GAHC010280162018

2026:GAU-AS:8412

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

Case No. : MACApp./524/2022

SRI SARALA KALITA AND 2 ORS
W/O LATE DILIP KALITA, RESIDENT OF VILLAGE ALOKPUR, PO MILANPUR, WARD NO. 10 DIST NALBARI, ASSAM 781337

2: SRI DANJIT KALITA
S/O LATE DILIP KALITA

RESIDENT OF VILLAGE ALOKPUR

PO MILANPUR
WARD NO. 10
DIST NALBARI
ASSAM
781337

3: SRI BRAJEN KALITA.
S/O LATE DILIP KALITA

RESIDENT OF VILLAGE ALOKPUR

PO MILANPUR
WARD NO. 10
DIST NALBARI
ASSAM
78133

VERSUS

THE NATIONAL INSURANCE CO. LTD AND ANR
A PUBLIC SECTOR UNDERTAKING HAVING ITS REGISTERED OFFICE AT KOLKATTA AND REGIONAL OFFICE AT GS ROAD BHANGAGARH, GUWAHATI INSURER OF THE VEHICLE

2:SRI RAM JIBAN SARKAR

S/O NONI GOPAL SARKAR
VILLAGE CHOWRAGURI PO GORAIMARI
DIST BONGAIGAON
ASSSAM
OWNER CUM DRIVER OF THE OFFENDING VEHICL

Advocate for the Petitioner : MR S C PANDIT,

Advocate for the Respondent : MS. R D MOZUMDAR, MS. C MOZUMDAR,MR. S P SHARMA

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates for the appellants : Mr. S.C. Pandit

Advocate for the respondents : Ms. R.D. Mozumdar

Date on which judgment is reserved : NA

Date of pronouncement of judgment : **12.06.2026**

Whether the pronouncement is of
the operative part of the judgment : Full judgment.

Whether the full judgment has been
pronounced : Yes.

JUDGEMENT AND ORDER (ORAL)

The instant appeal under Section 173 of the M.V Act 1988, has been preferred by the Claimant in MAC case 275 of 2015 praying for enhancement of compensation awarded in the judgment and award dated 04.01.2017 passed by

the MACT Nalbari.

Heard Mr. S.C. Pandit, learned counsel for the appellant. Also heard Ms. R.D. Mozumdar, learned counsel for the respondent/Insurer Nos. 1.

2. The facts leading to the filing of the instant appeal is that on 10.10.2015 at about 8:20 P.M the appellant's husband/father Dilip Kalita was proceeding from Nalbari Ganesh Mandir towards his residence at Alokpur through NH-31 riding his motorcycle and upon reaching in front of the Nalbari S.P's residence, suddenly the offending Scorpio vehicle B/R No.AS-19H/2191 coming from the same direction in a rash and negligent manner hit him from behind causing fatal injuries. After the accident the police took him to SMK Civil hospital Nalbari wherein after first aid he was referred to GMCH Guwahati but he was taken to Narayana Super Speciality Hospital, Amingaon wherein he succumbed to his injuries. Soon after the accident the O.C of Nalbari Police Station Registered P.S Case No.711/2015 u/s 279/304 (A) IPC and started investigation.

3. The wife and children of the deceased jointly filed a claim petition under Section 166 of the MV Act which was registered as MAC Case No. 275 of 2015. The respondents herein entered appearance and filed their written statements.

4. After hearing the parties, the learned Tribunal disposed of the MAC Case No. 275 of 2015 by Judgment dated 04.01.2017 awarding Rs.25,36,340/- (Rupees twenty-five lakhs thirty-six thousand three hundred forty) only. The insurer/Respondent No.1 was directed to pay the said amount of compensation to the claimant within 60 days as from the date of the judgment, failing which interest will be calculated at 6% per annum on the awarded amount from the date of filing of the claim application till realization.

5. Being aggrieved by the impugned judgment and award dated 04.01.2017 in MAC Case 275/2015, the appellant herein has preferred the instant appeal on the ground that the learned Tribunal had committed an error by deducting 30% from the income of the deceased as income tax amounting to Rs.10,12,003/- which is illegal and perverse in as much as it was done on a mechanical assumption that the entire income attracts 30% tax.

6. Another ground that the appellant has taken herein is that the interest on the awarded compensation should have been given from the date of filing of the claim petition till the date of payment without imposing any condition, but the learned tribunal had directed the National Insurance Company to make payment within 60 days from the date of the judgment and order, failing which, 6% interest on the awarded amount would have to be paid. Imposing such a condition is also illegal and deserves to be set aside and further the interest of 6% may be modified and increased to 9%.

7. Learned counsel for the appellant relies on the case *of* ***Vimal Kanwar and others Vs. Kishore Dan and others, (2013) 7 SCC 476,*** and Judgment and Order dated 11.02.2022 in ***MACApp./225/2018, Smti. Ranjita Singh and 2 others Vs. Lal Chand Sharma and 5 Ors*** in support of his submissions. By relying on the above judgments, the learned counsel for the appellant submits that the Hon'ble Supreme Court in the case of Vimal Kanwar Supra held that, "*while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under section 192(1) of the income tax Act 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment deduct income tax on*

estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source (TDS for short)". The Supreme Court said that, "*when the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the income tax act 1961. Therefore, in case the income of the victim is only from "salaries", the presumption would be that the employer under Section 192(1) of the Income tax act 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee".* The Supreme Court further went to hold that the High Court was wrong in deducting 20% from the salary of the deceased towards income tax, for calculating the compensation. It is submitted by the learned counsel for the appellant that the coordinate bench of this Court in MACApp./225/2018 has also followed the principle of law laid down in the case of ***Vimal Kanwar (Supra).***

8. In view of the submission made herein above and the law as laid down in the case of Vimal Kanwar, learned counsel prays that the instant appeal may be allowed and the deduction of 30% as income tax by the learned Tribunal may be quashed and set aside. And consequently, the compensation amount may be enhanced.

9. On the other hand, the learned counsel for the respondent No.1/Insurer had resisted the submission of the appellants by relying on the case of ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, wherein the Supreme Court had held that when the annual

income is in taxable range, the words "actual salary" should be read as actual salary less tax. Learned counsel has also relied on the case of ***Shyamvati Sharma and Others Vs. Karam Singh*** and others reported in ***(2010) 12 SCC 378***. Learned counsel submits that in the case of Shyamvati Sharma the Supreme Court held that:-

"8. The submission of the respondents that the deduction of 30% from the salary is not warranted in view of the decision in Sarla Verma, is not sound. In Sarla Verma, the monthly salary of the deceased was only Rs.4004/- and the annual income even after taking note of future prospects was Rs.72072/-. The income was in a range which was exempt from tax, if the permissible deductions were applied. Therefore, this Court did not make any deduction towards income-tax. But this Court made it clear that where the annual income is in the taxable range, appropriate deduction should be made towards tax. In this case as the annual income has been worked out as Rs.2,48,292/-, appropriate deduction has to be made towards income-tax. The rate of income tax is a varying figure, with reference to taxable income after permissible deductions and the year of assessment. The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased".

10. In view of the above mentioned authorities, learned counsel for the respondent/Insurer submits that the claimants had not produced any documents before the tribunal to prove that the income tax was already deducted at source. In the absence of any evidence, the Tribunal has rightly deducted 30% towards income tax. Learned counsel further submits that in the case of ***Shyamvati Sharma (Supra)*** the annual income was Rs.2,48,292/- and it was

held that appropriate deduction has to be made towards income tax. In the instant case also the annual income of the deceased was Rs.2,99,436/- and therefore the deduction towards the income tax had to be made. Learned counsel therefore submits the instant appeal has no merit and should be dismissed.

11. This Court has duly considered the submission of the learned counsel for the parties and perused the pleadings and the trial court records.

12. The governing principle laid down in the case of ***Sarla Verma (Supra)*** and followed in later decisions is that where the deceased was a salaried employee and his income was in a taxable range, the tribunal should deduct actual income tax liability from the gross annual income before calculating loss of dependency. However, this Court is of the view that this principle does not mean that the Tribunal should proceed on the mechanical assumption that the entire income attracts 30% income tax. The deduction must be based on actual tax slabs applicable in the relevant year and admissible deductions. For a death which occurred in the year 2015, an annual income of Rs.2,99,436/- would ordinarily not attract tax anywhere near 30%. In fact, after considering the basic exemption limit and permissible deductions, if any evidence existed, the tax liability would have been either NIL or very modest. on the basis of deduction of actual tax liability, not a notional flat percentage.

13. The Supreme Court in the Case of ***Vimal Kanwar (Supra)*** which was decided in the year 2013 had also held that as per law, the presumption will be that the employer State Government at the time of payment of salary deducted income tax on the estimated income of the deceased employee from the salary.

14. In a recent decision of the Supreme Court in ***Manorma Sinha Vrs Oriental Insurance Company Ltd, 2025 INSC 1237/2025 Supreme (SC) 1818,*** it was held that the High Court's flat 30% deduction towards income tax was unwarranted and unrealistic. And that tax cannot be cut by guesswork and must follow the actual slab.

15. This Court has observed that the Insurer did not raise any objection or even suggested that the employer failed to deduct the TDS from the salary of the deceased. The Tribunal did not access the income tax on the basis of any materials as the deduction cannot be just guesswork but has to be calculated on the actual tax slabs applicable in the year 2015 and not any arbitrary percentage. In the absence of any evidence to the contrary, this Court holds that the salary of the deceased in the instant case should be taken without any deduction towards income tax. This Court however, does not interfere with the deduction of Rs.600/- and M.A, Rs.105/-as K.M.A and Rs.300/- as R.A. The compensation granted under other heads is also not interfered with.

16. In view of the above findings, the computation of compensation is re-calculated and awarded as follows:-

a) Loss of dependency:- Rs.33,73,344/-

b) Funeral expenses:- Rs.25000/-

c) pain and suffering:- Rs.25,000/-

d) loss of love and affection:- Rs.25,000/-

e) loss of consortium:- Rs. 1,00,000/-

Total Compensation **Rs,35,48,344**/- (Rupees thirty-five lakh forty-eight thousand three hundred forty-four)

17. In the result, the appeal is allowed with the above modification. The appellants are entitled to **Rs,35,48,344/- (Rupees thirty-five lakh forty-eight thousand three hundred forty-four)** only with interest @ 6% pa from the date of the filing of the claim petition till full and final realization. The respondent No.1/National Insurance Company Limited is directed to discharge the liability of the award within a period of 6(six) weeks from the date of receipt of this Order by depositing the awarded amount before the learned Tribunal. However, it is to be noted that the appellant/claimant shall not be entitled to interest for 424 days as directed by this Court vide order dated 17.08.2022 in I.A(Civil) No. 633 of 2019.

18. With the above modifications and directions, the appeal stands disposed.

19. The Registry to send back the TCR along with a copy of this Judgment.

JUDGE

Comparing Assistant