

GAHC010003142015



2024:GAU-AS:7980

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

Case No. : MACApp./481/2018

SMTI RUNU DEKA and 2 ORS
W/O LT. DIPAK DEKA

2: BITOPAN DEKA
S/O LT. DIPAK DEKA

3: DAVID DEKA

S/O LT. DIPAK DEKA
ALL ARE R/O VILL. JAPARKUCHI
P.O. CHOWKBAZAR
DIST. NALBARI ASSAM THE APPLICANT NO. 2 and 3 ARE REPRESENTED
BY APPLICANT NO. 1 DUE TO MINORITY

VERSUS

THE NATIONAL INSURANCE CO LTD and ANR
A PUBLIC SECTOR UNDERTAKING HAVING ITS REGD. OFFICE AT
KOLKATA AND REGIONAL OFFICE AT G.S. ROAD, BHANGAGARH,
GUWAHATI-5

2:BASANTA BARMAN

S/O LT. LAKHI BARMAN
VILL. BARKURA
P.O. BALIKARIA
P.S. NALBARI
DIST. NALBARI
ASSAM

Advocate for the Petitioner : MR. S C PANDIT,

Advocate for the Respondent : MS. A THAKURIA, MS. S ROY (R1), MS. R D MOZUMDAR (R1), MS. C MOZUMDAR (R1), MR. S P SHARMA (R1)

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. S.C. Pandit,
Advocate.

For the Respondents : Mrs. R.D. Mozumdar,
Advocate.

Date of Hearing : 01.08.2024.

Date of Judgment : 16.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S.C. Pandit, learned counsel representing the appellants as well as Mrs. R.D. Mozumdar, learned counsel appearing for the Respondent No.1.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 29.05.2013, passed by the learned Member, Motor Accident Claims Tribunal, Nalbari in MAC Case No.84 of 2012.

3. On 17.02.2012 at about 2.20 P.M., Dipak Deka was driving a motorcycle. At Mazdia, the vehicle bearing Registrations No.AS 14/A- 7677 had hit the motorcycle of Dipak Deka. He sustained injuries and died on the same day at about 5.30 P.M.

4. The deceased was 45 years old at the time of his death. He was a Government employee doing the job of Panchayat Secretary, No.22, Dakhin Khetri, Dharmapur Panchayat. He left behind his wife and two children.

5. The Tribunal considered his basic pay of ₹14,180/- as the basis for calculating the compensation.

6. Finally, the Tribunal awarded a compensation of ₹15,58,500/-.

7. Being aggrieved by the said judgment, the present appeal has been filed on the ground that the Tribunal should have held the net pay of the deceased as the basis for calculating the compensation amount.

8. I have considered the submissions made by the learned counsel of both sides.

9. This Court is of the opinion that the learned Tribunal in spite of having documentary evidence relating to the monthly income of the deceased, erroneously held that the monthly income of the deceased was ₹14,180/-.

10. Therefore, the judgment of the Tribunal requires to be interfered with. The modified calculation will be like this—

Amount already paid to the claimant= ₹15,58,500/-.

Income = ₹20,996/- as per page 4 of the LCR- Ext.2- Salary Certificate.

Future prospect – 43%, Multiplier 13, Deduction 1/3rd.

30% of ₹20,996/- = ₹6,298/-.

Dependency calculation will be = ₹20,996/- + ₹6,298/-

= ₹27,294/-.

1/3rd of ₹27,294/- = ₹9,098/-

₹27,294/- – ₹9,098/- = ₹18,196/-

₹18,196/- X 13 (Multiplier) X 12 = ₹28,38,576 + ₹70,000/- (conventional amount) = ₹29,08,576/-.

Contribution of deceased towards accident 25% = ₹7,27,144/-.

Total Compensation = ₹29,08,576/- - ₹7,27,144/- (25% contribution towards accident) = ₹21,81,432/-

₹21,81,432/- - ₹15,58,500/- (Amount already paid by insurance company) = ₹6,22,932/-.

Payable = ₹6,22,932/- (Rupees six lakhs twenty two thousand nine hundred thirty two) only.

11. Now, the appellants shall be entitled to receive only ₹6,22,932/-.

12. The appeal is allowed accordingly.

13. The Insurance Company is directed to deposit ₹6,22,932/- in the Registry of this Court within next 6(six) weeks. It is further directed that failure to pay the money within next six weeks, would cause the Insurance Company to pay an interest at the rate of 6% per annum from the date of filing of

the claim petition. Upon deposit of the said amount, it shall be disbursed in favour of the claimants without any riders.

14. The appeal is accordingly allowed. Send back the LCR.

JUDGE

Comparing Assistant