



IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

KOHIMA BENCH

MAC Appeal No. 02/2022.

NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED AND HEAD OFFICE AT DIMAPUR IN
THE STATE OF NAGALAND.

.....APPELLANT

VERSUS

1. ANARUL ISLAM
S/O LATE IDRISH ALI, R/O TULI TOWN, A.M. ROAD,
MOKOKCHUNG, NAGALAND.
2. ANOWARA BEGUM
W/O LATE IDRISH ALI, R/O TULI TOWN, A.M. ROAD,
MOKOKCHUNG, NAGALAND.
3. MD. AZAHARUL ISLAM
S/O LATE IDRISH ALI, R/O TULI TOWN, A.M. ROAD,
MOKOKCHUNG, NAGALAND.
4. AFRUZA BEGUM;
D/O LATE IDRISH ALI, R/O TULI TOWN, A.M. ROAD,
MOKOKCHUNG, NAGALAND.
5. SHRI CHARANJIT KAUR,

C/O LATE AMRIT SINGH, SANTIPUR,
WARD NO. 14, P.O. KHELMATI, LAKHIMPUR
[OWNER OF THE VEHICLE NO. AS 07-C-4173 (CRANE)]

6. SHRI PRAHLAD SONOWAL,
S/O PRAFULLA SONOWAL;
R/O – VILLAGE-BALIJAN-KEKURI, DHAKUAKHANA
DISTRICT - LAKHIMPUR ASSAM.

..... RESPONDENTS.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the appellant	:-	Mr. Phoseko Pfotte,
Advocate for the respondent No.1 to 4	:-	Mr. B.N. Sharma
Advocate for the respondent No.5 & 6	:-	Ms. Khriezo Kirha

Date of Hearing :- 21.11.2023

Date of Judgment :- 19.01.2024.

JUDGEMENT AND ORDER

Heard Mr. Phoseko Pfotte, learned counsel for the appellant.
Also heard Mr. B.N. Sharma, learned counsel for the respondent Nos.
2 to 4; and Mr. Ms. Khriezo Kirha, learned counsel for the respondent
No. 5 & 6.

2. In this appeal, under Section 173 of the Motor Vehicles Act, the appellant –New India Assurance Company Limited has put to challenge the correctness or otherwise of the judgment and order, dated 31.07.2019, passed by the learned member, Motor Accident Claims Tribunal, Mokokchung, Nagaland in MAC Case No.16/2018.

3. It is to be noted here that vide judgment and order dated 31.07.2019, the learned Tribunal has directed the appellant to pay a sum of Rs.8,87,500/- to the respondent Nos.1 to 4.

4. The background facts, leading to filing of this revision petition, are briefly stated as under:-

“On 23.05.2018, at about 12 noon, while Idrish Ali, since deceased, was returning Lakhimpur and reached Khelmati Sriram Hotel, then one vehicle bearing registration No. AS-07/C-4173(Recovery Van), driven by its driver, in rash and negligent manner, knocked him down. As a result, Idrish Ali sustained grievous injuries on his person and he was taken to Lakhimpur Civil Hospital, from where he was referred to Guwahati, but he succumbed to his injuries on the way. Thereafter, the claimants have filed one claim petition before the learned Motor Accident Claims Tribunal, Mokokchung, Nagaland and the learned Tribunal has registered a case, being MACT Case No. 16/2018, and thereafter issued notice to the respondents, the appellant and the owner of the vehicle, and accordingly, they have entered appearance before the learned Tribunal and thereafter, hearing both the parties the learned Tribunal has ordered the

appellant to pay a sum of Rs. 8,87,500/- along with the interest of 9% per annum, to the claimants, vide the impugned judgment and award, dated 31.07.2019, from the date of filing the claim petition i.e. 29.06.2018.”

5. Being highly aggrieved, the appellant has preferred the present appeal contending to set aside the impugned judgment and order dated 31.07.2019, passed by the learned Motor Accident Claims Tribunal, Mokokchung, Nagaland in MAC Case No.16/2018, and to allow the appeal on the following grounds:-

- [i] That, the learned Tribunal has passed the impugned award without considering the basic requirement of Motor Vehicle Act as prescribed under section 166 of the said Act pertaining to the fault liability;
- [ii] That, the learned Tribunal had failed to take into account that the claimants have failed to adduce any cogent evidence in respect of income of the deceased;
- [iii] That, the learned Tribunal also failed to take into account that the claimant No.1 is 35 years old and that the learned Tribunal ought to have deducted 1/3rd from the total income of the deceased;
- [iv] That, the learned Tribunal had failed to consider the fact that the claimants have failed to establish the fault of the driver and as such determining the quantum of compensation is arbitrary and liable to be quashed;

- [v] That, the learned Tribunal had miscalculate the age of the deceased as 62 years, which ought to have been 69 years and on that count the multiplier applied ought to have been 5, instead of 7;
- [vi] That, the learned Tribunal has taken consideration of the age of the deceased while selecting the multiplier 16, but it ought to have been 15; and
- [vii] That, the learned Tribunal had awarded a sum of Rs.30,000/ under the head of pain and suffering which is not contemplated under the Act except, however, loss of estate, loss of consortium and funeral expenses;
- [viii] That, learned Tribunal had awarded interest @ Rs.9% per annum, which is clear violation of the decision of Supreme Court in the case of **Sarala Verma vs. State of Delhi Transport Corporation & Anr.**, reported in **(2009) 6 SCC 121**;

6. Mr. Pfotte, learned counsel for the appellant reiterating the grounds mentioned herein above and relying upon the aforementioned case law, submits that the impugned judgment and award dated 31.07.2019, passed by the learned Motor Accident Claims Tribunal, Mokokchung, Nagaland in MAC Case No. 16/2018, suffers from manifest illegality and the same failed to withstand the legal scrutiny and therefore, it is contended to allow the petition, by setting aside the aforesaid impugned judgment and award. Mr. Pfotte has referred following case laws to bolster his submission:-

- (i) Sarala Verma (Smti) And Another vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121,
- (ii) National Insurance Company Limited vs. Pranay Sethi & Others, : (2017) 16 SCC 680,
- (iii) Smti Upai Bala Devi @ Kumhar @ Majhi & Others vs. Oriental Insurance Company and Another, 2017 (2) T.A.C.281 (Cal),
- (iv) Oriental Insurance Company vs. Meena Variyal & Ors. AIR 2007 SC 1609,

7. On the other hand, Mr. B.N. Sharma, learned counsel for the respondent Nos.1 to 4 submits that the impugned award suffers from no illegality or infirmity requiring any interference of this Court. Mr. Sharma further submits that the learned Tribunal, after considering all the facts and circumstances, has determined the quantum of compensation, which is in accordance with law. Mr. Sharma also submits that there are sufficient materials on the record to show that the offending vehicle was being driven in rash and negligence manner, which caused the death of the deceased and there is no cross-examination on that point. Mr. Sharma also submits that there is no dispute regarding the income of the deceased and that the wife is the best person to say the age of the deceased. Mr. Sharma also submits that parental consortium is provided in the case of **Naggapa vs. Gurdiyal Singh & Ors. : (2003) 2 SCC 274** and as such the learned Tribunal has not committed any illegality in awarding the compensation under the said head, and therefore it is contended to dismiss the appeal with costs.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through memo of appeal as well as the grounds mentioned therein and also gone through the impugned judgment and order dated 31.07.2019, and also the case laws referred by Mr. Pfotte, learned counsel for the appellant.

9. It appears that the learned Tribunal, while deciding the claim petition has framed following issues:-

[i] Whether the deceased died out of accident dated 23.05.2018 due rash and negligent driving of the vehicle No. AS-07-C/4173 (Crane)?

[ii] Whether at the material time of accident the offending vehicle was possessing all valid and effective documents including driving licence as per law?

[iv] Whether the claimants are entitled to any compensation? If yes, what amount, payable by whom?

10. Further, it appears that after hearing both the parties and after perusal of the documents, the learned Tribunal has decided all the issues in favour of the claimant. It also appears that while deciding the issue No. 1, learned Tribunal has arrived at the finding that the vehicle was driven in rash and negligent manner, resulting death of the deceased.

11. Having carefully gone through the evidence on the record, I find that the claimant (P.W.1), in his evidence categorically stated that on the fateful day his father was returning from Naoboicha, after

depositing some money with a view to go to attend Haj pilgrim, and while his father reached Khelmati of North Lakhimpur, in front of Sriram Hotel, the driver of the offending vehicle, all of a sudden, turned the vehicle to the Garage without looking the pedestrian and knock down his father with great force. As a result, his father sustained grievous injuries and he was shifted to North Lakhimpur Civil Hospital, from where he was referred to Guwahati, and on his way to Guwahati his father succumbed to the injuries. The evidence so adduced by the P.W.1 remained unrebutted in cross-examination.

12. The evidence of the P.W.1, in respect of rash and negligent driving of the offending vehicle, finds corroboration from the evidence of P.W.2, the wife of the deceased. Further, it appears that in respect of the said accident a Police Case -(Exhibit-P 2), being North Lakhimpur P.S. Case No. 557 of 2018, under sections 279/304(A) IPC has been registered against the driver of the offending vehicle.

13. Thus, rash and negligent driving, on the part of the driver of the offending vehicle, stands established from the evidence adduced by the claimant before the learned Tribunal. And as such it cannot be said that the learned court below had arrived at such a finding without any evidence or materials placed before it. Though, the learned counsel for appellant submitted that the claim petition under section 166 M.V. Act is maintainable only on fault liability on the part of the driver, yet, the same has been successfully established herein this case. And as such the decision in **Smti Upai Bala Devi @ Kumhar @ Majhi & Others**

(supra) so referred by Mr. Pfotte would not advance the case of the appellant.

14. That, as regard the income of the deceased, the evidence of the claimant/P.W.1 reveals that the monthly income of the deceased was Rs.25,000/-, and the deceased used to earn the same by selling fish and other agricultural product and that he had one big pond, measuring 5 Bighas and agricultural land of 20 Bighas. This piece of evidence of P.W.1 remained undisputed in cross-examination. P.W.2-Smti. Anwar Begum is the wife of the deceased and she also corroborated the evidence of P.W.1 in respect of the income of the deceased. She also categorically stated that the monthly income of the deceased was Rs.25,000/-. It is however, a fact that no documents were produced before the learned Tribunal as regard the income of Rs.25,000/- by the deceased. But, I find no ground to disbelieve the oral testimony of the P.W.1 and 2 who are the son and wife of the deceased. Therefore, it cannot be said that the learned Tribunal had committed any illegality while accepting the oral testimony of the P.W.1 and 2 in respect of income of the deceased.

15. That, while assessing the compensation the learned Tribunal has held that the age of the deceased was 62 years. The learned counsel for the appellant submits that the age of the deceased was reflected as 69 years in the Form -54. And on such count the multiplier to be applied ought to have been 5 instead of 7 which the learned Tribunal had applied. On the other hand, the learned counsel for the respondent submits that the learned Tribunal has assessed the age of

the deceased on the basis of evidence of P.W.1 and 2, who are the son and wife of the deceased and wife is the best person to say the age of her husband. And as such the Tribunal has committed no wrong while assessing the age of the deceased as 62 years.

16. The submission of learned counsels of both sides received due consideration of this court. And it is a fact that the age of the deceased was recorded in the Accident Information Report of Traffic Branch of North Lakhimpur Police Station as 69 years. But, P.W.1 and 2 both have stated categorically that the age of the deceased was 62 years at the material time of accident. And the same remained unrebutted in cross-examination. As such, to the considered opinion of this court the learned Tribunal has correctly assessed the age of the deceased as 62 years.

17. That, as regard the submission of Pfoote, the learned counsel for the appellant, in respect of awarding a sum of Rs.30,000/- under the head of pain and suffering, which is not contemplated under the Act except, however, loss of estate, loss of consortium and funeral expenses, this court finds that in view of the decisions of a Constitutional bench of Hon'ble Supreme court in **Pranay Sethi & Ors.** (supra) has revisited the practice of awarding compensation under conventional heads and held that the figures on conventional heads, namely, loss of estate, loss of consortium, funeral expenses should be Rs.15,000/-, Rs.40,000/-, and Rs.15,000/- respectively and in span of three years the same should be enhanced @ 10%.

18. Thus, it appears that there is substance in the submission of Mr. Pfotte, the learned counsel for the appellant that except the head aforesaid no other head is contemplated and as such awarding of compensation @ Rs.30,000/- under the head of pain and suffering is not at all tenable. Though Mr. Sharma, the learned counsel for the respondent/Claimant, referring to a decision in **Naggapa** (supra) submits that the parental consortium can be granted and as such the learned Tribunal has not committed any illegality in awarding the compensation, yet we are unable to endorse such a view in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), and we are of the view that the learned tribunal has committed error in awarding compensation under the head of Parental Consortium and the same is not contemplated.

19. Thus, having considered the submissions learned counsel for both the parties, and also considering the facts and circumstances on the record, now an endeavour will be made to assess the quantum of compensation here in this case.

20. As discussed herein above, the evidence of the claimant- P.W.1, and 2 that the age of the deceased at the material time of accident was 62 years.

21. It also appears that at the time of accident the deceased left behind three sons and one daughter and his wife. The evidence of the P.W.1 reveals that his age, at the time of filing of evidence in affidavit, was 35 years and as such he is a major and cannot be dependent upon the income of the deceased. Mr. Pfotte, the learned counsel for

the appellant has rightly pointed this out and we find substance in the same. As P.W.1 is admittedly major, he cannot be a dependent upon the income of the deceased.

22. Admittedly, the claimants have not produced any documentary proof regarding the income of the deceased. But, the P.W.1 and 2 categorically testified that the income of the deceased was @Rs. 25,000/ per month. The same remained unrebutted in cross-examination. But, the learned Tribunal has assessed the monthly income of the deceased @ Rs.12,500/- per month, considering the fluctuation of fishery business. Therefore, the income of the deceased, as indicated by the learned Tribunal, cannot be said to be unreasonable. And having regards to the given facts and circumstances on the record, we are inclined to accept the same.

23. Having decided the age, avocation and income of the deceased now, the quantum of compensation, which the claimant is entitled to, is being assessed as under:-

23.1 Since the age of the deceased, at the relevant time of accident, was 62 years, and he was self-employed, in view of the law laid down by the Hon'ble Supreme Court in **Pranay Sethi** (supra) there shall be no addition of future prospect.

23.2 The deceased was 62 years old and at the time of accident and death and he left behind his three sons and one daughter and his wife, who were dependent on his income. But, P.W.1, who is the claimant and elder son of the deceased was 35 years at the time of filing of his affidavit in evidence. Therefore, we would like to deduct

1/4th of his total income towards his personal and living expenses, following the principle laid down in **Sarala Verma(supra)**. Thus, after deduction of 1/4th of the amount from the total income, the amount would be- Rs.12,500/- - Rs.3125/- = **Rs.9375/-**. And in view of the principle laid down in Sarala Verma's case (supra) and in National Insurance Co. Ltd. Vs. Pranay Sethi and Others (supra), the multiplier to be applied here in this case would be 7 since the deceased was 62 years old at the material time of accident and death. Thus, the total amount would be Rs.9375 x 12 x 7 = **Rs.7,87,500/-**. Besides, there should be an addition of Rs.15,000/- towards loss of estate and further, there should be addition of Rs.15,000/-, towards the funeral cost and Rs.40,000/- towards consortium, and these amounts have to be increased by 10% in every three years. Since three years elapsed in the meantime, we would like to add the amount under the said heads @ 10%. Thus, the amount towards loss of estate would be =Rs,15,000/- + Rs.1500/- = **Rs.16,500/-**, funeral cost would be = Rs,15,000/+Rs.1500/ = **Rs.16,500/-**, and loss of consortium would be Rs,40,000/- + Rs.4,000/- =**Rs.44,000/-**, in view of the principle laid down in **Pranay Sethi and Others** (supra). Further, we would like to add a sum of **Rs.25,000/-** as the cost of litigation as per judgment of the Hon'ble Supreme Court in **Boloram Prasad Vs. Kunal Saha & others (2014) 1 SCC 384**. Thus, the total amount of compensation is assessed at Rs.8,89,500/- (Rupees eight lacs eighty nine thousand five hundred) only, and to our considered opinion this amount will be "just, equitable and proper amount of compensation" here in this case. It also provided that the

said amount will carry interest at the rate of 9% p.a. in view of the law laid down in the case of **Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481**. The learned Tribunal also awarded the interest @ 9% per annum. Though Mr. Pfotte, the learned counsel for the appellant had raised objection in awarding interest @ 9% yet we find no substance in the same.

23.3 Thus, the total amount of compensation, which the claimants are entitled to, after application of the principle laid down by the Hon'ble Supreme Court in **Pranay Sethi and Others**(supra), **Sarala Verma's** case (supra), and in **Boloram Prasad's** (supra) is shown as under:-

Sl.No.	Heads	Calculation
(i)	Business	Rs.12,500/ per month
(ii)	No addition as future prospect since the deceased was 62 years old	Rs.12,500/
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased=	Rs. 12,500/ - Rs. 3125/ = Rs.9375/.
(iv)	Compensation after multiplier is 7 is applied=	Rs.9375 x 12 x 7 = Rs.7,87,500/.
(v)	Loss of estate	=Rs.16,500/
(vi)	Funeral cost	=Rs.16,500/
(vii)	Loss of consortium	=Rs.44,000/
(viii)	Cost of litigation	=Rs.25,000/
	Grand Total	=Rs. 8,89,500/,

24. Admittedly, the vehicle bearing registration No. AS-07-C/4173, was insured with the appellant Insurance Company, vide Policy No. 53010431170200001177, (Exhibit-P/10), and it was valid from 30.06.2017 till 29.06.2018. The accident took place on 23.05.2018, and on that day the policy was in force. It also appears from the Driving Licence, (Exhibit-P/7), that the driver of the offending vehicle – namely, Prahlad Sonowal had possessed a valid driving licence, bearing DL NO. AS-07 19940024395, and it was valid up to 16.02.2021. This being the position, it is the appellant Insurance Company, who is liable to pay the aforementioned amount of compensation i.e. **Rs.8,89,500/-**, (Rupees eight lacs eighty nine thousand five hundred) only, to the claimants.

25. In the result, I find no merit in this appeal and accordingly, the same stands dismissed. However, the amount of compensation, which the claimants are entitled to, stands is modified to the extent indicated above. It is provided that the appellant Company shall pay the aforesaid amount to the claimant/respondent, within a period of one month from today, after adjusting the amounts already paid by it. Send down the record of the learned Tribunal forthwith with a copy of this judgment and order. The parties have to bear their own costs.

JUDGE

Comparing Assistant