

GAHC010018812014



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

Case No. : MACApp./285/2014

ABDUL BHUYAN and ANR

2: SHAID BHUYAN

BOTH SONS OF LATE MAZID BHUYAN
R/O GANDHI BASTI
NEW SARANIA
NEAR SOAP FACTORY
C/O WAHIDUZ ZAMAN
P.O. SILPUKHURI
GUWAHATI-3
DIST. KAMRUP M
ASSAM

VERSUS

UNITED INDIA INSURANCE CO LTD
DIVISION-II, BHANGAGARH, GUWAHATI-5

2:DR. SHEIKHUL ISLAM

S/O MD. SAMED ALI
VILL. MAZDIA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MS.F BEGUM

Advocate for the Respondent : MR. A J SAIKIA (R1)

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

13.06.2024

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 in respect of a Judgment and Order dated 16.05.2014 passed by the MACT, Kamrup, Guwahati in MAC Case No. 1055/2006 whereby an amount of Rs.2,41,000/- (Rupees Two Lakh Forty One Thousand) only along with 6% interest per annum has been awarded.

- 2.** The appeal is filed by the claimants for enhancement of the award.
- 3.** The claim was instituted by the claimants on the death of their sister in a motor accident on 19.02.2006 involving the vehicle bearing registration No. AS-01-X-8958. The respondents - Insurance Company had contested the claim by filing written statement. However, the owner-cum- driver did not contest the claim.
- 4.** The claimants had adduced evidence through 2 (two) numbers of witnesses and the following documents were proved in before the Tribunal.

“Ext.-1:- Accident Report in original.

Ext.-2:- Certified copy of the P.M. report.

Ext.-3:- Certified copy of the F.I.R.

Ext.-4:- Income certificate of the deceased issued by the concerned Circle Officer.

Ext.-5:- Certificate issued by the concerned Gaonburah.

Ext.-6:- Certificate issued by the concerned Gaon Panchayat authority.”

- 5.** The Insurance company had examined one witness namely, the Investigator.
- 6.** The learned Tribunal vide the impugned Judgment and Order had awarded the amount of Rs. 2,41,000/- (Rupees Two lakh Forty One Thousand) only as mentioned above.

7. Amongst other grounds, Shri Mannaf, the learned counsel for the appellants has submitted that the multiplier applied is 13 by considering the age of the claimants which is not in accordance with law. It is submitted that the deceased being 28 years of age at the time of death, the correct multiplier is 17. In this connection, the learned counsel has relied upon the Judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***. It is submitted that the views expressed earlier in the case of ***Sarla verma vs. DTC*** reported in ***(2009) 6 SCC 121*** was reiterated by the Constitution Bench. It is submitted that if the correct multiplier is applied, the amount awarded would be enhanced.

8. Shri Mannaf, the learned counsel has also raised the issue of grant of adequate compensation on the aspect of future prospect. He submits that the aforesaid factor was also taken into consideration by the learned Tribunal.

9. *Per contra*, Shri A.J. Saikia, learned counsel for the Insurance Company has however submitted that the learned Tribunal had overlooked the aspect of dependency *qua* the claimants upon the deceased. He submits that from the materials on record it would be clear that the deceased was the sister of the claimants and the claimants were not dependent upon the said deceased and this factor was wholly overlooked by the Tribunal. He accordingly submits that the award is on the higher side.

10. With regard to the aspect of the multiplier, the learned counsel for the Insurance Company has however fairly conceded that the multiplier should be as per the age of the deceased as clarified by the Hon'ble Supreme Court in the aforesaid cases.

11. The rival submissions have been duly considered.

12. The impugned Judgment, while arriving at the awarded amount had applied the multiplier of 13. As per the statute, the age of the deceased being 28, the correct multiplier should have been 17. The Hon'ble Supreme Court in the aforesaid case of

Pranay Sethi (supra), in the context of the multiplier to be applied has laid down as follows:

“59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.”

13. As regards the submissions made by Shri Saikia, on the dependency factor, this Court is of the opinion that in absence of any appeal by the Insurance Company or a cross objection in the present appeal, that aspect is not liable to be gone into by this Court.

14. In view of the aforesaid facts and circumstances and following the law laid down by the Hon'ble Supreme Court, the impugned Judgment and Order dated 16.05.2014 passed by the MACT, Kamrup, Guwahati in MAC Case No. 1055/2006 stands modified to the following extent.

15. Considering that the claim is of the year 2006 and this Court being informed that the awarded amount has already been paid, this Court has made a rough calculation with the assistance of the learned counsel for the parties and accordingly directs payment of a lump sum additional amount of Rs. 2,60,000/-. The said amount is to be released within a period of 45 days from today failing which the same would accrue interest @ 9 % per annum.

16. The amount may be deposited in the Registry of this Court which would be released to the claimants on being properly identified.

17. The appeal accordingly stands disposed of.

JUDGE

Comparing Assistant