

GAHC010127522014



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

Case No. : MACApp./251/2014

SABINA YASMIN and 4 ORS.
W/O LATE RAFIQUL ISLAM

2: JAHAN UDDIN SK
S/O LATE MOFIZUDDIN SK.

3: ROMISHA BIBI
W/O JAHANUDDIN SK

4: SAHID HUSSAIN
S/O LATE RAFIQUL ISLAM

5: SELIM HUSSAIN
S/O LATE RAFIQUL ISLAM
ALL ARE R/O VILL. GERAMARI PT. IV AMBARI
P.O. and P.S. GAURIPUR
DIST. DHUBRI
ASSAM. {SERIAL NO. 4 AND 5 ARE MINOR SON OF THE DECEASED AND
REPRESENTED BY THEIR MOTHER APPELLANT NO 1

VERSUS

MOINUL HOQUE and 2 ORS.
S/O LATE MAJNUR ALI SK, VILL.B ARKANDA P.S. BILASIPARA, DIST.
DHUBRI, ASSAM

2:SAHID RAHMAN
S/O ATOWAR RAHMAN
VILL. PITHBARI
P.O. BALADMARI
DIST. GOALPARA
ASSAM

3:THE BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

GUWAHATI BRANCH 2B
2ND FOOR
CENTRE POINT
G.S. ROAD
ULUBARI
GUWAHATI 7810074
DIST. KAMRUP ASSA

Advocate for the Petitioner : MR.A R AGARWALA, MS.T HASNU

Advocate for the Respondent : MR. R GOSWAMI (R3),
MR D DEKA (R3),MS. P BORTHAKUR (R3),MR J JOHN

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 13-09-2024

Heard Mr. A.R. Agarwala, learned counsel for the appellants. Also heard Mr. R. Goswami, learned counsel, for the respondent No.3. None appears for the respondent Nos.1 & 2.

2. This Appeal is preferred under Section 173 of the *Motor Vehicle Act, 1988* (hereinafter referred to as 'the M.V. Act'), assailing the judgment and award dated 08.10.2013, passed by the learned Member, Motor Accident Claims Tribunal, Dhubri, whereby a compensation amount of Rs.6,11,700/- (Rupees six lakh eleven thousand and seven hundred) with interest @8% per annum, from the date of filing of the claim petition, has been awarded to the claimants.

3. Brief facts of the case are that on 18-11-2009, at around 9:00 P.M., while the husband of the claimant and two others were walking on the left side of the No.31 National Highway near Botertol, Geramari, a Truck bearing registration No.AS-17-8681, being driven by its driver in a high speed in reckless manner, knocked down her husband and two others from behind. As a result of which, all of them were thrown out of the road causing death of her

husband and one Sanjan Ali and Md. Awal Hoque sustained grievous injuries. Immediately after the accident, Police from Gauripur Police Station came and with the help of local villagers and one of the eye witnesses, namely, Ali Hussain took all the injured persons in their police van to Dhubri Civil Hospital but her husband and Sanjan Ali died on the same night at Dhubri Civil Hospital. Post Mortem examination was conducted at Dhubri Civil Hospital. A case being Gauripur P. S. Case No.1/2010, under Section 279/338/304-A of the IPC was registered.

4. The deceased was aged about 30 years at the time of his death and used to earn Rs.6,000/- (Rupees six thousand) per month, by doing business of seasonal goods. The deceased left behind five dependants. The offending vehicle was duly insured with the M/s Bajaj Allianz General Insurance Company Limited. The claimant claims to have incurred an expenditure of Rs.50,000/- (Rupees fifty thousand) only for burial and other expenses of her husband. The accident took place due to rash and negligent driving by the driver of the offending truck. The claimant claimed compensation of Rs.8,00,000/- (Rupees eight lakh) only, for the death of her husband.

5. The respondent No.3 has contested the case by filing written statement, raising the issue of maintainability of the claim petition. The respondent No.3 denied all the allegations that the vehicle was involved in the alleged accident and contended that the claimant be directed to produce the original Insurance Policy and prays for dismissal of the claim petition. The respondent No.1 & 2 have not appeared and contested the case. As such, the case proceeded ex parte against them.

6. Upon consideration of the pleadings and hearing the learned counsel for the parties, the learned Tribunal has framed the following four issues, which are as under:

(1) Whether the accident took place due to rash and negligent driving of vehicle No.AS-17/8681 and claimant's husband died due to the accident?

(2) Whether the offending vehicle was duly insured with M/s Bajaj Allianz General Insurance Co. Ltd at the time of accident?

(3) What shall be the just and proper compensation and by whom payable ?

(4) Whether the claimant is entitled to get the relief as prayed for ?

7. During the trial, the claimant examined herself as CW-1 and 2 (two) other witnesses as CW 2 and 3, in support of her claim, who were duly cross examined by the Respondent no. 3 but did not adduce any evidence and after hearing the learned counsel for the parties, the learned Tribunal, has passed the judgment on 08.10.2013, which is impugned in the present appeal.

8. The learned Tribunal has decided the issue no. 1 and 2 in favour of the claimants. As regards issue no. 3 and 4, learned Tribunal has held that the deceased was in between 28 to 30 years at the time of his death. It further held that, although, the claimant in her deposition claimed that deceased used to earned Rs.6000/- per month by doing business of seasonal goods, yet she failed to produce any income certificate in support of her claim. Therefore, taken the income of the deceased notionally as Rs.3000/- per month.

9. Mr. A.R. Agarwala, learned counsel for the appellants has submitted that the Tribunal has failed to take into consideration all the evidence on record in proper perspective, by taking into consideration the notional income, while calculating the amount of compensation, in spite of having sufficient materials on record regarding the income of the deceased. He submits that claimant had clearly established and proved the income of the deceased and there is nothing contrary has been stated to the income by the claimant in the cross-examination by the respondent No.3. The CW3 of the claimant who was a co-businessman of her deceased husband, also deposed that the income of the deceased was Rs. 6000/- (Rupees Six thousand) only per month, who was engaged in the business of seasonal goods. But the learned Tribunal has taken the notional income of the deceased as Rs. 3000/- (Rupees three thousand) only per month and added 30% as future prospects and further deducted 1/4th from the said amount, while calculating the compensation.

10. The learned counsel for the appellants further submitted that the Tribunal has failed to appreciate that the present case is not a case of 'No Income', where notional income can be adopted. As per judicial pronouncement, time and again, it is held that where there is some evidence regarding the income of the deceased/injured, notional income should not be taken into account while calculating the amount of compensation. No reason has been assigned for adopting Rs.3000/- (Rupees three thousand) only, as monthly income for calculating compensation where there is clear evidence that the deceased was a Businessman and was earning Rs.6.000/- (Rupees Six Thousand) only per month and also maintaining a family of 6 (Six) members.

11. Mr. A.R. Agarwala, learned counsel, has further submitted that the deceased was the only earning member of the family and was maintaining large family, only by his earning from his business of various seasonal goods etc. and now-a-days, a business by doing job of like nature earns more than Rs. 400/- (Four Hundred) only daily. He further submits that the learned Tribunal had erred in taking into consideration of only 30% increase in the total income to ascertain the loss of dependency. Further, Learned Tribunal has overlooked the increase in Price Index and cost of Living and inflation. Further, the Learned Tribunal failed to take into consideration the Judgment of Hon'ble Supreme Court in the case of **Rajesh and others -vs- Rajbir Singh and others**, reported in **(2013) 9 SCC 54**, wherein it was held that incremental enhancement of income by 50% is also applicable to Self-employed persons or those on fixed wages for deceased of below 40 years of age and 30% in case the deceased was in age group of 40 to 50 years and 15% if the deceased is of age group of 50 to 60 years. In the present case in hand the age of the deceased was 30 years and hence the 'Future Prospects' should be enhanced by 50%. Therefore, he submits that the award is liable to be modified and enhanced.

12. Mr. A.R. Agarwala, learned counsel, submits that while taking into consideration the deduction of 1/10th instead of deducting 1/4th for personal living expenses, as decided in the case of **Santosh Devi -vs- National Insurance Co. Ltd**, reported in **(2012) 6 SCC 421** the Learned Tribunal ought to have deducted 1/10th personal living expenses. Moreover, for

the rate of interest @ 8% per annum, as awarded by the Learned Tribunal is on the lower side and as such, at least 9% interest per annum should have been awarded. Hence, the award is liable to be modified and enhanced to the extent that the interest is to be awarded @9% per annum from the date of filing claim petition till realization. Moreover, the learned Tribunal had erred in awarding a sum of Rs.5, 000/- only as Funeral expenses and Rs. 10,000/- for Loss of consortium and no sum has been awarded for Loss of estate and on account of Love and affection for the death of father of the children. In view of the above, he submits, the Judgment and award passed by the learned Tribunal is liable to be modified and enhanced.

13. Mr. R. Goswami, learned counsel for the respondent No.3, while relying on the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680**, submits that the Hon'ble Supreme Court had held and decided that to limit the heads of compensation to three heads, namely, loss of estate, loss of consortium and funeral expenses and then scale down the compensation under these heads as Rs. 15,000/-, Rs.40,000/- and Rs.15,000/- respectively. It restricted to increase to only 10% after every three years. He submits that in view of the decision of the Hon'ble Supreme Court in the above case, the law regarding the award of enhancement for loss of income, loss of consortium and then fixation of notional income would be applied.

14. I have considered the submissions of learned counsel for the parties and perused the materials available on record including the Trial Court record.

15. The challenges by the appellants are essentially to the income of the deceased notionally taken by the learned Tribunal as Rs. 3000/- (Rupees three thousand) only per month and adding of 30% as future prospects and further deduction of 1/4th from the said amount, while calculating the compensation. The appellants also challenge the awarding of a sum of Rs.5,000/- as Funeral expenses and Rs. 10,000/- for Loss of consortium and no sum has been awarded for Loss of estate and on account of love and affection for the death of father of the children.

16. On consideration of the materials and the evidence, it is seen that the claimant had deposed that the income of the deceased was Rs.6,000/- (Rupees six thousand) only per month, as the deceased was in the business of seasonal goods. The evidence is supported by the testimony of CW3, who is co-businessman. The said testimony/evidence have not be refuted/rebutted by the respondent No.3, in the cross-examination.

17. It is elementary that when the income is proved by the claimant and has not been rebutted or demolished by the opposite party, it may not be safe to take recourse to notional income, which would be impermissible. However, in the present case, though the depositions of claimant and CW3 shows the income of deceased as Rs.6,000/- (Rupees six thousand) only per month, there is documentary evidence to support the same. Thus, in my view, learned Tribunal had rightly taken the notional income as Rs.3,000/- (Rupees three thousand) only per month.

18. In the case of **Pranay Shetty (Supra)**, the Hon'ble Supreme Court has held, which is reproduced herein under:

“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable

principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

55. [Section 168](#) of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in [Sarla Verma](#) (supra) and it has been approved in [Reshma Kumari](#) (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

59. In view of the aforesaid analysis, we proceed to record our conclusions:-

59.1. The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another

coordinate Bench.

59.2. As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

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

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

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years”.

19. In the case of **Manusha Sreekumar and others vs. United India Insurance Co. Ltd.**, reported in **2022 SCC Online SC 1441**, the Hon'ble Supreme Court has held that while determining compensation under the Act, [section 168](#) of the Act makes it imperative to grant compensation that appears to be just. [The Act](#) being a social welfare legislation operates through economic conception in the form of compensation, which renders way to corrective justice. Compensation acts as a fulcrum to bring equality between the wrongdoer and the victim, whenever the equality gets disturbed by the wrongdoer's harm to the victim.

It also endeavours to make good the human suffering to the extent possible and to also save families which have lost their breadwinners from being pushed to vagrancy. Adequate compensation is considered to be fair and equitable compensation. Courts shoulder the responsibility of deciding adequate compensation on a case to case basis. However, it is imperative for the courts to grant such compensation which has nexus to the actual loss. The Hon'ble Supreme Court further held that, this Court, in the case of Sarla Verma v. DTC, laid down an objective formula for calculating just compensation. According to the dictum, the three factors that need to be established are: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. Further, the issues that are to be determined by the Tribunal to arrive at the loss of dependency are: "(i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased." The purpose of standardising these determinants was to bring uniformity to the decisions and settle claims without delay.

20. In the case in hand, on consideration of the evidence, it reveals that at the time of the death of deceased, he was in between the age of 28 to 30 years. The claimant and the CW.3 had deposed that the deceased used to earn Rs.6,000/- (Rupees six thousand) per month, by doing business of seasonal goods. However, they have failed to substantiate the same with any document. Therefore, I am of the view that the Tribunal has rightly taken the notional income of the deceased @ Rs.3,000/- (Rupees three thousand) per month. The learned Tribunal added 30% in the total income which is Rs. 3,900/- and calculated as Rs. 3900 x 12 = Rs.46,800/-.

21. It is revealed that the learned Tribunal has deducted $\frac{1}{4}^{\text{th}}$ of the annual income of the deceased as the personal and living expenses of the deceased and annual loss of dependency. Accordingly, on deducting $\frac{1}{4}^{\text{th}}$ of the annual income of the deceased as personal and living expenses, the loss of dependency has been calculated as Rs.46,800 X 3 divided by 4 = Rs.35,100/-. The learned Tribunal has applied the multiplier of 17 and accordingly, multiplying the annual loss of dependency by multiplier 17, the total loss of dependency is found to be Rs.35,100 X 17=Rs.5,96,700/-. The Tribunal has also awarded an

amount of Rs.10,000/- (Rupees ten thousand) on the head of loss of consortium along with further amount of Rs.5,000/- (Rupees five thousand) as funeral expenses.

22. In view of the judgment of the Hon'ble Supreme Court in the case of **Pranay Shetty (Supra)**, I am of the view that the appellants would have been entitled to be added 40% of the notional income of the deceased, as the deceased was below forty (40) years, at the time of his death. The appellants would have been entitled to a reasonable amount on conventional heads such as, loss of estate, loss of consortium and towards the funeral expenses of Rs.15,000/- (Rupees fifteen thousand), Rs.40,000/- (Rupees forty thousand) and Rs.15,000/- (Rupees fifteen thousand) respectively, and increased @ 10% in three years. However, since the judgement has been rendered on 31.10.2017 and the impugned award of learned Tribunal under challenge is of 08.10.2013, it would not be appropriate, in my view, to apply the same in the present case. The learned Tribunal, appears to have rightly applied the judgements of Hon'ble Supreme Court in the case of **Santosh Devi (Supra)**, at that relevant point of time and **Sarla Verma vs. DTC**, reported in **(2009) 6 SCC 121**.

23. For the forgoing reasons and in the facts and circumstances of the present case, this court finds no ground to interfere with the impugned award dated 08.10.2013. Accordingly, appeal stands dismissed.

JUDGE

Comparing Assistant