

GAHC010254402019



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

Case No. : MACApp./451/2022

NEW INDIA ASSURANCE COMPANY LTD.
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING, 87, MAHATMA GANDHI ROAD, FORT, MUMBAI-400001 AND
REGIONAL OFFICE AT G.S. ROAD, GUWAHATI-5, REPRESENTED BY THE
CHIEF REGIONAL MANAGER

VERSUS

SMTI PRABHA BASUMATARY AND 5 ORS
W/O LATE BIJOY KR. BASUMATARY, R/O VILL-NILAIJHORA FV, P.O.-
SATYAPUR, P.S.-GOSAIGAON, DIST-KOKRAJHAR, BTC, ASSAM, P/R/A VILL-
HABRUBIL, P.O. AND P.S.-GOSAIGAON, DIST-KOKRAJHAR, BTC, ASSAM

2:SMT. KAOBLIT BASUMATARY
W/O SRI RABISWAR BASUMATARY
R/O VILL-NILAIJHORA FV
P.O.-SATYAPUR
P.S.-GOSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
P/R/A VILL-HABRUBIL
P.O. AND P.S.-GOSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM

3:DWIHUNG BASUMATARY
S/O LATE BIJOY KR. BASUMATARY
R/O VILL-NILAIJHORA FV
P.O.-SATYAPUR
P.S.-GOSAIGAON
DIST-KOKRAJHAR
BTC

ASSAM
P/R/A VILL-HABRUBIL
P.O. AND P.S.-GOSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM

4:SIMANGSHA BASUMATARY
S/O LATE BIJOY KR. BASUMATARY
R/O VILL-NILAIJHORA FV
P.O.-SATYAPUR
P.S.-GOSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
P/R/A VILL-HABRUBIL
P.O. AND P.S.-GOSAIGAON
DIST-KOKRAJHAR
BTC
ASSA

Advocate for the Petitioner : MR. S DUTTA, MR. SIDHANT DUTTA
Advocate for the Respondent : MR. I A TALUKDAR,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

03.12.2024

Heard Mr. S. Dutta, learned Senior Counsel assisted by Mr. Sidhant Dutta, learned counsel for the appellant Insurance Company. Also heard Mr. I. A. Talukdar, learned counsel for the respondents/ claimants.

2. This is an appeal u/s 173 of Motor Vehicles Act, 1988 (herein after referred as MV Act), against the Judgment and order dated 28/05/2019 passed by the learned member MACT, Kokrajhar in MAC Case no. 54 of 2017.

3. The case of the claimant in brief is that on 19/08/2017 while the deceased was going towards Gosaigaon Bazar, on the way he met his friend and while

talking to him after parking his motor cycle on the side of the road, one truck bearing no. UP-21/BN-1620 coming in a rash and negligent manner, knocked down the husband of the claimant no. 1 as a result of which he died on the spot. According to the claimants, the deceased was aged about 50 years at the relevant time of accident and being a teacher by profession, he used to earn Rs. 35,047/- per month. As such the claimants claimed compensation to the tune of Rs. 60, 00,000/- for the death of the deceased in the said vehicular accident.

4. The present appellant being the insurer of the alleged offending vehicle, contested the case by filing written statement. Further, the owner and driver of the vehicle also filed their written statement before the Tribunal. After recording the evidence of the witnesses and hearing learned counsel for the parties, the tribunal awarded compensation to the tune of Rs. 40,60,096/- in favour of the claimants considering the age of the deceased to be 50 years and thereby applying relevant multiplier of 11 as well as considering the income of the deceased to be Rs. 35,047/- per month. The amount so awarded was further directed to be paid by the appellant insurance company along with interest at the rate of 6% per annum from the date of filing of the claimed petition till its realization.

5. The learned counsel for the appellant has submitted that the learned Tribunal committed grave error in not considering the submission advanced on behalf of the appellant company that as the deceased was a government employee, the claimants are entitled to the newly introduced scheme for "*compassionate family pension*" for which the claimants would not in fact suffer any income loss and therefore question of loss of dependency does not arise. As such the award of compensation suffers from material irregularity and the same

cannot be said to be just and reasonable in the eye of law.

6. Further submission of the learned counsel for the appellant is that the learned tribunal ought to have taken into consideration of the fact of receiving 100% salary income of the deceased by the claimants as pension while deciding the quantum of compensation to be paid to them. According to the learned counsel for the appellant, as per family pension scheme, the family pension is equal to 100% of the last pay drawn by the deceased employee is to be paid to the dependents for a period upto the date of deemed superannuation of the deceased employee i.e., the date on which the employee would have superannuated had he been alive. Under such circumstances, in the case in hand, the claimants who are the dependents of the deceased government employee has been getting the benefit of the said scheme for compassionate family pension and therefore they have not suffered any loss of dependency or pecuniary loss so as to compensate them under the provisions of MV Act. Under such backdrop, the learned counsel for the appellant has submitted that the matter be remanded back to the Tribunal for fresh decision.

In support of his submission, learned counsel has relied on the case laws

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- a. (2019) 3 ACC 864 (Sebastiani Lakra and others vs. National Insurance Company and another)**
- b. (Special Leave Petition © No. 5044/ 2019) (Krishna and others vs. Tekchand and others)**
- c. MAC Appeal 261/2022 (National Insurance Company Ltd. Vs. Ranu Kalita and others)**

7. Per contra, learned counsel for the respondent/ claimants has submitted that the future prospect of the deceased can be taken into consideration at the time of deciding compensation to the claimants. On being asked, the learned counsel for the respondent has admitted that the claimants have availed the scheme for Compassionate Family Pension (CFP). Learned counsel for the respondent has also submitted that he has no objection if the case is remanded back to the tribunal for fresh decision.

8. I have considered the submissions of the learned counsel for the parties. I have also perused the government notification dated 14/09/2017, vide no. APG28/2017/26 "Scheme for Compassionate Family Pension" wherein column no. 5.3 is relevant which is reproduced as follows –

“5.3

.....where the employee dies before superannuation, the family pension equal to 100% of the last pay drawn by the deceased employee be paid for a period upto the date of "deemed superannuation" of the deceased employee i.e., the date on which the employee would have superannuated had he been alive. This would compensate the loss of family income to a large extent and fulfill the requirement of compassionate conditions arising out of the death of the serving employees. However, the government servant must complete minimum 1 year of continuous service without break before the death while in service...."

9. In the case of **Sebastiani Lakra (supra)**, it was observed by the

Hon'ble Supreme Court which reads as follows –

“..... 5. Section 168 of the Motor Vehicles Act, 1988 (for short 'the Act') mandates that "just compensation" should be paid to the claimants. Any method of calculation of compensation which does not result in the award of 'just compensation' would not be in accordance with the Act. The word "just" is of a very wide amplitude. The Courts must interpret the word in a manner which meets the object of the Act, which is to give adequate and just compensation to the dependents of the deceased. One must also remember that compensation can be paid only once and not time and again.

6. The traditional view was that while assessing compensation, the Court should assess the loss of income caused to the claimants by the death of the deceased and balance it with the benefits which may have accrued on account of the death of the deceased. However, even when this traditional view was being followed, it was a well settled position of law that the tortfeasor cannot not take benefit of the munificence or gratuity of others.

7. In Helen C. Rebello case (supra), the issue was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, in cash, bank balance, shares, fixed deposits etc., are 'pecuniary advantages' received by the heirs on account of death of the deceased and liable to be deducted from the compensation. This Court held that these amounts have no correlation with the compensation receivable by

the dependents under the Motor Vehicle Act. The following observations were made by the Court:

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all

these have no corelation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any corelation. The insured (deceased) contributes his own money for which he receives the amount which has no corelation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

10. In the aforesaid case, it was also held as follows –

“.....As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The

deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted...”

11. In another cited Judgment of Krishna and others (supra), the Hon’ble Supreme Court has observed as follows –

“.....We find that the observations of this Court in Sebastiani Lakra (supra) distinguishing the case of Shashi Sharma (supra) clearly applies to the case in hand. It is observed that the amount of Rs.31,37,665/- (Rupees Thirty One Lakhs, Thirty Seven Thousand and Six Hundred and Sixty Five only) was paid to the dependents of the deceased-employee who are the petitioners herein under the aforesaid Rules since the said Rule was by way of compassionate assistance owing to the sudden death of the employee in harness for any reason whatsoever including as a result of a road traffic accident. This is in order to compensate the loss of the bread earner of the family who dies in harness. In the case of a motor vehicle accidents, when negligence is proved, loss of dependency is compensated for the very same reason. In our view, there cannot be a duplication in payments or a windfall owing to a misfortune. In another words, on the death of the person in harness, owing to a road traffic accident the dependents of a deceased cannot be doubly benefited as opposed to those who are dependents of a deceased who dies owing to illness or any other reason under the Rules

formulated by the Haryana Government....”

12. Reverting to the case in hand, it is an admitted fact that the deceased who was the husband and father of the claimants, died during his service. In the Judgment of the Tribunal, there is no whisper about the notification dated 14/09/2017 issued by the Government of Assam. The tribunal accordingly assessed the compensation awarded to the claimants on the basis of the income of the deceased and loss of income on his death. The learned counsel for the respondent has admitted that the respondent/claimants had availed the benefit under the “Compassionate Family Pension Scheme.” Under such backdrop, the claimants are not entitled to the award of compensation on loss of income of the deceased.

13. In view of the Judgment of the Hon’ble Supreme Court as aforesaid and on the submission of learned counsel for the parties, this court is of the opinion that the tribunal should recompute the compensation by taking into account the notification dated 14/09/2017 and the Judgments of the Hon’ble Supreme Court as indicated above.

14. In the result, the case is remanded to the tribunal with a direction to dispose of the matter as early as possible. With the above direction, the appeal is disposed of.

15. Statutory amount, if any, be refunded accordingly.

JUDGE

Comparing Assistant