GAHC010179362015

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

Case No. : MACApp./236/2015

BISWAJIT BARDHAN
AGED ABOUT 38 YRS, S/O LATE RANJIT BARDHAN, R/O VILL. MONACHERRA BAZAR, P.O. MONACHERRA, P.S. LALA, DIST. HAILAKANDI

VERSUS

HUSSAIN AHMED CHOUDHURY and 2 ORS
S/O S.U. CHOUDHURY, R/O VILL. ALAICHERRA, PT-IV, P.S. KATLICHERRA, DIST. HAILAKANDI, DRIVER OF THE VEHICLE NO. AS-01-BC-2996

3:UNIVERSAL SOMPO INSURANCE CO. LTD.

DIVISIONAL MANAGER
UNIVERSAL SOMPO INSURANCE CO. LTD.
UNIT 401
4TH FLOOR
SANGAM COMPLEX
127 ANDHERI JURLA ROAD
ANDHERI EAST
MUMBAI-40005

Advocate for the Petitioner : MS.N MODI, MR.S DUTTA,MR.SIDHANT DUTTA,MR.C SHARMA

Advocate for the Respondent : MR.B KAKATIR-3, MR.K BORAH(R-3),MR.A J SAIKIA(R-3),MR.U K DUTTA(R-3),MRN BHUYAN(R-3)

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the Appellant : Shri Sidhan Dutta, Advocate.

Advocate for the respondents : Shri A.J. Saikia, Respondent No. 3.

Date on which judgment is Reserved. : 06.10.2026.

Date of pronouncement of Judgment. : 15.10.2026.

Whether the pronouncement is of the operative part of the judgment? : NA.

Whether the full judgment has been pronounced? : Yes.

JUDGMENT & ORDER

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, praying for enhancement of the Award given vide judgment and order dated 24.04.2015 in MAC Case No. 108/2013 by the learned MACT, Hailakandi.

2. Before going to the grounds for which the enhancement is sought, it would be convenient if the facts of the case are narrated in brief.

3. On the fateful date i.e. 21.06.2013, the deceased-Ranjit Bardhan was going to the State Bank of India, Monachera Branch, and after parking his motor cycle, the

offending Bolero vehicle, bearing Registration No. AS 01 BC-2996 which was driven in a rash and negligent manner coming from Lala to Hailakandi knocked the deceased and grievously injured him. The deceased expired on the next date in the hospital. The deceased was a pensioner and used to maintain the family with the pension.

4. Initially, the claim petition was instituted by the widow and son of the deceased. The widow, however, had passed away on 10.07.2014 during the pendency of the claim and it was maintained and continued by the son. The claim was contested by the Insurance Company by filing written statement. The other opposite parties did not contest the claim and the same proceeded *ex parte* against them. The learned Tribunal had framed two issues, which are as follows:

> *i) Whether the claimant is entitled to get any compensation and if so, to what extent and against whom?*
>
> *ii) To what relief/ relieves the claimant is entitled?*

5. The claimant had adduced evidence and had proved the relevant documents. No evidence was adduced by the appellant.

6. The learned Tribunal, vide the impugned judgment had awarded an amount of Rs.1,10,000/- as compensation with interest at the rate of 9% from the date of filing of the claim petition. It is for enhancement of this amount that the instant appeal has been preferred.

7. I have heard Shri Sidhant Dutta, learned counsel for the appellant. I have also heard Shri A.J. Saikia, learned counsel for the respondent-Insurance Company.

8. Shri Dutta, learned counsel for the appellant has submitted that the amount granted by the impugned judgment is wholly inadequate and the principles to be followed for determining compensation have been overlooked. By referring to Section 166 of the Act, he has submitted that a claim petition is not necessarily maintainable only by a dependent but also by a legal representative. He accordingly submits that a non-dependent major son would also be competent not only to institute a claim but also to receive compensation. The aforesaid submission has been made in view of the finding of the learned Tribunal holding that the son was not entitled to any compensation as he was not a dependent. In this connection, he has relied upon the case of ***Jitender Kumar Vs. Sanjay Prasad***, reported in **2025 Supreme (Online) (SC) 5470**.

9. The learned counsel for the appellant has also submitted that the claim was instituted by the widow and the son of the deceased and during the pendency of the claim petition, the widow, who was the claimant no.1 had passed away on 10.07.2014. However, he submits that the rights got crystallized on the initiation of the claim petition and therefore, mere passing away of the claimant no. 1 during the proceeding would not be a reason to totally deny the compensation. In this connection, he has relied upon the case of ***Kirti & Anr. Vs. Oriental Insurance Company***, reported in **(2021) 2 SCC 166** and the following observations of the Hon'ble Supreme Court are referred to:

> "***1. Deduction for Personal Expenses***
>
> *9. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased's dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant-claimants cannot rely upon subsequent increases in minimum wages, the respondent-insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally*

settled that advocates cannot throw-away legal rights or enter into arrangements contrary to law."

10. He has also relied upon the case of ***United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur & Ors.***, reported in **(2021) 11 SCC 780** on the aspect of payment of compensation under the head of consortium which include both spousal consortium as well as parental consortium. Reliance has also been placed on a judgment passed by the Hon'ble Supreme Court in the case of ***Oriental Insurance Vs. Kahlom*** **(Civil Appeal No.4880/2021)** wherein, it has been laid down that loss of estate would also include the loss of income and future prospects. Reliance has also been placed on the case of ***Seema Rani & Ors. Vs. Oriental Insurance Company Ltd. & Ors.***, reported in **2025 INSC 192** wherein, it has been reiterated that major married and earning sons of the deceased being legal representatives have a right to apply for compensation and the Tribunal must consider such application irrespective of whether the representatives are fully dependent or not. The said view has been followed by this Court in the case of ***Biswajit Chowdhury Vs. Aklesh Sah***, reported in **(2023) 2 GLR 511** wherein, it has been held that non-dependents will also be entitled to compensation.

11. The learned counsel for the appellant submits that the claim petition was instituted in 2013 by both the widow and the son and on expiry of the claimant no. 1-widow in 2014, the surviving claimant no. 2 would get the benefit as the claimant no. 1 has passed away. He accordingly submits that interference with the impugned judgment is called for and the compensation amount is to be enhanced. In this regard, he has also put forward a calculation.

12. *Per contra*, Shri Saikia, learned counsel for the respondent-Insurance Company has resisted the appeal and defended the impugned Award. He has submitted that

there is a distinction between legal representative and dependent and everything will depend on the facts and circumstances of the case. In this connection, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***United India Insurance Company Ltd. Vs. N.P. Joy*** **[SLP (C) No. 26642/2025]** and the following observations have been pressed into service:

> "*8) In our opinion, the aforementioned judgment is distinguishable on facts and inapplicable to the facts of the present case. Given that the deceased was 95 years of age, he would have been dependent upon his family members, including the claimant-sons. Furthermore, the claimant-sons have failed to place any evidence on record to substantiate their dependency upon the deceased. In absence of any such evidence or proof to the contrary, this Court is of the considered view that the respondent cannot derive any benefit of the said judgment in the facts of the present case. Accordingly, the claimant-sons may be legal heirs, but not the dependents of the deceased for computing and awarding the compensation under the head of loss of dependency.*
>
> *9) Therefore, taking note of all the attending circumstances, we are inclined to maintain the Award passed by the MACT and set aside the enhanced Award of the High Court. Learned counsel for the Insurance Company submits that payment of amount as awarded by the MACT has already been released to the claimant-respondent Nos. 1 to 4 which has also been indicated in the affidavit dated 23.09.2025 filed before this Court.*"

13. He has submitted that the deceased being a pensioner and the son being an earning member even otherwise, appropriate deductions have to be made for the expenses he would have made for himself. In this connection, he has relied upon a judgment of this Court in the case of ***United India Insurance Company Ltd. Vs. Girish Keot & Ors.***, reported in **2018 (3) GLT 572**.

14. The rival submissions have been considered and the materials on record have also been carefully examined.

15. Section 166 of the Act provides for filing of application for compensation arising out of an accident of the nature specified in Section 165(1). The expression used therein is not "dependent" but "legal representative". In other words, to institute and maintain an application, it is not necessary to be a dependent and even a legal representative can do so. For ready reference, the relevant portions of the aforesaid section are extracted hereinbelow:

> "*166. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made:*
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> *(a) by the person who has sustained the injury; or*
>
> *(b) by the owner of the property; or*
>
> *(c) where death has resulted from the accident, by all or any of the* ***legal representatives*** *of the deceased; or*
>
> *(d) by any agent duly authorised by the person injured or all or any of the* ***legal representatives*** *of the deceased, as the case may be:*
>
> …"

16. The statute itself having provided that a legal representative would be competent to institute and maintain a claim petition, the view of the learned Tribunal to hold the claimant not to be entitled for any compensation towards loss of dependency may not be a correct view. Of course, for a non-dependent, the compensation may not be at par with a dependent family member and as held by the Hon'ble Supreme Court, everything will depend on the facts and circumstances of the

case.

17. In the case of ***Jitender Kumar*** (*supra*), the Hon'ble Supreme Court had endorsed the earlier view expressed in the case of ***National Insurance Company Ltd. Vs. Birender***, reported in **(2020) 11 SCC 356** wherein, it was held that the legal representative of the deceased has a right to apply for compensation and had directed for deduction of 50% of the compensation as the legal representatives were not shown to be the dependents. The following observations made by the Hon'ble Supreme Court would be relevant:

> "*12. The High Court has placed reliance on the judgment of this Court in* ***National Insurance Co. Ltd. v. Birender****, **[(2020) 11 SCC 356.]** to observe that the claimant-appellant(s) are legal representatives of the deceased and have a right to apply for compensation. Thereafter, in its discussion, the Court observed that the claimant-appellant(s) have not been shown to be dependents on the deceased and consequently, a deduction of 50% is to be made to determine the compensation to be received by the claimant-appellant(s).*
>
> *13. In our considered opinion, the view on this issue cannot be faulted. The exposition of law in* ***Birender*** *(Supra) is clear, wherein it was observed as under:*
>
> > '***14.*** *It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only.'*

> *14. Such exposition came to be followed by this Court in* ***Seema Rani and Ors. v. Oriental Insurance Co. Ltd. and Ors. [2025 SCC Online SC 283.]****, wherein it was observed that the application for compensation, even by married sons and daughters, must be considered, irrespective of whether they are fully dependant or not. In the present case, it cannot be disputed that the claimant-appellant(s) became partner in the consultancy firm run by the deceased. Moreover, it is not in dispute that that the Flour Mill being run by the deceased, is still being run by the claimant-appellant(s). In such a factual circumstance, it cannot be said that the claimant-appellant(s) were financially dependent upon the deceased.*"

18. In the case of ***Seema Rani*** (*supra*), the Hon'ble Supreme Court had reiterated a similar stand by relying upon the case of ***Birender*** (*supra*). It was laid down that major married and earning sons of the deceased would have a right to apply for compensation irrespective of the fact as to whether they were fully dependent on the deceased or not. The relevant observations are as follow:

> "*9. We have heard the learned counsel for the Appellants. We are unable to agree with the view taken by the Tribunal on the dependents of the deceased. This Court in National Insurance Company Limited v. Birender & Ors. 1, had expounded that major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation, and the Tribunal must consider the application, irrespective of whether the representatives are fully dependent on the deceased or not. The Court went on to conclude that since the sons, in that case, were earning merely Rs.1,50,000/- per annum, they were largely dependent on the earnings of the deceased and were staying with her.*"

19. This Court finds force in the contention advanced by the learned counsel for the appellant that the rights of the claims got crystallized on initiation of the claim petition

and therefore, irrespective of the passing away of the claimant no. 1 (widow) during the claim proceeding, the claimant no. 2, who is the son, would also be entitled to the compensation.

20. Shri Saikia, learned counsel for the respondent-Insurance Company has cited the case of ***N.P. Joy*** (*supra*). However, in that case itself though a distinction has been said to be there between legal representative and dependent, everything would depend on the facts and circumstances of the case. It may be noted that the deceased in the said case was 95 years of age and it was held that he would, rather have been dependent on his family members, including the claimant sons. On the other hand, the deceased in the instant case was a pensioner. So far as the case of ***Girish Keot*** (*supra*) is concerned, even in that case, it is found that one fourth of the income was taken to be the savings of the deceased. On the other hand, in the instant case, as per the calculation presented by the appellant, 50% deduction has been suggested.

21. This Court is of the opinion that the approach of the learned Tribunal in proceeding with the matter culminating in the judgment dated 24.04.2015 may not be deemed to be in consonance with the principles of law holding the field more so, when the entire enactment is a welfare piece of legislation.

22. In view of the above, the impugned judgment dated 24.04.2015 in MAC Case No. 108/2013 stands interfered with. This Court has also noted that only no-fault liability of Rs. 50,000/- and certain amounts in the head of loss of estate, funeral expenses and love and affection, viz, Rs. 10,000/-, Rs.25,000/- and Rs. 25,000/-, respectively have been granted. So far as loss of estate is concerned, the same has been quantified by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi***, reported in **AIR 2017 SC 5157** at Rs. 18,000/- with

10% increase after every three years. Similarly, funeral expense has also been quantified at Rs. 18,000/- with 10% increase after every three years. Love and affect would be under the head of Consortium which is quantified at Rs. 40,000/- with 10% increase after every three years. Consortium, as laid down by the Hon'ble Supreme Court in the case of ***Satinder Kaur*** (*supra*) will include both spouse as well as parental consortium. However, such increase, in the instant case would only be for the existing claimant no. 2 as the claimant no. 1-widow had passed away on 10.07.2014 during the pendency of the claim petition. Nonetheless, the amount of Rs. 40,000/- would still be entitled to by the existing claimant which had accrued and crystallized for his mother on filing of the claim petition.

23. As an upshot of the aforesaid discussion, the claimant would be entitled to the compensation which is explained in the following manner:

i) <u>COMPENSATION FROM THE INCOME</u>

Monthly income of the deceased pensioner	:	Rs. 12,237/-
Annual income (Rs. 12,237/- x 12)	:	Rs. 1,46,844/-
Multiplier (age of the deceased 69 years)	:	5
Total amount(5 x 1,46,844/-)	:	Rs. 7,34,220/-
Deduction of 50%		
Net amount	:	Rs. 3,67,110/-
ii) <u>LOSS OF ESTATE</u>	:	Rs. 18,150/-
iii) <u>LOSS OF CONSORTIUM</u>		
For son(Rs. 40,000/- + 10% increase after every three years.)	:	Rs. 48,400/-
For widow who had passed away	:	Rs. 40,000/-

iv) <u>FUNERAL EXPENSE</u>	:	Rs. 18,150/-
Total [(i) + (ii) + (iii) + (iv)]		Rs. 4,91,810/-

(Rupees Four lakh Ninety one thousand Eight hundred ten) only.

24. The appellant would accordingly be entitled to the aforesaid amount of Rs. 4,91,810/- (Rupees Four lakh Ninety one thousand Eight hundred ten) only along with interest @ 9% from the date of filing of the claim petition, as directed by the learned Tribunal. It is needless to state that any amount paid in the meantime, shall be deducted from the aforesaid amount.

25. The MAC appeal stands allowed in the manner indicated above.

26. Send back the TCRs.

JUDGE

Comparing Assistant