

GAHC040015002023



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

MACApp./07(AP)/2023

HDFC, ERGO GEN. Ins Co. Ltd
6th Floor, Adityam building, Lachit
Nagar, G. S. Road, Guwahati, Assam.

...PETITIONER

-VERSUS-

Shri Hage Hinda,
S/O Late Hage Nyipa,
Resident of Hari Village,
P.O & P.S: Ziro
District: Lower Subansiri,
Arunachal Pradesh.

....RESPONDENTS/CLAIMANT

Advocates for the petitioner : Mr. G. Kato

Advocates for the respondent : Mr. H. Lampu

:::BEFORE:::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of hearing : 30.08.2024
Date of Judgment & Order : 31.08.2024

JUDGMENT

Heard Mr. G. Kato, learned counsel for the appellant. Also heard Mr. H. Lampu, learned counsel for the respondent/claimant.

2. This appeal under Section 173 of Motor Vehicle Act, 1988, has been preferred by the appellant, namely, M/s HDFC, ERGO Gen. Ins Co. Ltd, impugning the judgment and award dated 29.06.2023, passed by the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Arunachal Pradesh in MACT Case (Z) No. 05/2021, whereby, an award of Rs. 23,04,390/- (Rupees Twenty-three lakhs four thousand three hundred and ninety) was awarded in favour of respondent/claimant

3. The facts relevant for consideration of the instant appeal, in brief, are as follows:

(i) That one Hage Talle, who was the original claimant, had filed a claim application under Section 166 of Motor Vehicles Act, 1988, before the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, claiming compensation on account of death of his brother Hage Tagia, on 18.08.2013, in a vehicular accident which happened at Bhalukpong.

(ii) It was averred in the claim petition, by the claimant, that on the day of the

incident, at about 5:30 AM, the deceased Hage Tagia was riding on his own scooter near Vat Check Gate, Bhalukpong at main road of National Highway-NH52, a truck bearing registration No. NL-01-K-0699 coming from a wrong direction hit the deceased and ran over the body of the deceased causing instant death of the deceased at the spot of the accident. According to the post-mortem examination report the cause of the death of the deceased was due to multiple injuries on vital organs.

(iii) The original claimant, namely, Hage Talle being the younger brother of the deceased, in his claim petition, had prayed for a compensation amount of Rs. 60,25,000/- (Rupees Sixty lakh twenty-five thousand) and also prayed for grant of No-Fault liability of Rs. 50,000/- (Rupees Fifty thousand) under Section 140 of Motor Vehicle Act, 1988.

(iv) During the pendency of the MACT Case (Z) No. 05/2021 before the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, the original claimant Hage Talle passed away. On his death, by the order dated 18.04.2022, another brother of the deceased, namely, Hage Hinda (present respondent) was allowed to be substituted as claimant in place of the deceased Hage Talle. The present appellant, who was the opposite party No. 1 before the Tribunal contested the case by filing a written statement.

(v) Upon pleadings of the parties, the learned Member, Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro framed the following issues for determination:

(i) Whether late Hage Tagia died as a result of injuries sustained by him in the road accident dated 18.08.2013 involving Tata truck bearing registration No. NL-01-K-0699.

(ii) Whether the accident took place due to rash negligent driving of the driver of the offending vehicle.

(iii) Whether the claimant is entitled to receive any compensation and if yes, to what extend and who amongst the opposite parties will be liable to pay the compensation.

(vi) In support of his claim, the claimant adduced evidences of 3(three) witnesses, whereas, the opposite party adduced evidence of one defence witness. Ultimately, after culmination of the enquiry the learned Member, Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, passed the impugned judgement and award, dated 29.06.2023, wherein, all the 3(three) issues framed by the Tribunal were answered in affirmative. The Tribunal ultimately awarded a compensation amount of Rs. 23,04,391/- (Rupees Twenty-three lakhs four thousand three hundred ninety-one) with an interest at the rate of 8% per annum from the date of filing of the claim petition till realization of the full amount in favour of the claimant/respondent Shri Hage Hinda.

4. The learned counsel for the appellant has submitted that the appellant/Insurance Company has preferred this appeal mainly on the ground that the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, had erred in awarding the compensation to the claimant for loss of dependency as the present claimant was not dependent on the deceased. It is submitted by the learned counsel for the appellant that the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, has erroneously awarded a sum of Rs. 16,76,454/- (Rupees Sixteen lakhs seventy-six thousand four hundred fifty-four) against the pecuniary loss to the claimant without any basis.

5. The learned counsel for the appellant has submitted that the respondent/claimant would only be entitled to compensation against loss of estate, as he was not the dependent of the deceased Hage Tagia. The learned counsel for the appellant has also submitted that the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, has erred in treating the meaning of "legal representative" as similar to "dependent".

6. In support of his submissions, the learned counsel for the appellant has cited the following rulings:

(i) *Manjuri Bera vs. Oriental Insurance Company Ltd. & Anr., reported in (2007) 10 SCC 643.*

(ii) *National Insurance Company Limited vs. Polia Pator & Ors., (Judgment dated 10.12.2021) in MACApp. No. 131(AP)/2016.*

7. On the other hand, Mr. H. Lampu, learned counsel for the claimant/respondent has submitted that the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, has rightly assessed the compensation of Rs. 16,76,454/- (Rupees Sixteen lakhs seventy-six thousand four hundred fifty-four) against the pecuniary loss to the claimant as he is the legal representative of deceased Hage Tagia.

8. The learned counsel for the respondent has also submitted that the respondent/claimant, though, was not a dependent of the deceased Hage Tagia, however, as he was legal representative of the deceased Hage Tagia as well as of the original claimant Hage Talle, he is entitled to the compensation which has been awarded by the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, in MACT Case (Z) No. 05/2021.

9. The learned counsel for the respondent has cited the ruling of the Apex Court in the case of ***Sarla Verma & Ors., vs. Delhi Transport Corporation & Anr.,*** reported in ***(2009) 6 SCC 121.***

10. The learned counsel for the respondent has submitted that the only criteria for ascertaining the quantum of compensation to be paid to the claimant is on the basis of 3(three) factors, namely, age of the deceased; income of the deceased; and the number of dependents. He submits that if there is no dependent of the deceased, in such case, 50% of the income of the deceased would be deducted while computing the earning of the deceased and thereafter, depending of the age of the deceased, the correct multiplier is to be applied, which in the instant case was ascertain to be "13".

11. The learned counsel for the respondent has submitted that the learned Member, Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, has correctly computed the amount of compensation to which, the respondent/claimant is entitled to against traditional heads and against the head "pecuniary loss" and therefore, the impugned judgment and award of the Tribunal needs no interference by this Court and same is liable to be dismissed.

12. I have considered the submissions made by the learned counsel for both sides. I have also gone through the materials on record including the original case record of the MACT Case (Z) No. 05/2021, which was requisition from the concerned MACT.

13. In the instant appeal, the only challenge put by the appellant/Insurance Company is regarding computation of the amount of compensation in the impugned judgment and award against the head "pecuniary loss" to the tune of Rs. 16,76,454/- (Rupees Sixteen lakhs seventy-six thousand four hundred fifty-

four),

14. Admittedly, the present respondent/claimant, who was substituted as the claimant in the MACT Case (Z) No. 05/2021 before the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, on death of the original claimant Hage Talle, was not a dependent of his deceased brother Hage Tagia and therefore, he cannot be awarded compensation against “loss of dependency” on the death of his brother Hage Tagia.

15. Compensation in any case, more so, in MACT claim cases is awarded only on account of some loss suffered by the claimant. Though, because of the fact of being the legal representative of a deceased a person may have a right to file application seeking compensation. However, to be entitled to the compensation he has to show before the Tribunal, that he suffered some loss on account of which he is entitled to get compensation. This concept has been lucidly explained the case of **A. Manavalagan vs. A. Krishnamurthy & Ors.**, reported in **(2004) SCC Online Kar 222** by the High Court of Karnataka, wherein, it has observed as follows:

“19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the defendant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note : for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother; as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if

the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

16. In the instant case, though there is no dispute regarding the fact of the accident or the liability of the Insurance Company to pay the compensation to the claimant. The only dispute in the present appeal is that the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, has not specifically mentioned as to under which head the pecuniary loss of Rs. 16,76,454/- (Rupees Six thousand seventy-six thousand four hundred fifty-four) was awarded i.e., whether it was for "loss of dependency" or for "loss of estate" by the claimant.

17. In view of the observation made in the judgment cited above, to which, this Court is also in agreement, that a legal representative, who is not a dependent of the deceased cannot claim compensation against the head "loss of dependency". He would only be entitled to compensation against the head loss of estate in such a case. In the instant case also as admittedly, the respondent/claimant was not a dependent of the deceased Hage Tagia, he

would only be entitled to compensation for "loss of estate" only.

18. This Court is of considered opinion that having regard to the fact and circumstances of this case and in view of the observations made in the judgment cited herein above, 25% of the income of the deceased which was assessed by the learned Member Motor Accidents Claims Tribunal, Lower Subansiri District, Ziro, after deducting 50% of the said income as personal and living expenses, may be assessed as "loss of estate", to which, the respondent/claimant may be entitled to.

19. In view of above discussion, the just and reasonable compensation to which, the respondent/claimant is entitled is assessed as hereunder:

- (i) Loss of estate: Rs. 8,38,227/-
- (ii) Future prospects at the rate of 30%: Rs. 2,51,468/-

Total: Rs. 10,89,695/-

20. The respondent/claimant is therefore entitled to total compensation of Rs. 10,89,695/- (Rupees Ten lakhs eighty-nine thousand six hundred ninety-five) along with an interest @ 8% per annum thereon from the date of filing of the claim petition till full and final realization of the same.

21. The statutory deposit made by the appellant shall be returned to the appellant after proper verification by the Registry.

22. Let the case record of MACT Case (Z) No. 05/2021 be returned back to the concerned Tribunal along with the copy of this judgement.

23. This appeal is accordingly allowed and stands disposed of.

JUDGE

Comparing Assistant