

GAHC020008012022



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

**Case No. : MACApp./10/2022**

THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD  
DIVISIONAL OFFICE- JORHAT, ASSAM

VERSUS

SMTI. NIVA DAS AND 2 ORS  
W/O LATE SIRADA DAS, R/O YIMYU WARD, MOKOKCHUNG,  
NAGALAND

2:SHRI. TARUN DAS  
D/O LATE SARITA DAS  
R/O YIMYU WARD  
MOKOKCHUNG  
NAGALAND

3:SHRI. BENU GOPAL  
S/O KOSHEWAL DUTTA  
S/O BORGURI GAON- OWNER CUM-DRIVER- AS03X071

**Advocate for the Petitioner** : MOAJUNGLA,  
AKETOLI,YANGPILA,SETALU,THUYEKHRULU

**Advocate for the Respondent** : TONGPOK PONGENER, AKUM JAMIR,S REOPI,M.  
ATHAI,TONGPANG JAMIR,LAKNYEI PHOM,T ATALU CHIZO,JENDEMO  
TSANGLAO,M. DIVINA THERIE,ASEN S LONGKUMER,VIKEHIENUO  
VIMERHA,AKUM AIER

Date of hearing : 20.08.2024.  
Date of Judgment : 12.09.2024

**BEFORE  
HON'BLE MR. JUSTICE BUDI HABUNG**

**:: JUDGMENT AND ORDER ::  
[CAV]**

Heard Ms. Moajungla, learned counsel for the appellant. Also heard Mr. Tongpok Pongener, learned counsel appearing on behalf of the respondent nos. 1 and 2.

2. By filling this MAC appeal under section 173 of the Motor Vehicles Act, 1988 the appellant has put to challenge the impugned judgment and order dated 31.05.2022 passed by the learned Member, MACT, Mokokchung, Nagaland in MAC Case No. 09/2020 and the order dated 29.09.2022 whereby, and by which the learned Tribunal has granted compensation of Rs. 8,05,000/- as final award in favour of the claimant/respondent herein and directed the opposite party/Insurance Company (appellant herein) to pay awarded amount along with 9% interest per annum from the date of filing of the claim application.

3. This case has arisen out of the motor accident claim petition filed by the claimants/respondents herein before the learned Member, MACT, Mokokchung, Nagaland seeking grant of compensation for the death of their mother, late Sirada Das who died due to the hit of the offending motorcycle bearing

registration No. AS03-X-0711 near NH-37, Jorhat, Assam on 06.02.2020 at 6 pm. The accident occurred due to the rash and negligent driving of the driver of the motorcycle Shri Banu Gopal Das.

4. The claim case was contested. On completion of trial, the learned Tribunal by its judgment and order dated 31.05.2022 has awarded the compensation amount of Rs. 10,75,000/- in favour of the claimant/respondent herein and directed the opposite party/ National Insurance Company to pay the compensation amount within 30 days from the date of the said order failing which an interest at the rate of 9% per annum would be added to the awarded amount w.e.f. the date of filing of the claim petition.

5. Being aggrieved, the appellant filed a review petition praying for modification of the impugned judgment and award dated 31.05.2022. The said Review petition was partially allowed on 29.09.2022. Accordingly, a final compensation award was granted in favour of the claimant at Rs. 8,05,000/- and directed the opposite party/Insurance Company (appellant herein) to pay awarded amount along with 9% interest per annum from the date of filing of the claim application.

6. Being further aggrieved by the impugned judgment and award of the Tribunal dated **31.05.2022** and the review order dated **29.09.2022** in MACApp./9/2020, the appellant has filed the instant appeal for reduction of the quantum of compensation amount.

7. However, at the very outset, the learned counsel for the appellant made it clear that the factum of the instant case is not disputed. She has further submitted that the appellant has a specific prayer on the following heads of the compensation amount. They are:

- (i) The income of the deceased shown as Rs. 15,000/- is in the higher side.
- (ii) The deduction of two dependent members should be  $\frac{1}{3}$ th instead of  $\frac{1}{4}$ <sup>th</sup> since there are only 2 dependents of the deceased person.
- (iii) That the interest should be as per the present bank interest rate instead of 9% per annum.

8. The learned counsel for the respondent/claimant submits that the deceased was a businesswoman at the time of her death and she was earning Rs. 15,000/- (Rupees fifteen thousand) per month. The learned counsel for the respondent/ claimants submitted that there is no any logic or any documents produced by the appellant to show that the deceased was not earning Rs. 15,000/- (Rupees Fifteen thousand) per month; therefore, there is no reason for reduction of the said amount from the monthly income of the deceased.

9. With regards to the interest, the learned counsel for the respondent submitted that the interest at the rate of 9% per annum is as per the present banking interest rate and submitted that there is a catena of decision of the Hon'ble Supreme Court

and various High Court which came after *Sarla Verma* decision whereby the 9% interest per annum on the compensation amount granted by the Tribunals have been upheld. Hence, prays for upholding the same.

10. The learned counsel for the appellant has also fairly admitted that they could not produce any documents against the income of the deceased that he was not earning Rs. 15,000/- per month and the latest decision whereby the interest has been given lesser than 9% per annum.

11. However, with regards to the dependency, the learned counsel for the claimant/ respondent herein, fairly submitted that as there are only two dependents of the deceased, he has no objection if the deduction is made at  $1/3^{\text{rd}}$  instead of  $1/4^{\text{th}}$ .

12. In view of the above, both the parties have agreed for modification of the original award. The mutually agreed terms are as follows:

(i) Deduction for the dependent members shall be  $1/3^{\text{rd}}$  instead of  $1/4^{\text{th}}$ , however, other points raised by the appellant in the instant appeal as agreed upon by the parties shall remain unchanged. Therefore, the amount of deduction for the loss of earning of the deceased comes to the tune of  $10,000 \times 12 \times 5 = 6,00,000/-$ ,  $1/3^{\text{rd}}$  to be deducted for personal expenses and multiplier of 5 is applied. If so, Rs. 6,00,000/- is to be considered as loss of future earning of the deceased. Thus, the claimant now, would be entitled to a compensation as worked out herein:

| Sln.  | HEADS                                             | INCOME                           |
|-------|---------------------------------------------------|----------------------------------|
| 1.    | Income                                            | Rs. 15,000/-                     |
| 2.    | 1/3 deducted as personal expenses of the deceased | Rs. 15000-5000 = Rs. 10,000/-    |
| 3.    | Compensation after multiplier of 5 is applied     | Rs. 10,000x12x5 = Rs. 6,00,000/- |
| 4.    | Loss of care and guidance                         | Rs. 50,000/-                     |
| 5.    | Loss of estate                                    | Rs. 50,000/-                     |
| 6.    | Funeral Expenses                                  | Rs. 30,000/-                     |
| Total |                                                   | Rs. 7,30,000/-                   |

13. On careful consideration of the submission made by the learned counsel for the parties and having examined the records and also the proposed modification of the awarded amounts which has been mutually agreed upon by both the learned counsel for the parties, this Court is satisfied that the parties have reached to a consensus for modification of the quantum of deduction of the award.

14. Having taken into account the aforementioned proposed modification, this Court hereby modify the quantum of compensation. The details of the modified compensation amount and its distribution are as follows:

| Slno. | HEADS                                             | INCOME                           |
|-------|---------------------------------------------------|----------------------------------|
| 1.    | Income                                            | Rs. 15,000/-                     |
| 2.    | 1/3 deducted as personal expenses of the deceased | Rs. 15000-5000 = Rs. 10,000/-    |
| 3.    | Compensation after multiplier of 5 is applied     | Rs. 10,000x12x5 = Rs. 6,00,000/- |
| 4.    | Loss of care and guidance                         | Rs. 50,000/-                     |
| 5.    | Loss of estate                                    | Rs. 50,000/-                     |
| 6.    | Funeral Expenses                                  | Rs. 30,000/-                     |
| Total |                                                   | Rs. 7,30,000/-                   |

15. Accordingly, the appellant/National Insurance Company Limited is directed to pay a compensation of Rs. 7,30,000/- (Rupees Seven Lakhs Thirty Thosuang) only as final awarded amount to the claimant/respondent herein along with interest at the rate of 9% per annum from the date of filing of the claim petition till its realization. The payment shall be made within 60 (sixty) days from the date of receipt of a certified copy of this order.

16. The appeal is partially allowed to the extend as indicated above and the judgment and award of the Tribunal dated 31.05.2022 and the review order dated 29.09.2022 in MAC Case no. 09/2020 stands modified accordingly.

17. With the above observation, the appeal is disposed of.

18. The records be sent back.

**JUDGE**

**Comparing Assistant**