Item No. 2

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MAC. APP. No. 3 of 2019

The Divisional Manager National Insurance Co. Ltd. Thangal Bazaar, near Darmasala P.O. Imphal P.S. City P.S., Imphal-West Manipur Pin-795001

……. *Appellant*

- Versus –

1. Laishram Devakumar Singh aged about 60 yrs. f/o late L. Hemanta Singh.
2. Laishram Ongbi Bimola Devi aged about 56 yrs Mother late L. Hemanta Singh.
   ..... both resident of Ningthoukhong Ward No. 3 P.O. & P.S. Bishnupur, Bishnupur District, Manipur Pin-795126.

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3. Pintu Das S/O Gourango Das of Thangal Bazaar Alu Gali, P.O. Imphal P.S. City P.S. Imphal West, Manipur Pin-795001

…. *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

For the appellant	:	Mr. A. Deni Advocate
For the respondents	:	Mr. S. Joychandra, Advocate
Date of Order	**:**	**16.01.2020**

ORDER (ORAL)

[1] Heard Mr. A. Deni Sharma, learned counsel appearing for the appellant and Mr. S. Joychandra, learned counsel appearing for the respondents.

[2] The appeal has been filed by the Insurance Company challenging the award dated 18.03.2019 passed in Motor Accident Claim

Case No. 9 of 2016. The deceased in this case is a bachelor. Claimant No. 1 and 2 are father and mother respectively. The deceased, Laishram Hemanta Singh was said to be working as a Manager, Apol Tent House. On 16.06.2015 at about 6:30 pm, while he was walking on foot on the left side of Tiddim Road near State Bank of India (SBI) A.T.M. Booth, Ningthoukhong Bazar, a Maruti Van bearing Registration No. MN05A-3908 insured with the appellant insurance company, was driven in a rash and negligent manner by the driver and hit the pedestrian, Laishram Hemanta Singh who suffered serious injury on the head and was immediately taken to Bishnupur District Hospital. The doctors at Bishnupur District Hospital referred the injured person to JNIMS or RIMS hospital or well equipped Hospital. He was however admitted to Raj Medicity Hospital, North AOC vide MRD No. 15-09060 to the Department of Neuro Surgery. He was discharged on 17.06.2015. Thereafter, he was admitted to Shija Hospital & Research Institute, Langol being I.P. No. 405211 Unit Bed No. NICU-7. He was discharged on 04.07.2015 and referred to GNRC Hospital, Guwahati for further treatment. He was admitted to GNRC Hospital under MR No. SM/150705/0000002, visit I.D. IP/No. 150705/000002. He was again referred to Rahaman Hospital Pvt. Ltd., at Guwahati vide IPD No. 012935 OP-069629. On 13.07.2015, he was taken to Intensive Care Unit (ICU) in the said hospital where he died on 08.09.2015 at about 6:30. On the death, the parents claimed compensation filing the Motor Accident Claim Case No. 9 of 2016.

[3] According to claimants/parents, respondent No. 1 before the Tribunal is that the owner cum driver who drove the vehicle in a rash and negligent manner and caused the accident resulting in the death of the son on 08.09.2015, and this is evident on the basis of medical record. Therefore, the driver cum owner/respondent No. 1 and the insurer of the said Maruti Van/respondent No. 2 before the Tribunal are liable to compensate the claim. On that basis, the claim was pursued. It was further pleaded that the deceased Laishram Hemanta Singh was 30 years old and was working as Manager under Sunil Biswas, Proprietor, Apol Tent House and was drawing a sum of Rs. 14,000 per month. They claimed Rs. 25,00,000/- (Rupees Twenty Five Lakhs) only for the death of deceased Laishram Hemanta Singh, Rs. 3,00,000/- (Rupees Three Lakhs) only for mental agony, pain shocks and suffering, love and affection, besides compensation of Rs. 19,20,560/- (Rupees Nineteen Lakhs Twenty Thousand Five Hundred and Sixty) only for medical expenses. Though notice was served on respondent No. 1 and 2, the driver cum owner/respondent No. 1 failed to appear after filing of written statement. The insurance company entered appearance and filed their version. The Tribunal framed the following issues :

> ***"6. On pleadings, the following 4 (four) issues were framed:***
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> ***i) Whether the Laishram Hemanta Singh died due to a motor road accident dated occurred on 16-05-2015 at about 6:30 pm near at ATM Booth at Ningthoukhong Bazar, wherein he(i.e., deceased was knocked down while on the left side of the Tiddim road by a Maruti Van bearing Registration No. MN05A-3908 which was coming from Moirang side towards Bishnupur, if so whether the accident occurred due to rash and negligent driving of the driver of the Maruti Van?***

ii. Whether the Respondents are jointly and severally liable to pay compensation amount to the claimants for the death of Laishram Hemanta Singh in the said road traffic accident ?

iii. What would be just and appropriate compensation payable by the respondent to the Claimants?

iv. relief

To bring have their respective case, the claimants produced and examined 9 (nine) P.W.s and also tendered some documents, whereas, the respondents does not produced any witness and deposition of the DWs has been closed which I refer at it's proper place.

[4] The father of the deceased was deposed as P.W. No. 1, and he deposed about the accident and the nature of treatment given to his son till his death. P.W. No. 1 submitted the following exhibits Ext. A/1 to Ext. A/798. Most of the documents relate to medical expenditure, hospital, pharmacy and medicine etc. Ext. A/12 is the salary certificate of Laishram Hemanta Singh; Ext. A/4 is the post mortem report; Ext. A/3 is the injury report; Ext. A/2 is the FIR copy. Only one question was asked by the Insurance Counsel as to the employment of the deceased which suggestion was denied by P.W. No.1/father.

[5] One Ngasepam Gunajit Singh was appointed by the Presiding Officer, Motor Accident Claims Tribunal, Manipur at Lamphelpat by order dated 05.10.2018 to examine witnesses, namely :

(i) Dr. K.B. Choudhury, Assistant Professor, GMC, Guwahati, Assam.

(ii) Medical Superintendent of GNRC, Guwahati Assam.

(iii) Dr. Manas Jyoti Mahanta, Medical Superintendent of Rahaman Hospital, Guwahati, Assam.

(iv) Owner/Proprietor of APOL Tent House, Guwahati Assam.

(v) Nazrui Ali, Dispur Police Station, Assam

[6] He has recorded statement from all these persons as part of the record. P.W. No. 2, Sunil Biswas, Proprietor of Apol Tent House was wrongly recorded as P.W. No. 7. In his chief examination, he has clearly stated that the deceased was employed under him for the period specified and also till the death. But at the time of death, he was on leave. He also acknowledged the signature on the document as the proprietor of the firm. The suggestion made by the counsel for respondent No. 2/insurance company that the deceased was not working in the Apol Tent House after December 2014 was denied. The suggestion of the counsel that the deceased did not receive salary after December 2014 was also denied. P.W. No. 3, Dr. Kan Bapu, in his deposition, clearly states that the cause of death is due to head injury and the same was corroborated on the Ext. A/4 post mortem report and Ext. A/9, Autopsy Certificate. The cross examination of the P.W. No. 3 has been wrongly recorded by the Commissioner because both the sentence is incomplete and the question has not been properly recorded. Therefore, the reply has also been recorded wrongly. The suggestion was that the deceased did not die due to vehicular accident and that was denied by the witness. But recording of the commissioner is totally incorrect and inconsistent with the nature of question and answer. This error

in recording of cross examination and the reply is reflected in several portions of the deposition.

[7] The Trial Courts are directed to appoint Advocate Commissioner of good standing and caliber who have experience in trial cases to perform the duties as a Commissioner. If a person who is not conversant with the trial procedure is appointed as a Commissioner, it will lead to a situation where recording of examination in chief and cross examination is wrongly made and as a result, it creates more confusion in the case as is seen in the present claim Tribunal case. In every case of cross examination of witness, the question has to be first written and reply has to be also recorded separately. Otherwise, it will lead to situation where the denial will appear to be for or against one or other party in the case. This leads to misinterpretation of the evidences as is sought to be made by appellant's counsel.

A circular should be issued to all the Tribunals that competent advocates with good standing in the bar alone should be appointed as a Commissioner to record the deposition. It should be recorded in a proper form (i.e.) question and answer format, and not in a haphazard manner by recording the reply above.

[8] Be that as it may, on the basis of evidence of P.W. No. 2 wrongly stated as P.W. No. 7, and on the basis of other evidences namely, the doctors and witness who spoke about the medical treatment records, it is clear that the victim who suffered an accident on 16.06.2015 died on 08.09.2015 despite prolonged intensive and regular medical treatment. The medical records for the continuous treatment without any gap, clearly

establishes the cause of death is due to the head injury caused in the accident.

[9] Therefore, the plea of the appellant's counsel that the death was not due to the accident is based on a misinterpretation of the cross examination of the doctor is totally unacceptable. The Tribunal correctly held that Laishram Hemanta Singh died due to accident and injury, and finding of rash and negligence on the part of the owner cum driver of the Maruti Van was established by one Angom Badora alias Goroba Singh, a tailor, who is the eye witness to the accident on 16.06.2015. He was not cross examined by the appellant insurance company. Therefore, there is enough justification to hold that the death was due to rash and negligence of the owner cum driver of the vehicle insured with the present appellant insurance company and the liability, consequently, fixed on the insurance company to compensate the claim is justified and correct.

[10] One other issue on raised by Mr. A. Deni Sharma, learned counsel for the appellant is that income of the deceased taken as Rs. 14,000/- Rs. per month based on evidence of Sunil Biswas is not correct because after December 2014 there is no certificate for salary. The fact that the deceased was employed with Apol Tent House from 1st January, 2011 to 31st December, 2012 at the rate of Rs. 12,000/- per month and from 1st January, 2013 to 31st December, 2014 at the rate of Rs. 14,000/- per month shows that he has been in long and continuous employment. The period during which the accident happened was also stated by the witness that the deceased was on leave, but he was in employment. Therefore, it cannot be

said that there is no proof of employment. Owner/proprietor of Apol Tent House has also denied suggestion that the deceased was not employed. The accident in this case happened in the year 2015. The nature of business has also been explained by Sunil Biswas and also showed proof that he has paid salary to Laishram Hemanta Singh at the rate of Rs. 14,000/- per month. This commensurates with the nature of work performed by the deceased.

[11] The deceased was 30 years as per medical report. Considering the age of the deceased, 50% of salary was added as future prospects and the income was taken as Rs. 21,000/- per month. Thereafter, 50% was deducted towards personal expenses of deceased bachelor and hence the loss of income comes to Rs. 10,500/- per month. As per principle laid down in Reshma Kumari & Ors. Vs. Madan Mohon & Anr. (2013) 9 SCC, reiterated in Rajesh and Others Vs. Rajbir Singh (2013) 9 SCC 54, addition toward future prospects is added; and as per principle laid down in Sarla Verma Vs. DTC 2009 (6) SCC 121, deduction of 50% for personal expenses was applied. Considering the age, multiplier 17 was adopted. Consequently, the Tribunal passed the award as follows:

> *17. The point for consideration is that the claimants claim that their deceased son namely Laishram Hemanta Singh was a bachelor at the time of accident and I also find no rebuttal evidence against the claim. As such, in terms of Sarla Verma Vs DTC 2009 (6) SCC 121 the deduction for personal expenses would be ½ and had applied in the case in hand.*
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> *18. Further, Reshma Kumari & Ors. Vs Madan Mohon & Anr. (2013) 9 SCC 65, it was held that the addition towards future prospects is permissible only when the deceased is in settled*

employed or there is specific evidence in this regards and the same was reiterated in Rajesh and others Vs Rajbir Singh(2013) 9 SCC 54 even for the self employment and the calculation for future prospect as laid down in Rajesh and others Vs Rajbir Singh (2013) 9 SCC 54 is as follows (1) by 50% where his age was below 40 years, (ii) by 30% where he belonged to age group of 40 to 50 years and (iii) by 15% where he was was between age group of 50 to 60 years and where the deceased exceeds the age of 60 years no such addition/enhancement and the recently, Judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Pranney Sethi & Ors. SLP (C) No. 25590 decided by five Judge Bench of the Supreme Court on 31-10-2017 has categorically held that the age of the deceased should be the basis for applying the multiplier and that the selection of the multiplier shall be as indicated in the table in Sarla Verma & ors. Vs Delhi Transport Corporation & anr. (2009) 6 SCC 121 read with – paragraph 42 of that Judgment. As such the age multiplier of 17 shall apply in the instant case as the deceased at the time of accident he was 30 years of age and was in the age group 26 to 30 years as per the principles laid down in Sarla Verma (Supra).

In the instant case, the deceased being 30 years i.e. below 40 years, future prospect would be 50% and the same shall be entitled.

Hence, the claimants are entitled to compensation amount of Rs. 21,42,000/- (Rupees Twentyone Lakhs Forty Two Thousand) only for the death of Laishram Hemanta Singh in the said Motor Accident case, Rs. 19,20,560/- (Rupees Nineteen Lakhs Twenty Thousand Five Hundred Sixty) only as expenditures of the Medical treatment of the deceased Laishram Hemanta Singh and the Respondent No. 1 & 2 jointly and severally liable to pay the said compensation amount.

Since the respondent No. 2 being insured shall indemnify the respondent No. 1.

Accordingly, Respondent No. 2 is directed to pay a sum of Rs. 21,42,000/- (Rupees Twentyone Lakhs Forty Two Thousand) only as compensation amount + Rs. 19,20,560/- (Rupees Nineteen Lakhs Twenty Thousand Five Hundred Sixty) only as medical expenditures of the deceased during his treatment while he was alive + Rs. 40,000/- as Loss of consortium + Rs. 15,000/- as Funeral expenses + Rs. 15,000/- (Rupees Fifteen Thousand) only as Loss of Estate = Rs. 41,32,560/- (Rupees forty one lakh thirty two thousand five hundred sixty) only as total award inclusive of the interim compensation amount of Rs. 50,000/- (Rupees Fifty Thousand) only already withdrawn by the claimants with interest at the rate of 6% per annum from the date of filing this claim petition till the realization to the claimants within 60(sixty) days from the date of this order. Before I part with the case, permission U/S 170 of the Motor Vehicle Act is granted to the respondent No. 2 as I find that, the respondent No. 1 failed to effectively contest the case."

[12] Considering the age of the deceased bachelor, his nature of employment, his income at the time of his death and the claimants/parents' dependence, the approach of the Tribunal in fixing the loss of income after deduction and adopting 17 multiplier is justified. There is no reason to reduce or modify the same. As far as medical expenditure is concerned, the calculation of Rs. 19,20,560/- (Rupees Nineteen Lakhs Twenty Thousand Five Hundred Sixty) only as medical expenditure is not denied or controverted by the insurance company as stated earlier. The only issue raised was on the income of the deceased which was correctly assessed by the Tribunal for reason stated above.

[13] As a result, the determination of compensation and the award of the Tribunal appears to be just and reasonable. No other issue is raised by the counsel for appellant. There is no dispute raised on the interest at the rate of 6 %. per annum.

[14] Finding no merit, the appeal stands dismissed**.**

[15] Mr. A. Deni, learned counsel appearing for the appellant seeks 12 (twelve) weeks time to deposit the balance compensation if any and the claimants are entitled to withdraw the same on proper verification.

CHIEF JUSTICE

Sandeep

FR/NFR

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