

GAHC010184872018



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

Case No. : MACApp./812/2018

REJIYA AHMED
W/O MD. ABDUL LATIF
RESIDENT OF NALBARI TOWN, RAJNAGAR, WARD NO. 11
PO AND PS NALBARI, DIST NALBARI, 781335, ASSAM

VERSUS

THE NATIONAL INSURANCE CO. LTD AND 2 ORS
GUWAHATI DIVISIONAL OFFICE MALIGAON GHY-12
INSURER OF VEHICLE NO AS-01-BB/8543 (TATA SUMO)
POLICY NO 55270031156360162934, VALID UPTO 09.01.2017
REPRESENTED BY THE BRANCH MANAGER, NATIONAL INSURANCE CO.
LTD. NALBARI BRANCH, HAJO ROAD, NALBARI

2:GITIKA BHATTACHARJYA
W/O SAILEN BHATTA
R/O HOUSE NO 189
2ND BY LANE
DAKHINGAON ROAD
KAHILIPARA
DIST KAMRUP M GUWAHATI 19
ASSAM
OWNER OF VEHICLE NO AS-01-BB/8543(TATA SUMO)

3:SAILEN BHATTA
S/O LATE NAGEN BHATTA
R/O HOUSE NO 189
2ND BY LANE
DAKHINGAON ROAD
KAHILIPARA
DIST KAMRUP M GUWAHATI 19
ASSAM

DRIVER OF VEHICLE NO AS-01-BB/8543(TATA SUMO)
DRIVING LICENCE NO AS-0120010076579
VALID UPTO 07.07.202

Advocate for the Petitioner : MR. J KALITA

Advocate for the Respondent : MR. M GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT AND ORDER (CAV)

Date : 01-03-2024

- 1.** Heard Mr. J. Kalita, learned counsel for the appellant. I have also heard Mr. K. K. Bhatta, learned counsel appearing for the respondent no. 1/ National Insurance Company Limited.
- 2.** This appeal has been preferred against the judgment and order dated 31.10.2017, passed by the learned Member, Motor Accident Claims Tribunal, Nalbari in MAC case no. 56 (Death)/2016 whereby, the learned Member has awarded the compensation to the tune of Rs 6,48,000/- (Rupees Six lakhs forty eight thousand) only to the appellant/claimant, after considering the basis of their claim and the evidence produced in support of their respective claims.
- 3.** Being aggrieved by the quantum and award passed by the learned Tribunal, the present appeal has been basically filed for enhancement of the said award assailing that the learned Tribunal has wrongly determined the quantum of award ignoring certain vital aspects.
- 4.** The brief fact of the case is that on 20.06.2016 at about

11:25 AM while the claimant's son, Washim Akram was proceeding from Barama toward Nalbari by driving a Maruti Swift vehicle bearing registration No. AS-01 BQ/9735, and when the said vehicle reached at Dipta Suradi on National Highway 31, the offending vehicle- Tata Sumo bearing registration No. AS-01-BB/8543, coming from the opposite direction being driven by the respondent No.3 in a rash and negligent manner, hit the Maruti Swift vehicle which was driven by the deceased. According to the claimant, the offending vehicle- Tata Sumo came driving in the wrong lane in total violation of the traffic rules.

5. However, in the instant appeal, the factum of incident has not been challenged, what is challenged in this appeal is the quantum of the award which according to the appellant had wrongly been determined in the lower side, ignoring certain vital aspects, like; the experience and the degree certificates of the deceased, and not being satisfied with the amount of the award granted by the learned Tribunal, the appellant/claimant has approached this Court claiming as follows:

(i) That the deceased had completed the course of Technical Engineering which is equivalent to a Diploma in Civil Engineering and based on the Educational Qualification, it can be clearly ascertained that the deceased falls under the category of skilled worker. And as such, while considering the income of the deceased, the learned Tribunal should have considered the income of the deceased to be that of a skilled worker, and should have taken his monthly income to be more than Rs. 15,000/- and not as that of an unskilled worker.

(ii) That the deceased had also successfully completed his Post

Graduate Diploma in Software Application (PGDSA), for 12 months duration in the year 2010 and at the time of incident, he had a job under private firm earning more than 20,000/per month. And further that during his lifetime, the deceased had applied and appeared for written examination held on 26.08.2015, for the post of Junior Engineer in NFR (North Eastern Frontier Railway) and he was selected for appointment to the said post, however, before he could get an appointment order and join the said service, the deceased died in the said accident. This aspect of the claim of the appellant was not considered by the learned Tribunal and wrongly fixed a notional income of the deceased at Rs.4000/ per month without even categorizing him under any labours.

(iii) That the learned Tribunal committed error regarding calculation of future prospect of deduction towards personal expenses of the deceased.

(iv) That except for the compensation awarded for loss of income of the deceased, the learned Tribunal failed to consider the compensation as claimed under different heads.

6. It is submitted that while dealing with the income of the deceased, the learned Tribunal below has not discussed anything as to why the case of deceased has been considered at the notional income of Rs. 4000/- per month. It is well settled that such conclusion must be supported by reason. In this regard, this Court find sufficient force in the argument advanced by the learned counsel for the appellant and is in agreement with the said submission, that since there is no other evidence available against the claims made by the appellant, the

learned Tribunal ought to have considered the minimum wages fixed by the State authority applicable at the relevant point of time.

7. The law is well settled in this regard and this Court can find support on such principle in ***Chandra Alias Chandraram and Anr Vs Mukesh Kumar Yadav & Ors*** reported in ***(2022) 1 SCC 198*** wherein the Hon'ble Apex Court has held that when no evidence are available and when a person is self employed taking note of the nature of employment, the principle of minimum wage fixed under the minimum wage Act can be applied in determining the income.

8. In this regard the learned counsel for the appellant has relied on the Government notification No.GLR.503/81/Pt/39, dated 03.11.2015 issued by the Government of Assam, Labour and Employment Department: Labour (RC) Branch, Assam. As per the schedule of the said notification, the minimum rates of wages for the skilled/clerical workers is Rs. 10,500/- per month and the minimum rate of wages for highly skilled workers is fixed at Rs. 13,500/- per month, besides entitlement to variable dearness allowance. The above notification was produced by the learned counsel for the respondent representing the state respondent who further informed this Court that the said Govt. Notification dated 03.11.2015 was applied and in force during the year 2015-2016.

9. In the instant case, the deceased, had obtained a Technical Engineering Civil and he has been in the private job and he had also cleared the competition examination and selected for appointment to the post of Junior Engineer in NFR (North Eastern Frontier Railway) which, however, he could not join the said post as he expired before

issuance of the appointment order pursuant to the selection. Considering, his experience in the private job, the technical educational qualification he earned and subsequently qualified himself for appointment to the post Junior Engineer, the deceased was well deserved, and can be categorised as qualified for appointment as skilled worker as per the above stated State government Notification.

10. As per the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors*** reported in ***SLP (Civil) No. 25590/2014***, the Hon'ble Supreme Court has fixed the compensation in the case of death reasonable figures on conventional heads, i.e., loss of estate and funeral expenses should be 15,000/- and 15,000/- respectively. However, in the impugned judgment and order, the learned Tribunal has not awarded any amount in the said head.

11. The learned counsel for the respondent submits that since the learned Tribunal after consideration of the claims and objection and on appreciation of the evidences adduced by both the parties has not considered the case of the appellant for awarding any amounts on other heads; moreover, the appellant/claimant themselves had refused to accept the funeral expenses before the Tribunal, the same may not be considered for granting in this appeal. However, he fairly submitted that as per the Govt. Notification No.GLR.503/81/Pt/39 dated 03.11.2015, the skilled worker is entitled to a monthly wage of Rs.10,500/-. And the said notification was applicable in the year 2015 and 2016. And considering, the degree the deceased had obtained, the experienced and the skill he had earned and more so, he was selected for appointment to the post of Junior Engineer, just before his death,

the deceased is entitled to be enlisted under the category of skilled labour. In this regard, the learned counsel for the respondent did not raise any serious objection, and submits that if the deceased is to be categorised, his notional monthly income may be fixed under skilled labour as per the said Notification of the state government.

12. In view of the above submissions of the learned counsel for the parties and having regards to what has been discussed above, the impugned judgment and award dated 31.10.2017, passed by the learned Member, Motor Accident Claim Tribunal in MAC case No.56 (death)/2016 is hereby interfered with and the same is hereby set aside and quashed. Accordingly, the computation of the compensation awarded is modified as follows:

- i) Annual income of the deceased Rs. 10500/-x12 = Rs. 1,26,000/-
- ii) After deducting 50% of the annual income of the deceased, the amount comes to = Rs.63,000/-
- iii) deceased was below 40 years of age, so addition of 50% of the income on head future prospect (as per Decision in Rajesh Vs Rajbir reported in (2013) 9 SCC54 50% of 63,000/- comes to Rs.31,500/-
- which means 63,000/ +31,500 =Rs. 94,500/
- iv)after multiplied with multiplier 18 it comes to=Rs. 17,01,000/-
- Loss of estate =Rs.15,000/-
- Total (Rs.17,01,000+15,000) = Rs.17,16,000/-

13. In the result, this appeal is allowed with the aforesaid modification awarding Rs. 17,01,000/- (Rupees Seventeen lakhs one thousand) only with interest thereon at the rate of 6 % per annum from the date of filling of the case till the full and final realization.

14. The respondent no. 1, National Insurance Company is

directed to discharge the liability of the award within a period of 60 (sixty) days from the date of receipt of this order.

- 15.** The amount already paid be adjusted accordingly.
- 16.** Send back the LCR.

JUDGE

Comparing Assistant