

GAHC010181492021



2024:GAU-AS:11191

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

Case No. : MACApp./300/2021

HDFC ERGO GENERAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT RAMON HOUSE,
H.T. PAREKH MARG, 169, BACKBAY RECLAMATION, MUMBAI-400020 AND
ITS GUWAHATI BRANCH OFFICE AT ADITYAM BUILDING, 6TH FLOOR,
LACHIT NAGAR, GS ROAD, GUWAHATI, ASSAM-781007

VERSUS

PARESH DEKA AND 2 ORS.
S/O LATE NANDESWAR DEKA, R/O VILL-KHUDRA GOMURA, P.S.-
SARTHEBARI, DIST-BARPETA, ASSAM, PIN-781307

2:SMTI SABITRI DEKA
W/O SRI PARESH DEKA
R/O VILL-KHUDRA GOMURA
P.S.-SARTHEBARI
DIST-BARPETA
ASSAM
PIN-781307

3:SUBHAS TALUKDAR
S/O LATE NARENDRA TALUKDAR
R/O VILL-KHUDRA GOMURA
P.S.-SARTHEBARI
DIST-BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. R GOSWAMI, MS. P BORTHAKUR

Advocate for the Respondent : MR. M HUSSAIN (r-1,2), MR. A ISLAM (r-1,2)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

18.11.2024

Heard Mr. R. Goswami, learned counsel for the appellant and Mr. A. Islam, learned counsel for the respondent No. 1 and 2.

2. In this appeal, under Section 173 of the Motor Vehicles Act, 1988, the appellant has put to challenge the correctness or otherwise of the Judgment and Award dated 18.09.2021, passed by the learned Member MACT, Barpeta, in MAC Case No. 173/2019, filed under Section 166 of the M.V. Act.

3. It is to be noted here that vide impugned Judgment and Award dated 18.09.2021, the learned Member MACT, Barpeta has directed the appellant to pay a sum of Rs. 15,32,128/- along with interest @ 8% per annum from the date of filing of the claim petition, i.e. 31.08.2019, till realization.

Background Facts:-

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“On 26.05.2019, at about 02:00 a.m., the son of the claimants, namely, Champak Deka @ Ganesh was returning home from Baniakuchi, after enjoying a Bihu function, on a motor cycle, bearing Engine No. DJYCKL55780 and Chassis No. MD2A12DY9KCL08633, as pillion rider. The motorcycle was driven by one Raju Talukdar and when they reached at Namsalah, on account of rash and negligent driving, met with an accident. As a result of the same, both of them died instantly on the spot. Thereafter, postmortem was conducted at Fakhruddin Ali Ahmed Medical College and Hospital, Barpeta. In connection with the said accident, Sarthebari Police Station registered a case, being Sarthebari P.S. case No.

250/2019, under Sections 279/304(A) of the IPC.

Thereafter, the respondent No.1 and 2, being the parents of deceased Champak Deka @ Ganesh, had preferred a claim petition before the learned Member MACT, Barpeta, claiming compensation, stating therein that his son, aged about 25 years, was a Bell Metal Artist by profession and his monthly income was Rs. 12,000/-. He has left behind the claimant No. 1 Paresh Deka (father), claimant No. 2 Sabitri Deka (mother) as dependents at the time of his death.

The father of the driver cum owner of the vehicle, namely, Subhas Talukdar was impleaded as respondent and he had filed written statement denying the claim of the claimants. He has further stated that the vehicle, bearing Engine No. DJYCKL55780 and Chassis No. MD2A12DY9KCL08633 was duly insured with HDFC ERGO General Insurance Company Limited, vide policy No. 2312202798624500000 and the same was valid up to 23.05.2024, but it was not registered in the name of his son Raju Talukdar.

Thereafter, on receipt of notice from the Tribunal, the OP No. 2, i.e. the present appellant, HDFC ERGO General Insurance Company Limited, the insurer of the offending vehicle, entered appearance and by filed written statement wherein it had denied the facts of the alleged accident and also denied the age, income and profession of the deceased. It is stated that the compensation claimed by the claimant side is excessive, exaggerated and having no real basis. It is also stated that the policy condition is found to be violated and the insurance company is not liable to indemnify the owner of the offending vehicle.

Thereafter, the learned trial court had framed following issues:-

(i) Whether, Champak Deka @Ganesh died as a result

of injuries sustained by him in the alleged motor vehicular accident on 26.05.2019 involving vehicle bearing Engine No. DJYCKL55780 and Chassis No. MD2A12DY9KCL08633 (Pulsar Motor Cycle) and whether the said accident had taken place due to rash and negligent riding of the aforesaid motor cycle?

(ii) Whether the claimant side is entitled to any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?

Thereafter, hearing learned counsel for both the parties and also considering the evidence on record, the learned tribunal had decided both the issues in favour of the claimants and thereafter, assessed the compensation @ Rs. 15,32,128/- along with interest @ 8% per annum from the date of filing of the claim petition, i.e. 31.08.2019, till realization.

Grounds:-

5. Being highly aggrieved and dissatisfied, the appellant has preferred the present appeal, under Section 173 of the Motor Vehicles Act, 1988, challenging the correctness or otherwise of the Judgment and Award dated 18.09.2021, passed by the learned Member MACT, Barpeta, and contended to set aside the impugned Judgment and Award on the following grounds :-

- I. That, the impugned Judgment and the Award in so passed by the learned Member, MACT, Barpeta is bad in law as well as in the facts.
- II. That, the learned Member, instead of deducting 50% from the income of the deceased towards personal expenses of the deceased, has

erroneously made a deduction of 1/3rd(one-third) only. As the deceased was a bachelor and he had left behind his parents as dependents the deduction towards personal and living expenses ought to have been 50% instead of 1/3rd.

III That, the learned Member also erred in presuming the income of the 22 year old boy as Rs.7000.00 per month without any evidence. The learned Member ought to have appreciated the fact that the claimants failed to prove both income and occupation of the deceased.

IV. That, the learned Member, after having recorded the facts that not only the vehicle was used without registration, it was also being driven without a driving license, and as such the learned Member ought not to have held the appellant liable for compensation. Nothing has been brought on record to show that the owner of the vehicle had applied for registration. In the written statement the O.P-1 admitted that the vehicle was not registered in the name of the owner. It is a settled position of law that using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract.

V. That, the learned Member, MACT, Barpeta in spite of holding that the owner of the vehicle had violated policy conditions, held that since the owner of the vehicle also died in the accident the insurers are not entitled to pay and recovery from the Opposite Party No.1, the father of the owner of the vehicle. The learned Member took notice of the fact that there is no mention of the Driving Licence either in the claim petition or in the Accident Information Report (Form 54) (Ext -1). The Opposite Party No.1 did not discharge the burden of proving that the owner-cum-rider of the vehicle was holding a valid driving licence. As driving of any vehicle

without a driving licence is a clear violation of the condition of the policy of insurance, but is also a breach of the provisions of the M.V. Act, 1988 the appellant insurance company ought not to have been held liable for compensation.

VI. That, the learned Member ought to have appreciated that the requirement of an effective driving licence is a mandatory requirement of the M.V. Act, 1988. Compliance of this legal requirement is absolute. The Judgment and Award exonerating the owner of the vehicle is against public policy.

VII. That, the learned Member ought to have held that the owner cum driver of the vehicle had violated the policy condition and as such the insurers have no obligation under a policy of insurance to indemnify the owner of the vehicle for compensation payable by him to the claimant.

VIII. That, the learned Member ought to have considered the fact that award of Rs. 88,000/- under the head of filial consortium has no legal basis after recent Supreme Court judgment in **National Insurance Co. Ltd vs. Pranay Sethi.** reported in (2017) 16 SCC 680.

IX. That, the rate of interest @ 8% is against the principle of multiplier method and settled position of law.

Submissions:-

6. Mr. Goswami, learned counsel for the appellant, besides reiterating the grounds mentioned herein above, raised following contentions for consideration of this court:-

- (I) **The rate of interest** :- Mr. Goswami, referring to a decision of **Savithribai and Others vs. Divisional manager, National Insurance Co. Ltd.** reported in **2024 ACJ 497**, submits that in

the said case the learned Tribunal had granted interest @ 6% per annum. Again in the case of **Sarala Verma (Smt) and Others vs. Delhi Transport Corporation and Another** reported in (2009) 6 SCC 121, Mr. Goswami submits that Hon'ble Supreme Court has awarded 6% interest in the said case. Referring to Section 171 of the M.V. Act, Mr. Goswami submits that the rate of interest should be only simple interest and though the Section has not fixed the rate of interest, yet, the legislature has left the same to the judicial discretion of the Tribunal. Mr. Goswami further referring to a decision of **Kaushnuma Begum vs. New India Assurance Company Limited**, reported in (2001) 2 SCC 176, submits that in the said case Hon'ble Supreme Court has awarded the interest @ 9% per annum based on the bank interest prevalent at the relevant point of time.

- (ii) **Deduction towards personnel expenses** :- Mr. Goswami further submits that the learned Tribunal has deducted 1/3 of the income of the deceased for his personal and living expenditure. But, the deceased was a bachelor and as such, in view of the decision of Hon'ble Supreme Court in the case of **Sarala Verma (Supra)**, the deduction ought to have been 50%.
- (iii) **Notional Income** :- Mr. Goswami further submits that the learned Tribunal had fixed the notional income @ Rs. 7,000/- per month, but the same ought to have been less than Rs. 7,000/-.
- (iv) **Violation of Policy Condition** :- Mr. Goswami also submits that though the owner of the vehicle died in the accident, yet the vehicle was not registered in his name and there was violation of the policy condition. As such, thrusting the liability upon the shoulder of the present appellant is not in accordance with law.

Under the aforementioned circumstances, Mr. Goswami has contended to set aside the Judgment and Award dated 18.09.2021, passed by the learned Member MACT, Barpeta, in MAC Case No. 173/2019.

7. On the other hand, Mr. A Islam, the learned counsel for the respondent No. 1 and 2 has supported the impugned Judgment and Award. Mr. Islam submits that the learned Member has considered all aspect and thereafter assessed the compensation and the same warrants no interference of this court, and therefore, contended to dismiss the appeal.

Discussion :-

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also gone through the impugned Judgment and Award dated 18.09.2021, passed by the learned Member MACT, Barpeta, in MAC Case No. 173/2019, and also gone through the case laws referred by learned counsel for the appellant.

9. Now, coming to the first contention of Mr. Goswami, I find from impugned Judgment and Award that the learned Tribunal has awarded interest @ 8% per annum from the date of filing of the claim petition, i.e. 31.08.2019, after assessing the compensations, which the respondent No.1 and 2 herein are entitled to.

10. The issue of awarding of rate of interest has been dealt with by Hon'ble Supreme Court in umpteen cases, including the case of **Municipal Corporation of Delhi vs. Uphaar Tragedy Victims Association and Others**, reported in **(2011) 14 SCC 481**. In the said case, it has been held that the interest upon the compensation, amount @ 9% per annum, would be justified. Same principle was followed in the case of **Kalpanaraj vs. Tamil Nadu State Transport Corporation**, reported in **(2014) C.R. 693 (SC)**.

11. Though Mr. Goswami, learned counsel for the appellant has referred to the decision of Hon'ble Supreme Court in **Savithribai (Supra)** and in **Sarla**

Verma (Supra), yet, in the said two cases, no law has been laid down in connection with the award of interest and in view of the doctrine of precedent, as discussed in the case of **Pranay Sethi(supra)**, the same cannot be read as precedent.

12. On the other hand, in the case of **Kaushnuma Begum (Supra)**, Hon'ble Supreme Court has held that since the Reserve Bank of India has lowered the interest and nationalized banks are granting interest @ 9% per annum on fixed deposits for one year, the amount of interest carried in the said case should be @ 9% per annum.

13. It is to be noted here that though the learned Tribunal had awarded the interest @ 8 % per annum, yet no appeal has been preferred by the respondents for enhancing the rate of interest. Therefore, this court is not inclined to interfere the rate of interest granted by the learned Tribunal.

14. Now, coming to the deduction of 50% towards personal expenses of the deceased, I find that the law in this case is well settled in the case of **Sarla Verma (Supra)**. In view of the ratio laid down in the said case, the deduction of a person, who died as a bachelor, should be 50% towards his personal expenses. But, the learned Tribunal has deducted 1/3 of the income of the deceased towards his personal expenditure, which, to the considered opinion of this court, is erroneous and the same warrants no interference of this court. Therefore, this court is of the view that the deduction here in this case should be 50%, since the deceased died as bachelor.

15. Now, coming to the contention regarding notional income of the deceased, I find that the learned Tribunal has fixed the notional income @ Rs. 7,000/- per month. It is to be noted here that the claimants in the claimpetition as well as in their evidence have categorically stated that the deceased was working as a maker of Bell Metal utensil. The claimant No. 2 has exhibited one certificate issued by the Secretary of Assam Bell Metal Artist Association, Sarthebari as Exhibit - 5. But, said document was not proved by examining issuing authority for which learned Tribunal

has not placed any reliance upon the same. And in absence of any other document, in support of the income of the deceased at the relevant point of time @ Rs. 12,000/- per month, the learned Tribunal has proceeded to fix the notional income towards the deceased @ Rs. 7,000/- per month. It is to be noted here that Hon'ble Supreme Court in **Smti. Savita vs. Bindar Singh & others, 2014**, reported in **AIAR (Civil) 419 (S.C.)** and in the case of **Chandra @ Chanda @ Chandraram and Anr. vs. Mukesh Kumar Yadav and Others** reported in **(2022) 1 SCC 198**, it has been held that some guess work is permissible in fixing monthly income of the deceased. The deceased was at the relevant point of time was 25 years and the same has not been disputed. Though Exhibit- 5 was not proved by examining the issuing authority yet it is not seriously disputed that the deceased was not working as maker of Bell Metal utensil. And as such, the notional income of the deceased, so fixed by the learned Tribunal, appears to be justified and reasonable and therefore, the same needs no warrant of interference of this court.

16. As regards the contention of violation of policy condition as submitted by Mr. Goswami, learned counsel for the appellant and denying the liability of payment of compensation to the claimants, I find that the issue has been elaborately dealt with by the learned Tribunal.

17. It is not in dispute that at the relevant point of time the vehicle was insured with the present appellant, bearing policy No. 2312202798624500000 and it also appears that at the relevant point of time the policy was in force. It is also not in dispute that the said policy was purchased by Raju Talikdar, the driver of the motorcycle. And that being the position, the finding of the learned Tribunal by thrusting the liability upon the shoulder of the present appellant, to the considered opinion of this court suffers from no infirmity or illegality and there appears to be no arbitrariness to interfere with the same in the present appeal.

18. It also appears from the record that at the relevant time of accident the deceased, Late Champak Deka @ Ganesh was 25 years old. This fact is apparent

from the evidence of the claimant. And the same has not been disputed by the appellant herein.

19. The income of the deceased, as discussed herein above, has already been assessed by the learned Tribunal at Rs. 7000/ per month. The same has already been held to be justified in the foregoing para.

20. Thus, having accepted the income of the deceased at Rs.7,000/- per month, 40% of the same has to be added as future prospect, as at the time of accident the deceased was 25 years old and he was self-employed, in view of decision of Hon'ble Supreme Court in the case of **Pranay Sethi (Supra)**. After addition of 40% to Rs. 7,000/- the amount would be **Rs. 9,800/** (Rs.7,000+Rs.2800=9,800/-).

21. Thereafter, in view of the decision of Hon'ble Supreme Court in the case of **Sarla Verma (Supra)**, 50% of the aforesaid amount has to be deducted as personal expenses since he was unmarried at the time of accident. After deducting 50 % of the above, the amount would be Rs. 4,900/ (Rs.9,800 – Rs.4,900=4,900/-).

22. The multiplier applicable herein this case would be 18, in view of decision of Hon'ble Supreme Court in the case of **Sarla Verma (supra)** since the age of the deceased, at the time of the accident was 25 years. After application of multiplier, the amount would be Rs.10,58,400/ (Rs.4,900 x 12 x 18= 10,58,400).

23. Besides, under the conventional heads, a sum of Rs. 40,000/ each with 10% increase in every three years has to be awarded under the head - consortium, and a sum of Rs. 15,000/- under head - funeral expenses, and the aforesaid amounts should be enhanced by 10% in every 3 years, and a sum of Rs. 15,000/- under head - loss of estate, and the aforesaid amounts should be enhanced by 10% in every 3 years in view of the decision of Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**. It is to be noted here that after the accident almost 6 years elapsed. That being so, the aforesaid amounts have to be enhanced twice.

24. The whole calculation, after application of the principle laid down in the case of **Sarla Verma (Supra)** and also in the case of **Pranay Sethi (Supra)**, would be as under:-

Sl. No.	Heads	Calculation
I	Monthly income Rs.7,000/	
II	40% of (i) to be added as future prospect=(Rs.7,000 + Rs.2,800).	Rs. 9,800/
III	50% of the (ii) deducted as personal expenses of the deceased=(Rs.9,800 - Rs.4,900/).	Rs. 4,900/
IV	Compensation after multiplier of 18 is applied=(Rs.4,900x 12x 18).	Rs. 10,58,400/-
V	Loss of Estate Rs.15,000/ which has to be increased by 10% in every three years (15,000 x 10/100) = 1500 x 2 = Rs.3000	Rs.15,000/+ Rs.3,000/= Rs.18,000/-
VI	Loss of Consortium =Rs.40,000/, which has to be increased by 10% in each three years 40,000 x 10/100 = 4000 x 2 = 8,000. (Rs.40,000 + 4,000/ = Rs.48,000/	Rs.48,000/ x 2 = 96,000/
VII	Funeral expenses Rs.15,000/, which has to be increased by 10% in each three years 15,000 x 10/100 = 1500 x 2=Rs.3000	Rs.15,000/+ Rs.3,000/= Rs.18,000/
Total compensation awarded =		Rs. 11,90,400/-

25. As discussed herein above at the relevant time, the vehicle was insured with the appellant, bearing policy No. 2312202798624500000 and it also appears that at the relevant point of time the policy was in force and that being the position, the present appellant has to pay the the aforesaid amount of compensation.

Finding:-

26. In the result, this appeal is partly **allowed**. The impugned Judgment and Award, dated 18.09.2021, stands modified to the extent indicated above.

27. The appellant, i.e. the HDFC ERGO General Insurance Company Limited, is directed to pay a sum of **Rs. 11,90,400/-/- (*Rupees eleven lakhs ninety thousand and four hundred*)** only, being the compensation, which according to this court is just compensation, here in this case. The amount, if already paid to the claimant has to be deducted from the aforesaid amount.

28. It is further provided that the amount will carry interest @ 8% per annum, from the date of filing of the claim petition, i.e. 31.08.2019, till realization of the amount. The appellant shall deposit the aforesaid amount before the learned Tribunal within a period of 30 days from the date of the judgment and award.

29. In terms of above, this MAC appeal stands disposed of. The Registry shall send down the record of the learned Tribunal with a copy of this judgment and order forthwith. The parties have to bear their own cost.

Comparing Assistant

JUDGE