

GAHC010252482022



AS:10589

2024:GAU-

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

Case No. : MACApp./835/2022

1. ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT ICICI BANK
TOWERS, BANDRA KURLA COMPLEX, MUMBAI 400051, ITS ZONAL
OFFICE AT APEEJAY HOUSE, 15 PARK STREET, 7TH FLOOR,
KOLKATA- 700016, AND A BRANCH OFFICE AT KAMAKHYA TOWER,
3RD FLOOR, OFFICE NO. 305 AND 305, G.S. ROAD, GUWAHATI-
781005, ASSAM.

VERSUS

1. ASIA BEGUM AND 4 ORS.
W/O LATE AKRAM ALI,
R/O NORTH JALUKBARI, KATIA DALANG, A.T. ROAD, P.S.-
JALUKBARI, DIST.- KAMRUP (M), PIN- 781014.

2:MD ASHIK EKBAL HUSSAIN
S/O LATE AKRAM ALI
R/O NORTH JALUKBARI
KATIA DALANG
A.T. ROAD
P.S.- JALUKBARI
DIST.- KAMRUP (M)
PIN- 781014.

3:MS ANJUMA AFREEN
D/O LATE AKRAM ALI
R/O NORTH JALUKBARI
KATIA DALANG
A.T. ROAD
P.S.- JALUKBARI
DIST.- KAMRUP (M)
PIN- 781014.

4:MD EZAJUL HUSAIN
S/O LATE AKRAM ALI
R/O NORTH JALUKBARI
KATIA DALANG
A.T. ROAD
P.S.- JALUKBARI
DIST.- KAMRUP (M)
PIN- 781014.

5:MD SAJIDUL AHMED
S/O MD. DIL MAHAMMAD
R/O BEZPARA (GARIGAON)
P.S.- JALUKBARI
DIST.- KAMRUP (M)
PIN- 781012 (ASSAM)

Advocate for the Appellant : MR. R GOSWAMI

Advocate for the Respondents: MR. ABU JAHID

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 24-10-2024

Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Mr. A. Jahid, learned counsel appearing for all the respondents.

2. This Appeal under Section 173 of the *Motor Vehicle Act, 1988* (hereinafter referred to as 'the M.V. Act, 1988') is filed against the judgment and award dated 09.09.2022, passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup (M) at Guwahati in MAC Case No.2973/2016, whereby the learned Tribunal has awarded a compensation amount of Rs.58,19,206/- (Rupees fifty eight lakh nineteen thousand two hundred six) only, payable by the appellant to the claimants (respondent Nos.1—4 herein), due to the death of Akram Ali with interest @ 7.5% per annum, from the date of filing of the claim petition, till realization.

3. The challenge is essentially to the income of the deceased which has been accepted as Rs.48,577/- per month.

4. The case in brief is that on 10.11.2016, one Akram Ali was going towards his home from Adabari. On his way, he was dashed by one Motorcycle bearing registration No.AS-01-BD-3837, from the back side as a result of the accident, he sustained grievous injuries on his person and was admitted at the Railway Hospital, Maligaon and thereafter, shifted to GNRC Hospital, Dispur. However, victim Akram Ali succumbed to his injuries, while he was under treatment at the Hospital. It is contended that the accident occurred due to rash and negligent driving of the driver of the said Motorcycle.

5. An FIR was lodged after the accident, which was registered as the Jalukbari P.S. Case No.963/2016, under Section 279/304(A)/338 of IPC. At the time of accident, the deceased was aged about 53 years old and he was an employee of N. F. Railway, Maligaon, Guwahati. The claimants/ respondents herein filed the claim petition under Section 166 of the MV Act, 1988, claiming a compensation of Rs.75,00,000/- from the appellant/opposite parties, on account of death of Akram Ali.

6. The appellant/opposite parties have filed their written statement and contested the case.

7. The learned Member, Motor Accident Claims Tribunal, after consideration of the materials/evidence adduced by the parties, has awarded a compensation amount of Rs.58,19,206/- (Rupees fifty eight lakh nineteen thousand two hundred six) only, on account of death of Akram Ali, to be paid to the claimants with interest @ 7.5% per annum, from the date of filing of the claim petition, till realization.

8. Mr. R. Goswami, learned counsel for the appellant submits that the appellant is aggrieved on the question of income of the deceased Late Akram Ali to the extent that the learned Tribunal has accepted the gross pay of the deceased as Rs.48,577/-

(Rupees forty eight thousand five hundred seventy seven) per month. He submits that as per the Provisional Salary Slip, issued by the Railway Authorities, exhibited as Exhibit No.6, the gross pay is shown to be Rs.74,142/- (Rupees seventy two thousand one hundred forty two) only. As per another Provisional Salary Slip, it shows Rs.48,577/- (Rupees forty eight thousand five hundred seventy seven) only, which has been exhibited as Exhibit No.7 and the third Provisional Salary Slip, his gross pay is shown as Rs.40,464/- (Rupees forty thousand four hundred sixty four) only, which has been exhibited as Exhibit No.8.

9. He submits that perusal of the above exhibits show that there are huge difference of gross pay of the deceased. Therefore, he submits that the learned Tribunal has erred in taking Rs.48,577/- (Rupees forty eight thousand five hundred seventy seven) per month as the gross pay of the deceased. He further submits that the learned Tribunal has not deducted any applicable tax from the salary of the deceased, which is mandatory to be deducted and as such, he submits that at best the Exhibit No.8, which shows the gross pay of the deceased as Rs.40,464/- (Rupees forty thousand four hundred sixty four) only, ought to have been taken as gross pay of the deceased. Thereafter, the applicable tax ought to have been deducted.

10. Mr. A. Jahid, learned counsel appearing for the claimants/ respondents submits that indeed there appears to be a difference in the gross pay in respect of deceased in the three exhibits, which shows three different amount. However, he submits that Exhibit No.7, which clearly indicates the gross pay of the deceased as Rs.48,577/- (Rupees forty eight thousand five hundred seventy seven) only, the learned Tribunal has rightly accepted the same on being appropriately proved by the claimant. He further submits that the learned Tribunal has deducted Rs.2,833/- towards PF, Rs.5,000/- towards VPF, Rs.30/- towards CGIS-C, Rs.2,894/- towards Manager-L, Rs.581/- towards ELEC, Rs.119/- towards house rent, Rs.15/- towards water, Rs.208/- towards professional tax and Rs.3,565/- respectively. Therefore, the learned Tribunal has rightly awarded the compensation amount of Rs.58,19,206/- (Rupees fifty eight lakh nineteen thousand two hundred six) only, to the claimants (respondent Nos.1—4 herein).

11. Having submitted above, the learned counsel for the parties have fairly submits that in view of three different Provisional Salary Slips, having three different gross pay, the gross pay of Rs.40,464/- (Rupees forty thousand four hundred sixty four) only, as per Exhibit No.8 may be taken, for computing the compensation.

12. I have considered the submissions of leaned counsel for the parties and perused the record, including the impugned judgment and award dated 09.09.2022.

13. On consideration of the evidence, it is seen that the claimant as PW.1 had stated that at the time of death of her husband, he was working in the N.F. Railway, Maligaon. The claimants have also proved the salary of the deceased by examining the PW.3. PW.3 has deposed that the deceased was serving as Helper-I in the Engineering Department. He has also submitted the Provisional Salary Certificate, Exhibit No7 for the month of September, 2016, which shows the gross income of the deceased as as Rs.48,577/- (Rupees forty eight thousand five hundred seventy seven) only. However, there are other two salary certificates which shows Rs.74,142/- (Rupees seventy two thousand one hundred forty two) (exhibited as Exhibit No.6) and Rs.40,464/- (Rupees forty thousand four hundred sixty four) only, which is exhibited as Exhibit No.8.

14. The learned Tribunal has accepted the provisional salary certificate, exhibited as Exhibit No.7 and accepted the gross pay of the deceased as Rs.48,577/- (Rupees forty eight thousand five hundred seventy seven) only. Deduction of Rs.2,833/- towards PF, Rs.5,000/- towards VPF, Rs.30/- towards CGIS-C, Rs.2,894/- towards Manager-L, Rs.581/- towards ELEC, Rs.119/- towards house rent, Rs.15/- towards water, Rs.208/- towards professional tax and Rs.3,565/- respectively. Accordingly, held that the monthly salary of the deceased, after deducting Rs.208/- as professional tax, stands at Rs.48,369/- only and thus, the total annual salary of the deceased was Rs.5,80,428/- (Rupees five lakh eighty thousand four hundred twenty eight) only.

15. Having considered that the parties have agreed that the gross salary ought to have taken as Rs.40,646/- (as per Exhibited No.8) and the primary contention of the

appellant being to the income of the deceased, no further consideration on the other issues are required.

16. Considering that the parties have agreed that the gross pay of the deceased to be taken as Rs.40,646/- per month, this Court is of the view that it would be appropriate to allow and accept the gross pay of the deceased as Rs.40,464/- (Rupees forty thousand four hundred sixty four) only, for computing the just and reasonable compensation.

17. The compensation on the other heads remained unchanged. Thus, the total amount of compensation is:

Sl. No.	Heads	Amounts
1.	<u>Loss of dependency:</u> Income (Salary) = Rs.40,646/- Deduction 1/4 th = Rs.30,484.50 Addition (future prospect) 15% = Rs.6096.90. After addition = Rs.36,581.40 As such loss of dependency is (Rs.36,581.40 x 12 x 11)	Rs.48,28,744.80
2.	Loss of consortium	Rs.44,000.00
3	Funeral expenses	Rs.16,500.00
4.	Loss of estate	Rs.16,500.00
5.	Loss of prenatal consortium 40,000x3	Rs.1,20,000.00
6.	Medical expenditures	Rs.1,15,396.00

Total:51,41,140/-
(Rupees fifty one lakh forty one thousand one hundred forty) only

18. Accordingly, the appeal is disposed of and the claimants are awarded a sum of Rs.51,41,140/- (Rupees fifty one lakh forty one thousand one hundred forty) only, payable by the appellant/Opposite Party No.1, within two months from the date of order, with interest @7.5% per annum, from the date of filing of the claim petition till realization, as provided by the learned Member, MACT No.2, Kamrup (M), Guwahati.

19. Appeal stands allowed to the extent indicated above and disposed of.

Send back the TCR along with a copy of this judgment forthwith.

JUDGE

Comparing Assistant