

GAHC010208342016



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

Case No. : MACApp./318/2016

SMT ROMA RANI NATH
W/O LATE PRASANNA NATH, MOTHER OF THE DECEASED RESIDING AT
VILL. SAMAGURI, P.S. BAKALIA, DIST. KARBI ANGLONG, ASSAM,
PRESENT ADDRESS C/O SRI R.C. SUT, SILPUKHURI, KARNACHAL,
GUWAHATI-03, DIST. KAMRUP M, ASSAM.

VERSUS

SRI DIPAK DAS and 2 ORS
S/O SRI SISHU RAM DAS, VILL. BATADRAVA, NAGAON, DIST. NAGAON,
ASSAM. OWNER OF VEHICLE NO. AS-02-L-0764

2:MANURANJAN KONWAR
S/O LT. SARBESWAR KONWAR
RO RONGNIHANG
P.O. DIPHU
P.S. DIPHU
DIST. KARBI ANGLONG
ASSAM DRIVER OF VEHICLE NO. AS-02-L-0764

3:NATIONAL INSURANCE CO. LTD.
G.S. ROAD
BHANGAGARH
GUWAHATI-05
DIST. KAMRUP M
ASSAM
TO BE REPRESENTED BY ITS REGIONAL MANAGER INSURER OF
VEHICLE NO. AS-02-L-076

Advocate for the Petitioner : MR.D K KALITA

Advocate for the Respondent : MR.B KAKATIR-3

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 19-03-2024

Heard Mr. D.K. Kalita, learned counsel for the appellant along with Mr. A.J. Saikia, learned counsel for the Insurance Company/respondent No.3. Respondent No.1, the owner of the Motor cycle and respondent No.2, the driver of the accident motor cycle, are said to be proforma respondents in this case.

2. This appeal is filed under section 173 of the Motor Vehicles Act, 1988 against the judgment & award dated 04.07.2016 passed by the learned Member of Motor Accident Claims Tribunal-No.2 Kamrup (M), Guwahati in MAC Case No.751/2014, wherein the learned Member, MAC Tribunal had awarded Rs. 6,98,750/- (*Rupees six lakhs ninety eight thousand seven hundred fifty*) only to the appellant/claimant to be paid by the respondent No.3, Insurance Company. The instant appeal has been filed for the enhancement of the quantum of compensation.

3. The facts of the case in a nutshell is that, the present appellant is the claimant in the said MAC Case No.751 of 2014 for payment of compensation on the death of her daughter Late Deepali Rani Nath in a Motor cycle accident. The deceased Deepali Rani Nath was travelling as a pillion rider in the Motor cycle bearing Registration No.AS-02-L-0764 (Motor Cycle) and while proceeding from

her office towards her house at Bakalia Bazar, National High Way No.36, the said Motor cycle met with an accident on 19.03.2014 at Bakalia Bazar, National High Way No.36 due to the rash and negligent driving of the driver of a vehicle bearing Registration No.AS-02-L-0764 (Motor Cycle). As a result of the accident, she sustained grievous injuries and she was immediately treated for her injuries but she succumbed to her injuries during her treatment in the hospital.

4. The said vehicle was registered and insured with the National Insurance Company Limited. The deceased was employed under NHRM scheme and her salary was Rs.14,300/- (*Rupees fourteen thousand three hundred*) only per month. The claimant as her legal heir had filed the claimed petition seeking compensation of Rs.37,50,000/- (*Rupees thirty seven lakhs fifty thousand*) only. The respondent No.3, arrayed as opposite party No.3, filed their written statement taking all the routing plea and denied the case of the claimant. Thereafter, the following issues were framed by the learned Tribunal which is as follows :

- i) *Whether the victim Late Dipali Rani Nath died as a result of the injuries sustained by her in the alleged road accident occurred on 19.03.2014 at Bakalia Bazar, 36 National Highway under Bakalia Police Station, Dist. Karbi-anglong Assam involving vehicle No.AS-02-L-0764 (Motor cycle) and whether the said accident took place due to the rash and negligent driving of the driver of the said vehicle?*
- ii) *Whether the claimant is entitled to get any compensation, if so, to what extent and by whom amongst the opposite parties will be*

payable?

5. The learned Tribunal decided issue No.1 in favour of the claimant, finding that the accident occurred due to the rash and negligent driving of the driver of a vehicle bearing Registration No.AS-02-L-0764 (Motor Cycle) which caused the death of the deceased Deepali Rani Nath.

6. The learned Tribunal decided issue No.2 by finding that the claimant not being a dependent on the deceased Deepali Rani Nath, but being her legal heir had awarded Rs.5,00,000/- (*Rupees five lakhs*) only as compensation and the additional amount of Rs.1,98,750/- (*Rupees one lakh ninety eight thousand seven hundred fifty*) only for the medical expenses as per the documents submitted.

7. Aggrieved by the said judgment & award dated 04.07.2016, the instant is being filed.

8. Mr. D.K. Kalita, learned counsel for the appellant submits that the learned Tribunal had erred in finding that the claimant was not dependent on the deceased Deepali Rani Nath and had awarded her the amount of Rs. Rs.5,00,000/- (*Rupees five lakhs*) only as compensation being the legal heir of the deceased.

9. The learned counsel submits that the learned Tribunal has not considered the rule of the court as laid down by the Hon'ble Supreme Court in **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another**

reported in **(2009) 6 SCC 121**. He submits that the learned Apex Court held that if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent. He therefore, submits that award passed by the learned Tribunal is liable to be set aside for the non consideration of the rule of the court and held that the deceased was working as an NRHM, Pachim Sunpara SC, Howraghat BPHC, Karbi Anglong and her salary was Rs.14,300/- (Rupees fourteen thousand three hundred)only per month. The learned counsel submits that PW No.3 had also submitted the salary certificate which was exhibited as Ext.6 and was not challenged by the respondent.

10. The learned counsel submits that since she was a salaried person and getting her increment besides her annual income, there should be an addition of 50% for future prospects. He further submits that the appropriate multiplier in the instant case would be 15 since she was aged 35 years and a few months and that being unmarried, 50% was be deducted was personal and living expenses. He further submits that the conventional head may also be added which an amount to Rs.36,000/- (Rupees thirty six thousand)only that after the deduction of the amount already paid which is Rs.6,98,750/- (*Rupees six lakhs ninety eight thousand seven hundred fifty*) *only* the instant respondent No.3/Insurance Company is liable to pay the appellant the amount of Rs.14,38,420/- (*Rupees fourteen lakhs thirty eight thousand four hundred twenty*) *only*.

11. Mr. A.J. Saikia, learned counsel for the respondent/Insurance Company on the other hand submits that since PW-3 who is the employer of the deceased, Deepali Rani Nath has stated that the contract of the employment of the deceased, Deepali Rani Nath under the NHRM scheme is to be over in 2017,

therefore, she cannot be considered as a salaried person as held in **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another (supra)**. He therefore submits that the claimant is not entitled to get interest of future prospects. He further submits if future prospects are to be considered it will be only 40% for self employed persons has held in **National Insurance Company Limited Vs. Pranay Sethi & Others** reported in **(2012) 16 SCC 680**.

12. The learned counsel also submits that interest may not be imposed on the future prospects and in support of his submission, he has cited a decision of a co-ordinate bench of this Court in **MAC. Appeal No.378/2017 dated 01.10.2019** in **Oriental Insurance Company Limited Vs. Smt. Champabati Ray & Ors.**

13. From the submissions made by the learned counsels for both the parties, the main points for consideration are :

- 1) Whether the learned Member, MACT had erred in deciding that mother of the deceased, who is the appellant in the instant case is not to be considered as a dependent of the deceased, Deepali Rani Nath.*
- 2) Whether the deceased, Deepali Rani Nath being an employee on contractual basis under the NHRM scheme can be considered as self employed.*

14. Having considered the submissions made by the learned counsels for both the parties and on perusal of the documents on record, this Court finds that the

Apex Court in **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another (supra)** has clearly stated that even if the deceased, Deepali Rani Nath is survived by parents and siblings, the mother would be considered to be dependent and 50% would be treated as the personal and living expenses of the bachelor and 50% as contribution to the family.

15. In view of the above decision, this court finds that the learned Tribunal had erred in deciding that the mother was not dependent on her daughter the deceased, Deepali Rani Nath, as such, this Court finds that principle of rule of the Court laid down by the Apex court in **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another (supra)** case is applicable in the instant case.

16. This also finds that even though Pw 3 had stated that the deceased, Deepali Rani Nath was employed under NHRM on contractual basis and that her contract would end in 2017, he has further clarifying that the contract of the deceased, Deepali Rani Nath, if she had not died would have been continued. A perusal of her income certificate shows that she is a regular salaried person getting timely increments and this Court finds that she is entitled to get 50% of her salary as future prospect. Accordingly, the appellant/claimant is entitled to be compensated in the following manner.

Monthly salary is Rs. 14092 is not disputed at the Bar.

On deduction of 50% for personal expenses = 7,046

Multiplier would be 15 = 7046 x 12 x 15 = 12,68,280

Future prospect @ 50% = 6,34,140

Conventional heads summed up = 36,000

As per the medical bills enclosed

Medical expenses incurred = 1,98,750

The total amount payment will be = 21,37,170

On deduction of the amount already paid (minus)= 6,98,750

= Rs. 14,38,420

17. Thus, this Court finds that the claimant/appellant is now entitled to be paid an amount of Rs.14,38,420/- (*Rupees fourteen lakhs thirty eight thousand four hundred and twenty*) only. The respondent No. 3 is accordingly directed to deposit the above compensation amount of Rs.14,38,420.00 before the learned Tribunal Kamrup (M), Guwahati within a period of 1 (one) months from the date of obtaining a certify true copy of this order.

18. In consonance with the decision of a co-ordinate bench of this court dated 01.10.2019 in MAC. Appeal No.378/2017, the total compensation amount indicated above, minus the future prospects of Rs.6,34,140/- will carry an interest @ 6% per annum from the date of filing the claimed petition till final payment. Consequently, the judgment and order dated judgment & award dated 04.07.2016 passed by the learned Member of Motor Accident Claims Tribunal-

No.2 Kamrup (M), Guwahati in MAC Case No.751/2014 is hereby set aside.

19. Accordingly, MAC.Appl./318/2016 stands allowed and disposed of.

JUDGE

Comparing Assistant