

GAHC010199362010



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

Case No. : MACApp./206/2010

SMT. BINITA KALITA and 3 ORS
W/O LATE BHUMIDHAR KALITA, R/O KAMALABARI, DA-HUKUTA
GAON, P.O. and P.S. DULIAJAN, PIN-786602 IN THE DIST. OF
DIBRUGARH, ASSAM.

2: NIRANJAN KALITA

AGED ABOUT 16 YEARS
S/O KAMALABARI
DA-HUKUTA GAON
P.O. and P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
ASSAM.

3: MISS DIPAMONI KALITA

AGED ABOUT 14 YEARS
D/O THE DECEASED
RO KAMALABARI
DA-HUKUTA GAON
P.O. and P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
ASSAM.

4: PARAN JYOTI KALITA

AGED ABOUT 12 YEARS
S/O THE DECEASED
R/O KAMALABARI
DA-HUKUTA GAON
P.O. and P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
ASSAM. THE CLAIMANT NO. 2
3 and 4 WHO ARE REPRESENTED BY THEIR LEGAL

GUARDIAN/MOTHER
SMT. BINITA KALITA
ALL ARE R/O KAMALABARI
DA-HUKUTA GAON
P.O. and P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
ASSAM

VERSUS

THE REGIONAL MANAGER, THE ORIENTAL INSURANCE CO. LTD
REGIONAL OFFICE , G. S . ROAD,
ULUBARI, GODREJ BUILDING
GUWAHATI-7 (INSURER OF THE VEHICLE BEARING NO AS06/E-2779
VIDE POLICY NO 1954 VALID UP TO 22.08.2007)

Advocate for the Petitioner : MR.A PHUKAN

Advocate for the Respondent : MR.S DUTTA

Linked Case : I.A.(Civil)/336/2023

SMT. BINITA KALITA AND 3 ORS
W/O LATE BHUMIDHAR KALITA
R/O KAMALABARI
DA-HUKUTAGAON
P.O. AND P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
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AGED ABOUT 16 YEARS
S/O KAMALABARI
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PIN-786602 IN THE DIST. OF DIBRUGARH
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P.O. and P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
ASSAM. THE CLAIMANT NO. 2
3 and 4 WHO ARE REPRESENTED BY THEIR LEGAL
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ALL ARE R/O KAMALABARI
DA-HUKUTA GAON
P.O. and P.S. DULIAJAN
PIN-786602 IN THE DIST. OF DIBRUGARH
ASSAM.
VERSUS

PRABIN CH. DUTTA
S/O LATE NABIN CH. DUTTA
R/O OIL COLONY
QTR. NO. SAP/1850
DULIAJAN IN THE DIST. OF DIBRUGARH
ASSAM (OWNER OF THE VEHICLE BEARING NO. AS-06/A-2779)

Advocate for : MR. T BAIDYA
Advocate for : MR S DUTTA appearing for PRABIN CH. DUTTA

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 20-03-2024

1. Heard Mr. Y.S. Mannan, learned counsel for the appellant and Mr. S. Dutta, learned counsel for the respondent No.3.
2. This is an appeal under Section 173 of the Motor Vehicle Act, 1988 filed against the impugned judgment dated 11.11.2009 passed by the Addl. District & Sessions Judge (FTC) No.2; Member of MACT, Kamrup at Guwahati in MAC Case No.1146/06 (Old MAC No.2906/06) whereby the respondent Insurance Company has been directed to pay compensation amount of Rs.16,42,288/- to the claimants along with interest there on @6% per annum w.e.f from the date of filing the claim petition till its realization.
3. This case has arisen out of the motor accident claim petition filed by the claimants before the Additional District & Sessions Judge seeking grant of compensation for the death of her deceased husband late Bhumidhar Kalita who died due to the hit of the offending vehicle in motor vehicle accident took place on 21.10.2006 at about 10.20 PM at Kamalabari road near Oil new bus stand, Dhuliajan. The accident occurred due to rash and negligent driving of the driver of the vehicle bearing registration no.AS-06/E-2779.
4. The case was contested. And on completion of the trial, the learned Tribunal by its judgment dated 11.11.2009 has awarded a compensation amount of Rs.16,42,288/- in favour of the claimant /appellant. And the Opposite party No.3 Oriental Insurance Company

Ltd has been directed to pay the awarded compensation amount along with the interest @6% per annum. Being aggrieved, the appellant filed this appeal for enhancement of the compensation amounts.

5. However, at the very outset of hearing, the learned counsel for the appellant has made it clear that the factum of the case is not disputed. He further made it clear that the appellant has a limited prayer specifically on the following heads of the award for modification. They are: -

- (i) Multiplier given should be 13 instead of 11.
- (ii) Deduction for the 4 dependent members should be $\frac{1}{4}$ the instead of $\frac{1}{3}$ rd.
- (iii) The future prospect has not been calculated whereas it has been given as 30% on future prospect.
- (iv) Loss of estate be given at Rs.15,000/- instead of Rs.5000/-
- (v) Funeral expense should be Rs.15,000/- instead of Rs.5000/-
- (vi) Loss of consortium should be Rs.40,000/- instead of Rs.5000/-

6. The learned counsel for the respondents/Insurance Company submits that he has agreed and accepted the above proposal made by the appellant. However, he further submits that the claimant is not entitled for any interest on the future prospect; hence, no interest be accruing against the above income on future prospect as granted in the original award. The learned counsel for the appellant/claimant

acceded to the said proposal of the respondent/Insurance company.

7. It is submitted that both the parties have mutually settled the matter and agreed for certain modification and addition of some heads on the original award as proposed above. The mutually agreed terms are as follows:

- (i) Multiplier be 13 instead of 11;
- (ii) Deduction for the 4 dependent members shall be $\frac{1}{4}$ instead of $\frac{1}{3}^{\text{rd}}$.
- (iii) The future prospect which was not calculated shall be at 30%. However, there shall be no interest accrued on future prospect.
- (iv) Loss of estate shall be given at Rs.15,000/- instead of Rs.5000/-
- (v) Funeral expense shall be at Rs.15,000/- instead of Rs.5000/-
- (vi) Loss of consortium shall be at Rs.40,000/- instead of Rs.5000/-; and

6. The learned counsel for the parties further submits that they have worked out the proposed modified amount of award in the original award and the same has been placed before this court for consideration which is taken on record.

7. On careful consideration of the submissions made by the learned counsel for the parties and having examined the records and also the proposed modification of the awarded amounts in the original award which

has been mutually agreed upon to and submitted by both the learned counsel for the parties, this Court is satisfied that the parties have reached on consensus for modification of the quantum and addition of some heads in the original award.

8. Having taken into account the aforementioned proposed modifications, this Court hereby approves the mutually agreed terms for modification and addition on the quantum of compensation calculated by the parties. The detail of the modified compensation amount and its distribution are as follows: -

Salary - Rs.18,256

Deduction towards $1/4^{\text{th}}$ (18,256 x $1/4$)=4,564
 personal expenses Rs.18,256-4564(Deduction $1/4^{\text{th}}$)=Rs.13962

Annual income Rs.13962 x 12 =Rs.1,64,304x(13)Multiplier
 =Rs.21,35,952/-

Future prospect Rs.21,35,952 x 30/100=6,40,785+21,35,952
 (30%)
 =Rs.27,76,738

Future prospect amount =Rs.6,40,785

Conventional heads =70,000 =27,76,738+70,000
 =28,46,738(Enhanced amount)
 =16,42,288(Paid earlier)
 =12,04,450(Difference balance amount)

Rs,12,04,450 (Difference balance amount)
 Out of Rs,12,04,450

An amount of Rs.6,40,785 (Future prospect amount) will not carry interest.
And Rs.5,63,665/- (will carry 6% interest)

9. Accordingly, the respondent oriental Insurance Co. Ltd is directed to pay a sum of Rs.12,04,450/-(balance amount) out of which the claimant shall be to 6% interest of Rs.5,63,665/- from the date of filing the claim petition till its realization. The payment shall be made within six weeks from the date of receipt of this order.

10. The appeal is allowed to the extend as indicated above, and the judgment and award of the Tribunal dated 11.11.2009 is modified accordingly.

11. With the above observation, the appeal is disposed of.

12. The records be sent back.

JUDGE

Comparing Assistant