

GAHC010148102018



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

Case No. : MACApp./674/2018

THE RELIANCE GENERAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT H BLOCK FIRST
FLOOR DHIRUBHAI AMBANI KNOWLEDGE CITY, NAVI MUMBAI-40710
AND ITS BRANCH OFFICE AT ANIL PLAZA, ABC, GS ROAD, GUWAHATI
781005

VERSUS

SMTI REGINA MAWI AND 4 ORS
W/O SRI LALDINMAWIA
RESIDENT OF VILLAGE NEW BAZAR, CHURACHANDPUR PS NEW LANKA,
DIST LANKA
MANIPUR, 795128

2:MISS ELIZABETH LAL MIHRIATI
D/O SRI LALDINMAWIA
RESIDENT OF VILLAGE NEW BAZAR
CHURACHANDPUR PS NEW LANKA
DIST LANKA
MANIPUR
795128

3:SRI SOLOMON LAL MALSAWMA
S/O SRI LALDINMAWIA
RESIDENT OF VILLAGE NEW BAZAR
CHURACHANDPUR PS NEW LANKA
DIST LANKA
MANIPUR
795128

4:SRI LALZIKPUII
W/O SRI LALDINMAWIA
RESIDENT OF VILLAGE NEW BAZAR
CHURACHANDPUR PS NEW LANKA

DIST LANKA
MANIPUR
795128

5:SRI BHARAT KALITA
S/O LATE DULAL KALITA
R/O VILLAGE MAZIRGAON

PO AND PS AZARA
DISTRICT KAMRUP ASSAM
781017
OWNER OF VEHICLE NO AS-01M/8014 (M/VAN

Advocate for the appellant : Mr. R. Goswami

Advocate for the respondents : Mr. B. K. Jain (R.1-4)

Date of hearing : **04.06.2024**

Date of Judgment : **14.06.2024**

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (CAV)

Heard Mr. R. Goswami, learned counsel for the appellant along with Mr. B.K. Jain, learned counsel for the respondent Nos.1-4.

2. This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Award dated 27.04.2018 passed by the learned Member, MACT, No.2, Kamrup (M), in MAC Case No.541/2009 filed under Section 166 of the Motor Vehicles Act, 1988.

3. Brief facts of the case is that the deceased victim who was the husband of the claimant No.1 died in a Motor accident on 08.03.2009 while he was walking from Ganeshguri towards Paltanbazar Railway Station, when he reach near

Foodex Restaurant at Christian Basti, a vehicle bearing Registration No.AS-01-M-8014 (Maruti Van) knocked him down. As a result of the accident the deceased victim sustained severe injuries and succumbed to his injuries at GNRC hospital. The deceased was said to be about 28 years of age and was a Jr. boxing instructor. The claimants being the wife, mother and children of the deceased filed the claim application under Section 166 MV Act, notice was issued to the O.P. No. 1, Reliance General Insurance Company Ltd. and O.P. No.2, the owner of the vehicle (Maruti Van), O.P. No.3, driver of the offending vehicle. The Insurance Company/O.P. No.1 contested the case by filing their written statement, denied the whole fact of the accident and the involvement of the alleged accident vehicle. They further denied that there was any rash or negligent driving on the part of the driver and also denied that the driver of the alleged accident vehicle had a valid driving license. The Insurance Company/O.P. No.1 admitted that at the time of the accident, the alleged accident vehicle bearing Registration No.AS-01-M-8014 (Maruti Van) was duly insured with a valid Policy No.1505782311002263. The owner of the vehicle/O.P.No.2 also denied the whole facts of the case but stated that at the time of the accident, the vehicle (Maruti Van) was duly insured with Policy No.1505782311002263, which was valid upto 11.05.2009 and therefore it was the Insurance Company who are liable to pay any compensation to the claimants. None had appeared on behalf of the O.P. No.3 the driver of the offending vehicle and the case proceeded ex-parte against him.

4. From the pleadings of the parties, the learned Tribunal framed the following issues :

i) Whether victim Laldinmawia died as a result of the injuries sustained by him in the alleged road accident dated 08.03.2009

involving vehicle No.No.AS-01-M-8014 (Maruti Van) and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

ii) Whether the claimants are entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?

5. During hearing, 3 (three) witnesses adduced evidence on the claimants side and exhibited the following documents, namely; Copy of the accident information report, copy of the post-mortem report, a certificate showing the salary of the deceased issued by Singapore Boxing Club, salary voucher of the deceased, discharge certificate, medical certificate of the dead, Boxing Coach Certificate issued by Champion Boxing Club, Singapore and medical reports which were Exhibited at Ext. 1 to 702. One witness appeared on behalf of O.P. No.1.

On considering the evidence adduce by both the parties, the learned Tribunal held that the Maruti Van No.AS-01-M-8014 (Maruti Van) was having a valid Insurance Policy. The learned Tribunal also found that the accident which occurred on 08.03.2009 was due to the rash and negligent driving of the driver of the offending vehicle, Maruti Van bearing Registration No.AS-01-M-8014 (Maruti Van) and that the deceased victim died due to the grievous injuries sustained by him in the accident.

6. The learned Trial Court then considered what would be the just and proper compensation to be given to the dependents of the deceased victim/claimants. In the absence of a birth certificate or any document to prove the age of the deceased, the learned Tribunal held the age of the deceased to be aged about

26-30 years, finding that the claimant stated the age of the deceased victim to be 28 years and the post-mortem report vide Ext. 2 showed the age as 28 years. Thus, in view of the decision of the Apex Court in **Sarla Verma Vs-Delhi Transport Corporation** reported in **(2009) 6 SCC 121** held the multiplier to be 17 for ascertaining the loss of dependency.

7. The claimant No.1 stated that her husband was an International Junior Boxing Coach of Boxing Club and his monthly income was Rs.50,000/- by submitting the salary certificate vide Ext. 3 issued by the Boxing Club, Singapore and salary voucher vide Ext.4 however since the claimants have not proved the said documents by adducing cogent evidence, the learned Tribunal also took the income to be Rs.25,000/-p.m. The learned Tribunal had taken the income of the deceased at Rs.25,000/- p.m. considering the fact that the deceased was an able bodied International Junior Boxing Club and would definitely earn a minimum of Rs.25,000/- for his livelihood.

The learned Tribunal also considered the bills and voucher Ext.36-711 which is the expenditure incurred for the injuries sustained by the deceased victim before his death which amounting to Rs.6,79,931/-.

The learned tribunal by placing reliance on the decision of the Apex Court held 40% to be added to the income of the deceased towards future prospect. The learned Tribunal also found that the deceased left behind 4 (four) dependents and accordingly deducted towards personal expense and living expenses of the deceased victim, $\frac{1}{4}^{\text{th}}$ of his income. Accordingly, the compensation amount was calculated by the learned Tribunal as follows :

Sl.No.	HEADS	CALCULATION
(i)	Income	Rs.25,000/- per month
(ii)	40% of Rs.25,000/- to be added as future prospect	Rs.25,000/+Rs.10,000 =Rs.35,000/-per month
(iii)	1/4 th of Rs.35,000/- is deducted as personal expenses of the deceased who left four dependents	Rs. 35,000/- minus Rs. 8,750/- =Rs.26,250/-
(iv)	Compensation after multiplier of 17 is applied	Rs.26,250/- x 12 x 17 =Rs.53,55,000/-

8. The learned Tribunal held that in addition to the aforesaid amount of Rs.53.55.000/- placing reliance on a decision dated 31.10.2017 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.25590 of 2014, the claimants are also held entitled to receive the following amount on conventional heads namely:

Loss of consortium and	:	Rs.40,000/-
Funeral expenses	:	Rs.15,000/-

9. The learned Tribunal thus held that in total the claimants were entitled to receive Rs.60,89,931/-. The learned Tribunal also found that, it was the Insurance Company who are liable to pay the compensation amount since the accident vehicle bearing Registration No.AS-01-M-8014 (Maruti Van) was duly insured with the Insurance Company vide the Police No.1505782311002263 which is valid upto 11.05.2009. The learned Tribunal also found that the driver of the vehicle was having a valid driving license Extd. as Ext 1 which is driving license bearing No.338/2000/K(W/Z) which was valid up to 19.03.2009.

10. Accordingly, the learned Tribunal Awarded and Order, the Insurance

Company to pay Rs.60,89,931 within a period of 3 (three) months from the date of the Judgment & Order and also held that the compensation amount would carry an interest at Bank rate for fixed deposit from 19.04.2017 since record reveals that although the case was filed by the claimant on 27-05-2015, around three years back but the claimant could adduce his evidence only on 19.04.2017, as such, the Tribunal did not find any reason to direct the Insurance Company to pay interest from the date of filing the claim petition. It was also held that on the failure to make the payment within the stipulated time, the compensation amount will bear additional interest @ 1% per annum from the date of filing the claim petition. The learned Tribunal further held that Rs.5,89,931/- shall be released to the claimant No.1 the wife of the deceased for immediate exigencies. Rs.50,000/- shall be released to the claimant No.4 the mother of the deceased. The claimant No.1, the wife of the deceased shall open two FDR of Rs.10,00,000/- each (Total of Rs.20,00,000/-) in the name of the claimant No.2 and 3, children of the deceased in any Nationalized bank till they attain majority. The claimant No.1, the wife of the deceased shall open fifteen FDR of Rs. 2,00,000/- each (Total of Rs.30,00,000/-) in her name in any Nationalized bank for a period of 1-15 years (one to fifteen years). To meet any urgent need for money, claimant No.1 the mother/guardian as the case may be, shall make application to the Tribunal for permitting withdrawal. The Tribunal shall consider the application and pass appropriate order.

Aggrieved by the Judgment & Award the appellant has filed the instant appeal.

11. Mr. R. Goswami, learned counsel for the appellant submitted that the learned Tribunal had erred in awarding the said compensation amount of Rs.60,89,931/- without the claimants proving the age of the deceased victim

and also without proving the income of the deceased victim. The learned counsel for the appellant submitted that the claimants had not produced either the birth certificate or the passport to prove the age of the deceased and it is unbelievable that the deceased victim being an International Boxing Coach would not be possessing the birth certificate or a passport which are valid documents for proving the age.

12. The learned counsel for the appellant further submitted that the learned Tribunal had erred in presuming the income of the deceased as Rs.25,000/- which was not based on any proved documents. The learned counsel has brought to the notice of the court that though the deceased victim was said to be working at Singapore as Boxing Coach, the document to prove his income was issued from Kuala Lumpur, which is at Malaysia. There is no evidence to prove that the deceased victim was actually an International Boxing Coach, the salary voucher issued by someone in Malaysia can be a manufactured document to show the needs of the case. The learned counsel further submitted that as per the rate table of the currency in Malaysia which is Malaysian Ringgit (MR) – Indian Rupee (MYR/INR), the deceased victim was earning Rs.50,000/- of Malaysian Ringgit which would amount to Rs.30,000/- when converted to Indian rupees. Therefore, the learned Tribunal by taking Rs.25,000/- as monthly income, is on a much higher side especially considering the cost of living in foreign country and that the loss of dependency in the case of the claimants for the death of her husband working abroad would be lower than in a normal case because a cost of living abroad would be higher than in India.

13. The learned counsel for the appellant has cited the decision of the Apex court in **Arati Das Vs. M. Bhattacharjee** reported in **2007 (4) GLT 172** and

the decision of the Apex Court in **Syed Basheer Ahamed & Ors vs. Mohd. Jameel & Anr.** reported in **2009 2 SCC 225 para 2**, wherein it was held that onus of prove is on the claimants to prove the income by leading reliable and cogent evidence before the tribunal. The learned counsel has also relied on the decision of the Apex Court in **Oriental Insurance Co. Ltd. Vs. Meena Varyal, 2007 STPL 8008 SC** wherein the Apex court has held that the Tribunal trained in law should have ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased.

For the above reasons, the learned counsel submits that the compensation amount as calculated by the learned Tribunal is too high and without any cogent basis.

14. Mr. B.K.Jain, the learned counsel for the respondent/claimant submitted that the passport and the birth certificate of the deceased have been misplaced since at the time of the accident, the deceased had carried the important documents with him which were no longer traceable after the accident. He however submits that the postmortem report has clearly stated the age of the deceased which was 28 years and the wife of the deceased victim has also stated the same and therefore, the learned tribunal had not erred in taking the age of the deceased victim to be about 26-30 years for taking the multiplier i.e. 17 and also for calculating the future income.

15. The learned counsel for the respondent submitted that they have however, filed a cross objection since the learned Tribunal had erred in reducing the income of the deceased in taking only Rs.25,000 as the income, while the income was stated to be Rs.50,000/- as per the vouchers issued by Singapore Boxing Club and the pay certificate issued from Kuala Lumpur. The learned

counsel submitted that it was never a disputed fact that the deceased was a Junior boxing instructor at the time of his death. The learned Tribunal had also awarded the rate of interest @ 1% which should be at least 9 % per annum and should have awarded the interest from 27.05.2015 which is the date of filing the claim and not from 19.04.2017

For the above reasons, the learned counsel for the respondent has prayed for enhancement of the award.

16. The learned counsel for the respondent has relied the Judgment of the Apex Court in the decision of **United India Insurance Company Limited Vs. Satinder Kaur Satwinder Kaur** reported in **(2021) 11 SCC 780** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram &Ors.** reported in **(2018) 18 SCC 130** and in the case of **Smt. Anuwara Khatoon Vs. Mukniak Co-operative Society Limited** in **2012 0 Supreme (Gau) 471.**

17. I have considered the submissions of both the parties and have also perused the documents on record. It is not a disputed fact that the deceased died due to the rash and negligent driving of the vehicle bearing Registration No.AS-01-M-8014 (Maruti Van) which was duly insured with the Insurance Company vide the Police No.1505782311002263 which is valid upto 11.05.2009. It is also an admitted fact that the driver of the accident vehicle was having a valid driving licence. The only issues disputed in the instant appeal are the age and the income of the deceased at the time of his death on 08.03.2009.

18. It is seen that the claimants have not produced any documents to prove

the age of the deceased. The claimant No.1/wife of the deceased had stated that the deceased was 28 years and relied on the Post mortem examination which recorded the age of the deceased as 28 years. The learned counsel for the respondent/claimant has submitted that the passport and the birth certificate of the deceased can no longer be traced out since, at the time of the accident, the deceased had carried the important documents with him. The learned Tribunal, in the absence of any other document held the age to be about 26-30 years. I find that the learned Tribunal had rightly assessed the age of the deceased to be about 26-30 years, since it appears that it would be a futile exercise to insist on production of any document to prove the exact age of the deceased

19. This court also finds that it is not a disputed fact that at the time of his death the deceased was a was a Jr. boxing instructor. The claimants have exhibited the Boxing Coach Certificate issued by Champion Boxing Club, Singapore the pay vouchers issued by Boxing club Singapore exhibited as Ext-4 and salary certificate exhibited as Ext-3 and stated that the deceased earned about Rs. 50,000/- per month. Thus, though the persons who had issued the certificates could not be present to prove the exhibited certificates, the learned Tribunal had rightly reasoned that the deceased victim was an able bodied person, who was an International Boxing Coach at the time of his death and that he would, in fact, be earning much more than Rs. 25,000/- per month and had accordingly held the income to be Rs. 25,000/-.

20. The Apex Court in a number of its decisions have held that the main guiding principle for determining the compensation is that it must be just and the award must be reasonable. That "Just compensation" is an adequate

compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. Thus, in the instant case this court finds that the learned Tribunal has taken into consideration the documents and evidence available and had rightly and reasonably assessed the approximate age and income of the deceased, wherein a precious life of an individual was lost due to an unfortunate accident caused due to the rash and negligent driving of the vehicle bearing Registration No.AS-01-M-8014 (Maruti Van).

21. This court also finds that the learned Tribunal had given reasonable reasons in directing the Insurance Company concern to pay interest from the date of filing the claim petition since it is revealed that although the case was filed by the claimant on 27-05-2015 but the claimant could adduce his evidence only on 19.04.2017 around three years later, as such, the Tribunal did not find any reason to direct the Insurance Company concern to pay interest from the date of filing the claim petition. This court also finds no reason to interfere with the rate of interest imposed by the learned Tribunal in view of the reasons given above

22. Thus for the above reasons this court finds no grounds to interfere with the Judgment and award dated 27.04.2018 passed by the learned Member, MACT, No.2, Kamrup (M), in MAC Case No.541/2009. Accordingly, the appellant/Reliance General Insurance Co. Ltd are to deposit the above amount before the Registry of this court, minus the amount already deposited and paid by the appellant and the balance award amount is to be disbursed in terms of the judgment of the learned Tribunal, after due verification.

- 23.** Statutory deposit by the appellant, if any, shall be released.
- 24.** LCR is to be returned.
- 25.** No cost imposed.
- 26.** MAC.App. 674 of 2018 thus stands dismissed and disposed of.

JUDGE

Comparing Assistant