

GAHC010312762019



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

Case No. : MACApp./94/2020

SMTI. PROTIMA SAHU AND 3 ORS
W/O- LATE RAJ KUMAR SAHU, R/O- LELA TOWN WARD NO.3, S P ROAD,
P.O AND P.S- LELA, DIST- HAILAKANDI, ASSAM

2: SAMANTA KUMAR SAHU
W/O- LATE RAJ KUMAR SAHU
R/O- LELA TOWN WARD NO.3
S P ROAD
P.O AND P.S- LELA
DIST- HAILAKANDI
ASSAM

3: JYOTI SAHU
D/O- LATE RAJ KUMAR SAHU
R/O- LELA TOWN WARD NO.3
S P ROAD
P.O AND P.S- LELA
DIST- HAILAKANDI
ASSAM

4: KALYANI SAHU
D/O- LATE RAJ KUMAR SAHU
R/O- LELA TOWN WARD NO.3
S P ROAD
P.O AND P.S- LELA
DIST- HAILAKANDI
ASSA

VERSUS

THE DIVISIONAL MANAGER
ORIENTAL INSURANCE CO LTD, DHARMANAGAR RAJBARI, P.O AND P.S-
DHARMANAGAR, DIST- TRIPURA NORTH, STATE TRIPURA, DIST- TRIPURA
NORTH, PIN- 799250

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent :

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants:	Mr. A.M. Barbhuiya, Advocate.
For the Respondent(s):	Ms. M. Choudhury. Advocate.
Date of Hearing :	14.05.2024.
Date of Judgment:	28.05.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.M. Barbhuiya, learned counsel representing the appellants. Also heard Ms. M. Choudhury, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and order dated 14.11.2019 passed by the Motor Accident Claims Tribunal, Hailakandi in MAC Case No.135/2015.
3. On 28.11.2014 at about 2 A .M., Raj Kumar Sahu, Assistant Enforcement Inspector was doing his duty. At that time, a truck bearing Registration No.TR-01U/1814 knocked down Raj Kumar Sahu. Before reaching hospital, he died.
4. A claim application was filed before the Tribunal seeking compensation.
5. The owner of the said truck contested the claim case by stating that his vehicle was covered by a valid insurance policy.
6. The Insurance Company has contested the case and denied the incident.

7. On the basis of the pleadings, the Tribunal framed the following issues:

I. Whether on 28.11.2014 at about 2 A.M. at Thandapur under Panchgram Police Station, District- Hailakandi, the deceased Raj Kumar Sahu died in the motor accident involving the vehicle i.e. truck bearing Registration No.TR-01U/1814 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

II. Whether the claimants are entitled to get any compensation and if yes, what will be the quantum of compensation and by whom amongst the opposite parties, the said compensation shall be payable?

8. During the hearing of the case, the appellants/claimants examined two witnesses and respondent Insurance Company one witness.

9. On the basis of the evidence on record, the trial court awarded a compensation of ₹7,32,600/-.

10. The present appeal has been filed only on one ground. The appellants claimed that the deceased Raj Kumar Sahu was a Government employee and was earning a salary of about ₹28,370/- per month. To that effect, the salary certificate i.e. Ext.7 was also produced. In spite of that, the Tribunal notionally held the income of the deceased to be ₹7,000/- per month. The Tribunal gave the reasoning that Ext.7 was not proved as because the claimants did not examine the person who issued Ext.7.

11. The learned counsel Mr. Barbhuiya submits that the Tribunal erred in arriving at the aforesaid opinion. According to Mr. Barbhuiya there is no doubt that the deceased was working as an Assistant Enforcement Inspector and naturally, his monthly income would be more than ₹7,000/-.

12. *Per contra*, Ms. Choudhury has submitted that simple production of Ext.7, salary certificate, before the Tribunal would not prove the monthly income of a person. In order to prove her contention, Ms. Choudhury relied upon a judgment of the Supreme Court that was delivered in *Sayed Basheer Ahamed and Ors. Vs. Mohd. Jameel and Ors.*, reported in (2009) 2 SCC 225. Paragraph 21 of the said judgment is

quoted as under:

“21. In the instant case, the main grievance of the appellant is that the High Court erred in reducing the monthly income of the deceased from Rs 7000 to Rs 4000. More so, when the claim of the appellants was that the deceased was earning about Rs 20,000 per month. It needs little emphasis that insofar as the question of earnings of the deceased is concerned, the onus lies on the claimants to prove this fact by leading reliable and cogent evidence before the Tribunal. A bare assertion in the claim petition in that behalf is not sufficient to discharge that onus.”

13. I have considered the submissions made by the learned counsel of both sides.

14. In the case in hand, the salary certificate i.e. the Ext.7 was only produced before the Tribunal. But it was not proved as required by law. In *Sayed Basheer Ahamed* (supra), it is laid down that the onus lies on the claimants to prove the actual income of the deceased by leading reliable and cogent evidence before the Tribunal. A simple assertion that the deceased earned ₹28,370/- per month, is not sufficient to discharge that onus.

15. I have found that the learned Tribunal has arrived at a correct finding. The impugned judgment and award requires no interference of this Court.

16. Under the circumstances, the appeal is found to be devoid of merit and stands dismissed accordingly.

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JUDGE

Comparing Assistant