

GAHC040001482018

2024:GAU-AP:872



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

Case No. : MACApp./24/2018

THE ORIENTAL INSURANCE COMPANY LTD.
REPRESENTED BY ITS DIVISIONAL MANAGER HAVING ITS DIVISIONAL
OFFICE AT TAKAR COMPLEX B. SECTOR NAHARLAGUN, PO/PS
NAHARLAGUN, DIST. PAPUM PARE PIN-791110, AP.

VERSUS

SHRI RAM SINGH GHAUR
S/O LT. CHANDRA KANTA GHAUR, PRESENTLY RESIDING AT SERA
VILLAGE, NEAR GAS AGENCY, PO/PS BOMDILA, DIST. WEST KAMENG, AP.

Advocate for the Appellant : M Tunar, MrU Deka

Advocate for the Respondent : G. T. Gonpapa, L. Tsering, B. Picha, O. Pada, G. Loyi,
M. Likha, N. Nayom, J. Team, I. Kamduk

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

Date : 24-09-2024

1. Heard Mr. U. Deka, learned counsel for the appellant. Also heard Ms. L. Moriam, learned counsel for the sole respondent.
2. This appeal under Section 173 of the Motor Vehicles Act, 1988, is directed

against the judgment and award dated 18.05.2018, passed by the learned Member, Motor Accident Claim Tribunal (MACT), West Kameng District, Bomdila in MACT Case No. 08/2016, whereby, an amount of Rs. 12,90,000/- (Rupees Twelve Lakhs Ninety Thousand) only, with interest @ 6 % per annum, from the date of filing of claim petition i.e., 05.07.2015, till full and final realisation of the award, has been directed to be paid to the claimant/respondent.

3. The case, in brief, is that a vehicular accident involving a Bolero Pickup Van bearing registration No. AS-12E-8755 had occurred on 04.07.2015 at 1600 hours, wherein, the wife of the claimant late *Mongli Ghour* aged about 40 years and his minor daughter late *Pooja Ghour* aged about 9 (nine) months had succumbed to their injuries, along the Tenga-Tezpur road. The deceased(s) died at the place of occurrence having sustained fatal injuries. A case being Rupa P.S. Case No. 19/2015, under Sections 279/337/338/304(A) of the IPC was registered and the Investigating Officer, thereafter, filed an accident report. On the police requisition, post-mortem on her dead body was conducted at Rupa by the doctor, wherein, it was opined that head injury damaging the brain was the cause of her death.

4. The claimant/respondent filed a claim petition before the learned Member, Motor Accident Claim Tribunal (MACT), West Kameng District, Bomdila, claiming a compensation of Rs. 21,50,000/- (Twenty-One Lakhs Fifty Thousand Only). The appellant and 2 (two) others were arrayed as opposite party/respondent Nos. 3, 1 & 2.

5. The claimant had contended that the vehicle was duly insured by the appellant having effective date from 15.02.2015 to 14.02.2016. The claimant had stated that the deceased was a farmer, indulged in tomato farming, earning her monthly income @ Rs. 4500/- to 6000/- and she died at the young age of

40 (forty) years, leaving her widower/claimant.

6. The appellant contested the case by filing written statement and denied the claim and cross examined the claimant witness. The appellant disputed the claim that the claimed compensation amount is exaggerated and the annual loss of dependency of the deceased has not been proved. However, the appellant did not dispute the claim that the driver of the offending vehicle possessed a valid Driving License at the time of accident.

7. After consideration of the pleadings, 4 (four) issues were framed by the learned Tribunal, as follows:

- “i. Whether the claim petition is maintainable in law and facts?*
- ii. Whether any cause action arose for filing the instant application?*
- iii. Whether the deceased died due injuries cause to her out of motor vehicle accident occurred on 04.07.2015 by vehicle bearing Registration No. AS-12E-8755?*
- iv. Whether the respondent is liable to pay sum of Rs. 21,50,000 on compensation?”*

8. The claimant adduced 3 (three) witnesses, including himself and exhibited 5 (five) documents. The appellant had cross-examined only the claimant/respondent.

9. CW-1 is the claimant and he had stated that the vehicular accident occurred on 04.07.2015 at Indian Army Camp No. 311, established about 3 KM from Tenga Market, which resulted in the death of his wife *late Mungli Ghour*. He stated that the deceased got crashed to death by the offending vehicle while she was walking along the Highway with the deceased infant daughter. The Post-mortem report of the deceased and the Death Certificate have been exhibited as P/Ext. 2 and P/Ext. 3.

10. CW-2, the I.O. had deposed that on receipt of occurrence of vehicle accident at 1.5 KM ahead of 14 BRTF along the Balipara-Charduar-Tawang road on 04.07.2015, he visited the place of occurrence and found Bolero Pick Up Van with registration No. AS-12E-8755 in a capsized position. *Late Mongli Ghour* and *Pooja Ghour* were evacuated to Dahung Hospital, where doctor declared them brought dead. He had conducted the inspection and opined that the accident occurred due to sudden skidding of the offending vehicle. The I.O. has exhibited P/Ext.1, P/Ext. 1 (A), P/Ext. 4 and Ext. 4 (A). The P/Ext. 1, the Driving Licence of the driver was valid up to 05.04.2018.

11. After careful consideration of the materials and the evidence, the learned Tribunal has decided all the issues in favour of the claimant/respondent against the appellant.

12. On consideration of the entire evidence and relying on the judgments of the Hon'ble Supreme Court, the learned Tribunal has considered the following to be just and reasonable compensation including the consortium to be awarded to the claimant:-

Monthly income of the victim is = Rs 3,000.00

One third of her income is deducted towards personal expenses, thus monthly contribution towards family income is = Rs 2000.00

Annual dependency is = 2000 X 12
= Rs 24,000.00

Thus, 50% of annual dependency would be added towards future prospects, i.e. = Rs 8000

+ Rs 24,000.00

= Rs 32,000

Since the victim died at the age of 40 applied multiplier is "15"

Thus, annual dependency loss = Rs 32,000 X 15

= Rs 480,000.00

Loss of life = Rs. 500,000/-

Loss of care, guidance and love to her surviving family members
= Rs. 200,000/-

Funeral and incidental expenses = Rs. 25,000

Total: Rs. 12,90,000/-

13. Mr. U. Deka, learned counsel for the appellant submits that the learned Tribunal has failed to consider the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs Pranay Sethi and Ors.***, reported in ***(2017) 16 SCC 680***, as the learned Tribunal has wrongly awarded the loss of care and guidance and love to the surviving family member for an amount of Rs. 2,00,000 (Two Lakhs) and the funeral and incidental expenses as Rs. 25,000 (Twenty-Five Thousand). He fairly submits that the appellant has no objection to other heads i.e., the notional income, annual dependency loss, multiplier and the loss of life. In other words, the appellant is aggrieved by the award of loss of care and guidance and love to her surviving family member for an amount of Rs. 2,00,000 (Two Lakhs) and the funeral and incidental expenses to the tune of Rs. 25,000 (Twenty-Five Thousand). Therefore, he submits that the claimant is entitled on conventional heads, namely, loss of estate, loss of consortium and funeral expenses at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively, and as such, prays for modification of the impugned award by deducting Rs. 2,25,000/- (Two Lakhs Twenty-Five Thousand) and thereafter to add Rs. 70,000/- (Seventy Thousand) in terms of the Judgment of the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)***.

14. Ms. L. Moriam, learned counsel for the claimant/respondent submits that she would not have serious objection to the submissions of the learned counsel

for the appellant as the Hon'ble Supreme Court has clearly provided a reasonable figure on conventional heads, namely, loss of estate, loss of consortium and funeral expenses at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively.

15. Having considered the submissions of learned counsel for the parties and in the light of the decision and conclusion of the Constitution Bench of the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)*** and on the consent of the parties, I deem it appropriate to modify the impugned award as under:

<i>Monthly income of the victim is</i>	<i>= Rs 3,000.00</i>
<i>One third of her income is deducted towards personal expenses, thus monthly contribution towards family income is</i>	<i>= Rs 2000.00</i>
<i>Annual dependency is</i>	<i>= 2000 X 12</i>
	<i>= Rs 24,000.00</i>
<i>Thus, 50% of annual dependency would be added towards future prospects, i.e.</i>	<i>= Rs 8000</i>
	<i>+ Rs 24,000.00</i>
	<i>= Rs 32,000</i>
<i>Since the victim died at the age of 40 applied multiplier is "15"</i>	
<i>Thus, annual dependency loss</i>	<i>= Rs 32,000 X 15</i>
	<i>= Rs 480,000.00</i>
<i>Loss of life</i>	<i>= Rs. 500,000/-</i>
<i>Loss of Estate</i>	<i>= Rs. 15, 000/-</i>
<i>Loss of Consortium</i>	<i>= Rs. 40,000/-</i>
<i>Funeral expenses</i>	<i>= Rs. 15,000/-</i>

Total: Rs. 11,35,000/-

16. Accordingly, the appellant is directed to pay a total compensation amount of Rs. 11,35,000/- (Eleven Lakhs Thirty-Five Thousand) to the claimant with interest @ 6 % from the date of filing the claim petition i.e. 05.07.2015, till full and final realisation of the award. The amount of Rs. 5,00,000/- (Rupees Five

Lakhs) already paid and withdrawn by the claimant/respondent be deducted.

17. It is provided that the manner of payment provided in the award by the learned Tribunal shall remain the same.

18. The MAC Appeal is allowed to the extent indicated above and disposed of.

JUDGE

Comparing Assistant