

GAHC010176122015



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

**Case No. : Review.Pet./51/2015**

BHUBAN CH BORAH and ANR  
S/O LATE KHUHLARA BORAH, R/O SAHPURIA GAON, P.O. and P.S.  
PULIBOR, DIST. JORHAT, ASSAM.

VERSUS

NEW INDIA ASSURANCE CO LTD and ANR  
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE  
BUILDING 87 MAHATMA GANDHI ROAD, FORT, MUMBAI 400001 AND  
REGIONAL OFFICE AT G.S. ROAD, GUWAHATI-5, ASSAM, REPRESENTED  
BY THE CHIEF REGIONAL MANAGER.

2:THE NAME OF RESPONDENT No. 2 IS STRIKE OUT  
AS PER HON'BLE COURT ORDER Dtd. 23.07.2018

3:M/S BOHNIMAN ICECREAM PVT. LTD.

C/O SRI NIPEN GHOSAL  
J. BARUAH ROAD  
NEAR DONA APARTMENT  
SILPUKHURI  
GUWAHATI

**Advocate for the Petitioner : MR G JALAN**

**Advocate for the Respondent : MR.S DUTTA**

Linked Case : **Review.Pet./7/2016**

NEW INDIA ASSURANCE COMPANY LTD  
HAVING ITS REGISTERED OFFICE AT NEW INDIA ASSURANCE BUILDING 8  
M.G. ROAD FO  
MUMBAI 400001 AND ONE OF ITS BRANCH OFFICE AT TINSUKIA AND  
REGIONAL OFFICE AT GUWAHATI -5  
REPRESENTED BY ITS REGIONAL MANAGER

VERSUS

SRI BHUBAN CHANDRA BORAH and 2 ORS  
S/O LATE KHUHLARA BORAH  
R/O SAHPURIA GAON  
P.O. and P.S. PULIBOR  
DIST. JORHAT  
ASSAM.

2:SMT. NIRU BORAH

W/O SRI BHUBAN CH. BORAH  
R/O SAHPURIA GAON  
P.O. and P.S. SPULIBOR  
DIST. JORHAT  
ASSAM.  
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B E F O R E

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocates for the petitioners : Shri Shri G. Jalan, Advocate.

Advocates for the respondent : Shri S. Dutta, Advocate.

Date of hearing : **11.06.2024**

Date of Judgment : **11.06.2024**

### **JUDGMENT & ORDER**

Both these two applications for review have been filed by the rival parties in the MAC App. No. 128/2015. While Review Pet. No. 51/2015 is filed by two applicants who were the claimants before the MACT, Dibrugarh, Review Pet. No. 7/2016 has been filed by the Insurance Company both *qua* the judgment and order dated 04.03.2015 passed by this Court in the aforesaid appeal. Accordingly, this Court proposes to dispose of both the petitions by this common order.

**2.** Before going to the issues which have been raised in the two petitions, it would be convenient if a brief background on the factual aspect is given.

**3.** The claimants had instituted the claim petition before the MACT, Dibrugarh being MAC Case No. 82/2006 on the death of their son in a motor vehicle accident. The learned Tribunal vide the award dated 15.03.2012 had granted an amount of Rs. 7,24,252/- (Rupees Seven Lakhs Twenty Four Thousand Two Hundred Fifty Two) only as compensation along with interest @ 9% per annum and further interest in case of delay.

**4.** The aforesaid award dated 15.03.2012 was the subject matter of challenge in MAC App No. 128/2012. This Court vide the judgment and order dated 04.03.2015 had modified the award and the amount concerned was modified to Rs.6,98,720/- (Rupees Six Lakhs Ninety Eight Thousand Seven Hundred Twenty) only along with interest @ 12% per annum after expiry of one month by which time the amount was directed to be released. The breakup of the amount in question was in the following manner:-

|                        |                  |
|------------------------|------------------|
| “1) Loss of dependency | = Rs. 6830/-     |
| less 50%               | = Rs. 3,415.00   |
| p.m.x12                | =Rs 40,980/-p.a. |

Rs 40,980/- Multiplier of 14 = Rs 5,73,720.00

2. Funeral expenses = Rs 25,000.00

3) Loss of consortium = Rs 1,00,000.00

Total: = Rs. 6,98,720.00”

**5.** It is this judgment in respect of which the present applications for review has been made.

**6.** I have heard Shri G. Jalan, learned counsel for the claimants and Shri S. Dutta, learned counsel for the Insurance Company which are the petitioners in these two petitions and also the corresponding respondents.

**7.** Shri Jalan, the learned counsel has submitted that the multiplier has been wrongly applied by taking into consideration the age of the claimants. It is submitted that the relevant age is that of the victim and in the instant case, the victim of the accident was the son of the claimants who died in the said accident and was aged 24 years and accordingly the correct multiplier was 18 and not 14 as was held by this Court. In this connection, he has also relied upon the case of ***National Insurance Company Ltd. Vs Pranay Sethi and Ors.*** reported in ***(2017) 16 SCC 680*** wherein the principles for determining compensation have been laid down, the relevant paragraph of which is extracted herein

below:-

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

**8.** So far as the review sought for by the Insurance Company is concerned, Shri Dutta, the learned counsel for the Insurance Company has submitted that while making the calculation, the income of the deceased has been taken to be Rs.6,830/-. However, the salary of the deceased was Rs.6030/- which was inclusive of the GPF amount of Rs.835/. He accordingly submits that this Court had made a wrong assumption regarding the aforesaid factor by which the GPF amount of Rs.835/- was taken into account twice.

**9.** The exercise of the powers of review are well established. In a recent judgment, namely, ***S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.*** reported in **(2022) SCC OnLine 1034**, the Hon'ble Supreme Court has reiterated the earlier principles laid down in the case of ***Kamlesh Verma Vs. Mayawati & Ors.*** reported in **(2013) 8 SCC 320** wherein the principles laid down are extracted herein below:

*“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

*20.1. When the review will be maintainable:*

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

*The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.*

*20.2. When the review will not be maintainable:*

*(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

*(ii) Minor mistakes of inconsequential import.*

*(iii) Review proceedings cannot be equated with the original hearing of the case.*

*(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

*(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*

*(vi) The mere possibility of two views on the subject cannot be a ground for review.*

*(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*

*(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

*(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”*

**10.** The grounds on which the review is sought for by both the parties constitute a point of law wherein it appears that there was an error apparent on the face both in applying the multiplier vis-à-vis the age of the victim and also the monthly salary received by the deceased. Accordingly, in the considered opinion of this Court, both the applications warrant merit.

**11.** This Court also records that the learned counsel for the either of the parties have not opposed in principle the prayer for review on the grounds mentioned above as the said grounds involve a pure point of law settled by the Hon’ble Supreme Court and also amounts to an apparent error in so far as construing the monthly salary of the deceased.

**12.** Accordingly, both the applications are allowed and the compensation payable would be in the following manner:-

“Monthly salary =Rs.6030/-

(-) Less 50% =Rs 3015/-

Being bachelor

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Annual Salary =Rs. 3015x12=36180/-

Total Dependency =36,180x18 (Multiplier, being 24 years)

= 6,51,240/-

Add: Funeral Expenses = 25,000/-

Add: Loss of Consortium =1,00,000/-

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Total Award ought to be =Rs.7,76,240/- "

**13.** This Court has been informed that in the meantime, the original amount of Rs.6,98,720/- has already been paid.

**14.** Accordingly, it is directed that the balance amount of Rs.77,520/- (Rupees Seventy Seven Thousand Five Hundred Twenty) only be paid within a period of 45 days from today. The amount would carry interest @ 9% if there is delay in making the payment within the aforesaid period.

**15.** Both the petitions are accordingly disposed of.

**JUDGE**

**Comparing Assistant**