised, I was re-admitted at Guwahati Medical College Hospital on 06/02/2017 till 27/02/2017 I was taking treatment as an indoor patient. Even after releasing from the hospital I am continuing my day to day treatment at different places however there is no recovery. Due to the injuries sustained at present I am in a total bedridden condition and I cannot move below hip of the body unless somebody pull me up from the bed even my attendant unless accompanied me I cannot attend for my natural call. Since the day of release from Civil Hospital I am laying on the bed resultantly my both legs is becoming thinner. Even I am not in a position to discharge stool and urine without used of anemia and catheder. Due to continuous laying in bed new wounds as well as bed sores are appearing and affecting the back side body of my body which cannot be healed till date despite all possible treatment. As advised by my Doctor I shall not be cured in future and advised me for continuous medical treatment for the rest of my life. By constituting a Medical Board I was thorough examined and categorized my injury as 75% permanent physical impairment due to the injuries”.

It is also relevant to reproduce the deposition of the claimant/respondent No.2, the wife of the injured claimant;

“.....To substantiate my claim I mark and exhibit the following documents: the claim petition as P-1 my signature appearing in each pages of the petition as P-1A, original copy of police report as P-2, original copy of medico legal case record as P-3, initial treatment proof issued by Ghilamara PHC as P-4, original copy of admission and discharge certificate issued by Saumarpath

Nursing (P) Ltd. as P-5, original copy of admission and discharge certificate issued by the Guwahati Medical College Hospital as P-6, original copy of clinical investigation report dated 08/02/2017 and 06/02/2017 as P-7 & 8 respectively, true copy of GD Entry dated 04/02/2017 along with translate copy from Assamese to English as P-9, registration certificate of the offending vehicle as P-10, fitness certificate of the offending vehicle as P-11, insurance policy of the vehicle as P-12, 15 number of X-ray films as P-13 in a bulk, cash memos and vouchers containing serial page number 5 to 27 of this affidavit as P-14 in a bulk. Medical disablement certificate issued by Medical Board and also photograph of my injured husband containing page number 28 to 31 as P-15 in a bulk, clinical investigation report from page number 32 to 43 as P-16 in a bulk, driving license of the driver of the offending vehicle as P-17. As advised by the Doctor concerned my husband ought to continue his treatment for the rest of his life."

The appellant/insurer in the cross-examination before the Tribunal has not led any evidence to rebut the statements of the claimants. The appellant/insurer has also not contested the medical certificate/report exhibited by the claimants before the Tribunal, nor has insisted for examining any of the Doctors of the Medical Board who had treated the injured claimant. There is absolutely no denial by the appellant/insurer on the medical report/certificate exhibited by the claimants before the Tribunal. It is only in the present appeal that the learned counsel for the appellant has made a faint submission before the Court that as none of the Doctors of the Medical Board who treated the injured claimant No.1 has been examined, the disability certificate dated 02/10/2017 issued by the Medical Board certifying the degree of disability of the injured as 75% cannot be given any weight-age. On a pointed query as to whether the appellant/insured has raised any objection to the medical certificates/reports exhibited and relied upon by the injured claimant before the learned Tribunal or as to whether any evidence has been led to disprove the medical reports/certificates, the learned counsel for the appellant submits that no objection was taken to the medical reports/certificates exhibited by the claimants nor any evidence led to disprove the same. This Court is therefore of the view that the appellant/insurer cannot be allowed to raise such an issue for

the first time in the present appeal.

In the case of **Raj Kumar -versus- Ajay Kumar & Another**, reported in **(2011) 1 SCC 343**, the Hon'ble Supreme Court has held that;

“23.....Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses.”

Furthermore, in the case of **Oriental Insurance Company Ltd. -versus- A.J Thomas**, reported in **2010 (1) TAC 414 (Gau)**, this Hon'ble Court has held that;

“11. In this appeal, the appellant has seriously questioned the finding of the learned Tribunal on the permanent disability to the extent of 40% without taking any evidence of the Doctor and awarding the compensation. In this regard, it is be noted that the respondent-claimant produce necessary medical certificates before the learned Tribunal and the appellant had opportunity to pursue the same. No doubt, the respondent-claimant did not examine the concerned Doctor but the appellant, at no point of time, made any prayer before the learned Tribunal to summon the Doctor concerned for examination to testify the veracity of the medical report and thus, it failed to avail the chance of calling the material witnesses.”

12. In view of the above, I do not find any infirmity in the impugned judgment and order passed by the learned Tribunal warranting any interference and as such, the appeal is found to be bereft of merit and accordingly, the same is dismissed.”

The learned Tribunal in the judgment dated 13/05/2020 after discussing the Issue No. (ii) and Issue No. (v) has held that the un-rebutted evidence of PW-1, 2 & 3 corroborated by the documentary evidence of accident report, FIR, GDE entry, medical certificates, test result and X-ray exhibited during the trial prove that the claimant No.1 was injured in the accident dated 04/02/2017 due to rash and negligent driving of the driver of the offending vehicle and the extent of permanent disability inflicted on the injured as per the Disability Certificate issued by the District Medical Board, Lakhimpur (Exhibit P-15) is

75%.

In the light of the discussions made above, this Court on further examination of the second ground of appeal holds that the claimant/respondent No.1 suffered serious bodily injuries to the extent of 75% disability, due to the accident which occurred on 04/02/2017 involving the vehicle (tractor) B/R No. AS-07-AC/1373 insured with the appellant.

11. The third and the fourth ground of appeal which is with regard to the income of the injured claimant is taken simultaneously. The injured claimant/respondent No.1 before the Tribunal has deposed as follows;

“Prior to accident I was of sound health and active habit as such I used to earn Rs. 15,000/- to Rs. 20,000/- per month by engaging myself in agricultural farming, selling and purchase of bamboo handicrafts, seasonal farming of silk and muga worm and the earnings there from I was able to maintain my family. Due to the injury sustained my business is totally collapsed and I am now compelled to confine on the bed. I was involved in the accident at the age of 45 years. My total claim in the petition is Rs. 30,00,000/- jointly and severally against the opposite parties.....”

In cross-examination by the appellant/insurer, the injured claimant has stated as follows;

“It is correct to say that I have not filed any documents to prove my age that I am 45 years old.”

“It is correct to say that at the time of accident I was earning Rs. 15,000/- per month by selling and purchase of bamboo handicrafts, seasonal farming of silk and muga worm. To prove my income I have not filed any documentary evidence.”

From the cross-examination of the injured claimant it is seen that the appellant/insurer has not disputed the avocation and the income of the injured claimant. The injured claimant had only stated that *“to prove my income I have not filed any documentary evidence.”*

The learned Tribunal while discussing the Issue No. (iv) of the claim petition has come to the finding that the claimant has not produced any

document to prove the age of her deceased husband, however the Form-54, Accident Information Report, Medical certificates and test reports shows the age of the deceased to be 45 years and this documents have not been disputed. It has therefore held that the age of the deceased at the time of the accident was 45 years. The learned Tribunal has further held that in the case of the present nature where the injured claimant was self employed it is not possible to produce documentary proof and therefore it would be reasonable to hold that the claimant was earning Rs. 10,000/- per month.

In the case of **Syed Sadiq & Others -versus- Divisional Manager, United India Insurance Co. Ltd.**, reported in **(2014) 2 SCC 735**, the Hon'ble Supreme Court has held that;

“8. The appellant/claimant in his appeal further claimed that he had been earning Rs. 10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrapa v. Royal Sundaram Alliance Insurance Co. Ltd.⁶, has held as under: (SCC pp. 242-43, para 13-15)

“13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our

view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs. 4500/- to Rs. 3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-."

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs. 6,500/- per month."

Furthermore, in the case of **Shivakumar M -versus- Managing Director, Bengaluru Metropolitan Transport Corporation**, reported in **(2017) 5 SCC 79**, the Hon'ble Supreme Court has held that;

"5. No doubt, there was no evidence available with regard to the income of the appellant but there is no dispute on the fact that he was a painter by profession. The accident happened in the year 2013 when he was living in Bangalore, Karnataka. For a casual worker, who goes from house to house and place to place doing his painting work it is difficult to get any evidence, since there is no employer. He does his daily work, sometimes piece rated work as well. That is why he made a moderate self estimation of his income to Rs.15,000/- to Rs.16,500/-.

6. In the absence of any serious dispute on the part of the respondent on the avocation and income, we are of the view that the Tribunal and for that matter the High Court

should have accepted the evidence of the appellant. Therefore, we assess his monthly income as Rs.15,000/- and after deducting one third towards his personal expenses, the income will be assessed for the purpose of computation of compensation as Rs.10,000/- per month. The income is substituted as Rs.10,000/- in the place of Rs.6,500/- , as assessed by the High Court. The compensation will carry interest at the rate of 9% per annum from the date of the claim petition before the Tribunal. Rest of the award is maintained.”

In the present case, it is the case of the claimants that the injured victim was earning Rs. 15,000/- p.m by engaging in agricultural farming, selling and purchase of bamboo handicrafts and seasonal farming of silk and muga worm. This avocation of the injured claimant and his earning of Rs. 15,000/- per month has not been disputed by the appellant/insurer in any manner whatsoever before the Tribunal. Moreover, considering that the injured claimant was involved in self employment in an un-organized sector it could not have been possible for the claimant to produce documents to prove his avocation and monthly income. The learned Tribunal after taking into consideration the un-rebutted evidence of the claimants and taking all relevant facts into consideration has held that the injured claimant was earning Rs. 10,000/- per month. This Court is therefore of the view that the non production of the documentary evidence to prove the income of the injured claimant cannot be a ground to deny compensation to the injured claimant and accepts the finding of the Tribunal that the injured was earning Rs. 10,000/- per month.

The appellant, further by introducing the notification dated 30/05/2017 issued by the Government of Assam, Office of the Labour Commissioner, Assam has contended that the injured victim being an un-skilled workmen his daily wage/income should have been fixed at Rs. 257.40 per day and accordingly his monthly income should have been calculated at Rs. 7722.00 as per the said notification and not as calculated by the learned Tribunal. This ground of appeal cannot be accepted at this stage. The notification dated 30/05/2017 was never exhibited by the appellant before the learned Tribunal nor was any evidence led on the said notification. This Court is therefore not inclined to discuss the notification dated 30/05/2017 vis-à-vis the income of the injured claimant.

12. The last ground of appeal raised by the appellant/insurer is that the 9%

interest p.a awarded on the compensation amount is unreasonable and in violation of the law and only 6% interest should have been awarded. The appellant has however not justified as to why the 9% interest p.a should be reduced to 6% interest p.a. Section 171 of the Motor Vehicles Act, 1988 provides that where any claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. In the present case, the learned Tribunal has awarded Rs. 14,36,124/- as compensation which also includes the interim award of Rs. 25,000/- and the appellant/insurer has been directed to pay the compensation with interest @ 9% from the date of filing the claim petition till full satisfaction of the award and the appellant has been directed to pay the compensation within 1(one) month's time from the date of the order. The direction of the Tribunal to pay 9% interest p.a on the awarded amount is in conformity with the mandate of section 171 of the M.V Act, 1988. This Court therefore does not find any infirmity with the findings of the Tribunal to pay 9% interest p.a on the awarded amount.

In the case of **Kaushnuma Begum (Smt) & Others -versus- New India Assurance Co. Ltd.,& Others**, reported in **(2001) 2 SCC 9**, the Hon'ble Supreme Court in fixing the rate of interest on the compensation awarded has held as follows;

*“24. Now, we have to fix up the rate of interest. **Section 171** of the MV Act empowers the Tribunal to direct that “in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf”. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs.50,000/- paid by the*

Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.”

So also, the Hon'ble Supreme Court in the case of Bhartiben Nayabha Ker & Others -versus- Sidabha Pethabha Manke & Others, reported in AIR 2018 SC 2728, in the case of Manusha Sreekumar & Others -versus- United India Insurance Co. Ltd. reported in AIR 2022 SC 5161, in the case of Kanhsingh & Another -versus- Tukaram & Others reported in (2015) 11 SCC 343 and in a catena of decisions has held that the 9% interest p.a on the compensation amount to be proper.

13. In the light of the discussions made above, this Court is of the view that the present appeal has no merit and is accordingly dismissed. The judgment dated 30/05/2020 passed by the learned Member Motor Accident Claims Tribunal, Dimapur, Nagaland is upheld.

14. The appellant/insurer shall accordingly pay the compensation amount of Rs. 14,36,124/- (Rupees Fourteen lakh thirty six thousand one hundred and twenty four) only with 9% interest p.a from the date of filing of the claim petition till final satisfaction of the award. The interim award of Rs. 25,000/- (Rupees Twenty five thousand) only paid to the claimant and the 50% of the compensation amounting to Rs. 7,18,062/- (Rupees Seven lakh eighteen thousand and sixty two) only deposited by the appellant/insurer and received by the claimants/respondents shall be deducted from the awarded amount with effect from the date it was deposited. The compensation/award shall thereafter be re-calculated and the claimant shall be entitled to the balance amount of compensation with 9% interest p.a as aforesaid. The amount payable to the claimants/respondents shall be deposited by the appellant/insurer, before the Tribunal, not later than 30(thirty) days from the date of this judgment.

15. Send back the LCR forthwith.

Sd/-

JUDGE

Comparing Assistant