

GAHC010173882017



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

Case No. : MACApp./569/2018

ORIENTAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE A 25/27 ASAF ALI
ROAD, NEW DELHI 110002 AND REGIONAL OFFICE AT GUWAHATI-7,
REPRESENTED BY THE REGIONAL MANAGER

VERSUS

MAMTAZ BEGUM and 5 ORS
W/O LATE ABDUS SAMAD,
R/O VILL. JAMADARBORI, P.O. and P.S. SORBHOG, DIST. BARPETA, ASSAM,
PIN 781317 RESPONDENT NO. 3 and 4 ARE MINORS AND SON REPRESENTED
BY THEIR MOTHER I.E. RESPONDENT NO. 1

2:SAHARA KHATUN
W/O LATE ASARUDDIN

3:MUSTAQUE SAQLAIN
S/O LATE ABDUS SAMAD

4:SANIA AKTARA

D/O LATE ABDUS SAMAD ALL ARE R/O VILL. JAMADARBORI
P.O. and P.S. SORBHOG
DIST. BARPETA
ASSAM
PIN 781317 RESPONDENT NO. 3 and 4 ARE MINORS AND SON REPRESENTED
BY THEIR MOTHER I.E. RESPONDENT NO. 1

5:AKTAR ALI

S/O NAGDO ALI
VILL. JAGRATARI

PT/L.V. D.K. ROAD
P.S. DHUBRI
DIST. DHUBRI
ASSAM
PIN 783301

6:HARIDAS BARMAN

S/O LATE SURENDRA NATH BARMAN
VILL. MAZAIATI
P.O. ULUBARI
R/O D.K. ROAD
HOUSE NO. 10
P.S. and DIST. DHUBRI
ASSAM

Advocate for the Petitioner : MR.S DUTTA, MR.C SHARMA,MR.SIDHANT DUTTA,MS.N MODI

Advocate for the Respondent : MR. M KHAN, MR. J RAHMAN

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. S. Dutta,
Senior Advocate.

For the Respondents : Mr. M. Khan,
Advocate.

Date of Hearing : 21.05.2024.

Date of Judgment : 01.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Dutta, learned senior counsel representing the appellant as well as Mr. M. Khan, learned counsel appearing for the claimants/respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 15.02.2017, passed by the learned Member, Motor Accident Claims Tribunal, Barpeta in MAC Case No.444 of 2016.

3. On 12.12.2015, Abdus Samad was going from Bamuntary M.E. Madrassa, Kalgachia towards his residence by riding a motorcycle. At about 3.10 P.M., a bus bearing Registration No.AS-18-A-4088 which was coming from the direction of Barpeta Road, knocked the motorcycle of Abdus Samad. He died instantly. A police case being Sorbhog P.S. Case No.348 of 2015 was registered. The deceased was 45 years old at the time of his death and being an Assistant Teacher of Bamuntary M.E. Madrassa, he was earning a salary of ₹30,897/- per month. The deceased left behind his wife, two daughters and his mother.
4. A claim application was filed before the Tribunal seeking compensation.
5. The appellant Insurance Company had contested the claim application by filing a written statement. The appellant denied the entire accident and also denied its liability to pay compensation.
6. Finally, the Tribunal directed the Insurance Company to pay a compensation of ₹52,51,896/- along with interest at the rate of 7% per annum to the claimants.
7. Aggrieved by the aforesaid judgment, the present appeal has been filed.
8. The appellant pleaded that the Tribunal did not consider the deduction of income tax from the total salary of ₹30,689/-. The appellant contended that no interest is liable to be paid upon future prospect. According to the appellant, the Tribunal committed error while awarding ₹25,000/- on account of funeral expenses. The appellant pleaded that the total consortium amount of ₹1,000,00/- is exorbitant in view of the decision of the Supreme Court that was delivered in *National Insurance Company Limited vs. Pranay Sethi and Ors.*, reported in (2017) 16 SCC 680.
9. I have given my anxious considerations to the submissions made by the learned counsel of both sides.
10. The witness Eusub Ali Ahmed, who was examined by the claimants, has stated in his evidence that though the monthly gross salary of the deceased was ₹30,897/-, the deceased was earning a net salary of ₹28,989/-.
11. This Court is of the opinion that the Tribunal has committed an error by holding that the monthly income of the deceased was ₹30,689/-.
12. According to *Pranay Sethi* (supra), the Tribunal committed error in holding that the claimant is entitled to ₹25,000/- on the head of funeral expenses.
13. Regarding consortium amount, this Court is of the opinion that it should not be interfered with at

this stage.

14. Now, the question comes how the accident took place. No eye witnesses were examined by the claimants. The deceased was travelling from Kalgachia towards Jamadarbori under Sorbhog Police Station. The offending vehicle bearing Registration No.AS-18-A-4088 was coming from the direction of Barpeta Road and was going towards Dhubri. It is not clear from the record that it was a head-on-collision. But the accident took place on the National Highway No.31. The motorcycle of the deceased and the bus bearing Registration No.AS-18-A-4088 were running at that time. This Court has the reason to believe that the motorcycle of the deceased had also contributed to the accident. Therefore, the percentage of contribution on the part of a motorcycle is determined at 25%.

15. Now, this court is of the opinion that the impugned judgment requires interference of this Court. Accordingly, the calculation is modified as under:

1.	Income	-----	-----	₹28,989/- X 12=	₹3,47,868/-
2.	30% as future prospect	----			₹8,697/-
					₹3,56,565/-
	1/4 th deducted	-----			₹2,67,424/-
	Multiplier 14	-----			₹37,43,936/-
	Consortium	-----			₹1,000,00/-
	Funeral expenses	-----			₹15,000/-
	Total:				₹38,58,926/-

16. Twenty-five percent (25%) of ₹38,58,926/- shall be deducted on account of contributory negligence. Therefore, the claimants are entitled to receive ₹28,94,195/-.

17. The appeal is allowed. The impugned judgment is modified accordingly. The appellant Insurance Company is directed to pay ₹28,94,195/- (Rupees Twenty-Eight Lakh Ninety-Four Thousand One Hundred Ninety-Five) only to the claimants along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

18. It is further directed that upon the future prospect amount, there shall be no interest at all.
19. Out of the total compensation amount, ₹5,000,00/- shall be given to mother Sahara Khatun. Two amounts, each consisting of ₹5,000,00/- shall be kept fixed deposited for a period of three years in the name of Mustaque Saqlain and Sania Aktara. The remaining amount shall be paid to the claimant Mamtaz Begum.

The appeal is disposed of. Send back the LCR.

JUDGE

Comparing Assistant