GAHC010233322013

2026:GAU-AS:16267

THE GAUHATI HIGH COURT

[THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH]

MAC.APP No. 2/2013

Kumari Chinu Lodh, W/O Late Biren Lodh, Vill. Sikari Pather, P.S Bakalia, Dist. Karbi Anglong Assam, Presently Residing At Bharalumukh, Guwahati, P.S. Bharalumukh, Dist. Kamrup, Assam

……Petitioner

-Versus-

1. Deputy Secretary, I/C Transport, Karbi Anglong Autonomous Council, Diphu, P.D. Diphu, Dist. Karbi-Anglong, Assam Owner Of Vehicle No. AS-09- 5171
2. Kam Singh Bey, S/o Late Hona Ram Bey Vill. Pub Dikharugaon, P.S. Howraghat Dist. Karbi Anglong Assam, Driver of Vehicle No. AS-09-5171
3. The Oriental Insurance Co Ltd., Ullubari, Guwahati 781007, Dist. Kamrup, Assam, to be represented by its Regional

Manager Insurer of Vehicle No. AS-09-5171

……Respondents

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Appellant	:	Mr. D.K. Kalita, Advocate
Respondent no. 3	:	Ms. M. Choudhury, Advocate
Date on which judgment is reserved	:	N.A.
Date of pronouncement of judgment	:	03.11.2026
Whether the pronouncement is of the Operative part of the judgment?	:	No
Whether the full judgment has been Pronounced ?	:	Yes

JUDGMENT & ORDER

1. This appeal under Section 173 of the Motor Vehicles Act, 1988, as amended ['the Act', for short], is preferred against a Judgment and Award dated 10.10.2012 passed by the learned Member, Motor Accident Claims Tribunal-cum-Additional District and Sessions Judge [FTC] no. 2, Kamrup, Guwahati ['the Tribunal', for short] in a claim application preferred under Section 166 of the Act, registered and numbered as MAC Case no. 1045/2009.

2. The appellant herein who was the claimant in MAC Case no. 1045/2009, is the wife of one Late Biren Lodh. The appellant-claimant preferred the claim application before the Tribunal seeking compensation under Section 166 of the Act in respect of death of her husband in a motor vehicular accident occurred on 27.03.2009.

3. As per the claim application, the deceased, Late Biren Lodh was proceeding from Bakalia Bazar towards his house by riding a bicycle and when he reached near a place at Irrigation Colony on National Highway no. 36 at about 08-45 a.m., a Bus bearing registration no. AS-09/5171 [hereinafter referred to as 'the offending vehicle' for easy reference] coming from Nagaon side, at a high speed and allegedly in a rash and negligent manner, knocked down Biren Lodh. As a result of the accident, Biren Lodh fell down on the road side and died instantaneously at the spot due to injuries sustained on his person.

4. In the proceedings before the Tribunal, the appellant-claimant impleaded the owner of the offending vehicle, that is, the Deputy Secretary, In-Charge, Transport, Karbi Anglong Autonomous Council as the opposite party no. 1 and the driver of the offending vehicle as the opposite party no. 2. The insurer of the offending vehicle, that is, the respondent no. 3 herein was impleaded as the opposite party no. 3. On receipt of notices from the Tribunal, the opposite party no. 1 and the opposite party no. 2 appeared and filed written statement denying the case of the claimant. The respondent no. 3 – insurer as the opposite party no. 3 also contested the proceedings by filing its written statement.

5. After examining the pleadings of the parties, the first issue of the two issues framed by the Tribunal was : 'Whether the victim Late Biren Lodh died as a result of the injuries sustained by him in the alleged road accident dated 27.03.2009 at about 8:45 A.M., near Irrigation Colony on the N.H. No. 36 under Bakalia Police Station, involving the Bus bearing registration no. AS-09/5171 due to rash or negligent driving of the driver of the said offending vehicle?'. The

second issue framed by the Tribunal was : 'Whether the claimant is entitled to get any compensation and if yes, to what extent and from whom amongst the opposite parties, the compensation amount will be payable?'.

6. To establish the case, the claimant side examined two witnesses and those two witnesses were cross-examined by opposite parties. The claimant examined herself as P.W.1 and P.W.2 was one Sri Mintu Das, who adduced his evidence as an eye-witness to the accident. The opposite parties did not, however, examine any witness on their behalf.

7. In the proceedings before the Tribunal, the claimant side also exhibited a number of documents including the Accident Information Report [Ext.1]; a certified copy of FIR registered as Bakalia Police Station Case no. 24/2009 under Sections 279/304[A]/427, Indian Penal Code against the driver of the offending vehicle [Ext.2]; and a certified copy of the Post-Mortem Examination Report [Ext.3] wherein it was reported that the cause of death of the deceased was due to massive intra-cranial haemorrhage caused by blunt trauma of head.

8. On analysis of the evidence brought on record, the Tribunal, on the first issue, recorded a finding that the accident had occurred due to rash and negligent driving on the part of the driver of the offending vehicle and the deceased died as a result of the injuries sustained on his person in the accident.

9. I have heard Mr. D.K. Kalita, learned counsel for the petitioner and Ms. M. Choudhury, learned counsel for the respondent no. 3 – insurer.

10. Though the names of the learned counsel for respondent no. 1 are reflected in the Cause-List, none has appeared today to represent the respondent no. 1 at the time of hearing. As per Order dated 05.04.2013, notice upon respondent no. 2 was presumably served. None has appeared for the respondent no. 2 also.

11. Mr. Kalita, learned counsel appearing for the appellant has submitted that the present appeal has been preferred on the limited aspect regarding the enhancement of the compensation amount awarded by the Tribunal. He has submitted that while arriving at the amount of compensation, the Tribunal did not take into account a number of relevant factors into consideration. The compensation amount awarded at Rs. 3,48,000/- cannot, therefore, be termed as just compensation. It is his contention that the Tribunal did not consider the future prospects of the deceased which arriving at the final compensation amount. He has submitted that even for a self-employed person like the deceased, the future prospects ought to have been taken into consideration. In addition, the amounts given under the conventional heads were also lesser. It is his further contention that the monthly income of the deceased taken by the Tribunal is on the lower side. According to him, the deceased was running a bicycle repairing shop and it was claimed by the appellant-claimant that the deceased was earning Rs. 6,000/- per month at the time of his death.

12. In response, Ms. Choudhury, learned counsel appearing for the respondent no. 3-insurer has submitted that though it was canvassed before the Tribunal that the deceased was running a bicycle shop at Patradisa, Bakalia and was earning Rs. 6,000/- per month from the said bicycle repairing shop, the claimant side had failed to adduce any iota of evidence, not to speak of any documentary evidence regarding existence of a bicycle repairing shop, regarding the income of the deceased. In absence of any evidence in relation to the monthly income of the deceased, the Tribunal was right to take Rs. 3,000/- as monthly income of the deceased. Ms. Choudhury has further contended that since from the claim application and the testimony of claimant itself, it has emerged that the deceased was not having any regular salary, the question of granting any amount for future prospects does not arise. It is further contended that as the appellant-claimant had already been disbursed the amount awarded by the Tribunal under the conventional heads there is no question for any modification, at the appellate stage.

13. The submission of the learned counsel for the parties are duly considered. The evidence, materials on record, as available in the TCR, have been perused.

14. The Tribunal on the basis of the evidence on record had reached a finding in the impugned Judgment and Award dated 10.10.2012 that the Bus bearing registration no. AS-09/5171 was the offending vehicle and as a result of the accident involving the offending vehicle, the deceased, due to injuries sustained on his person, died instantaneously at the spot. Admittedly, the respondent no. 3 is the insurer of the offending vehicle. The Tribunal had accordingly, saddled the respondent no. 3-insurer with the liability to pay the amount of compensation awarded by it. The Judgment and Award dated 10.10.2012 has not been assailed in any manner by the respondent no. 3-insurer either by filing an appeal or by filing any cross-objection. Therefore, the question of liability to pay the compensation amount is not required to be gone into in this appeal.

15. The Tribunal has awarded an amount of Rs. 3,48,000/- as compensation along with interest @ 6% per annum on it from the date of filing of the claim application till payment holding that the said amount of compensation would be just and reasonable amount of compensation. To arrive at the said amount, the Tribunal took Rs. 3,000/- as monthly income of the deceased. Deducting 1/3rd from the monthly income of Rs. 3,000/- towards personal expenses of the deceased, the Tribunal arrived at the figure of Rs. 24,000/- as annual loss of dependency. Based on the testimony of P.W.1, and the age reported in the Post-Mortem Examination Report [Ext.3], the Tribunal accepted the age of the deceased as 45 years and applied 14 as the multiplier. After arriving at the amount of Rs. 3,36,000/- as total loss of dependency, the amounts of 2,000/-, Rs. 5,000/- and Rs. 5,000/- were added towards funeral expenses, loss of estate and loss of consortium to arrive at the final amount of compensation of Rs. 3,48,000/-.

16. The learned counsel appearing for the parties have referred to the decisions of the Hon'ble Supreme Court of India in **Sarla Verma [Smt] and others vs. Delhi Transport Corporation and another, [2009] 6 SCC 121** and **National Insurance Company Limited vs. Pranay Sethi and others, [2017] 16 SCC 680,** in the course of the submissions.

16.1. In **Sarla Verma** [supra], the Hon'ble Supreme Court had adopted as a rule of thumb for addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. The Hon'ble Supreme Court had further held that the addition should be only 30% if the age of the deceased was 40 to 50 years. It was further observed that where the deceased was self-employed or was on a fixed salary, the Court would usually take only the actual income at the time of death.

16.2. But the Constitutional Bench in **Pranay Sethi** [supra] after considering the decision in **Sarla Verma** [supra] and a host of other decisions has observed that in case of a deceased who had held permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. Taking into consideration a host of factors including the passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., the Hon'ble Supreme Court in **Pranay Sethi** [supra] has held that an addition of 40% of the established income of the deceased towards future prospects and an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable in case the deceased was a self-employed person.

16.3. In the conclusion part of the Judgment in **Pranay Sethi** [supra], more specifically, in paragraph 59.8, it has been held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

17. As it has emerged from the facts on record, the deceased was not having any permanent job with the assurance of a salary with increments, the case of the deceased is to be considered as that of a self-employed person. The learned counsel appearing for the parties have not advanced anything on the age of the deceased and the multiplier applied by the Tribunal. Therefore, the age of the deceased is to be accepted as 45 years with '14' as the applicable multiplier, for a person of 45 years, the applicable multiplier, as per **Sarla Verma** [supra] should be '14'.. As the deceased was aged between 40 years to 50 years, this Court finds that the compensation amount should have contained the additional amount towards future prospect at 25%.

18. It is noticed from the Judgment delivered by the Hon'ble Supreme Court in **Saroj and others vs. IFFCO-TOKIO General Insurance Co. and others., 2024 INSC 816** [Date of Accident : 04.08.2015 & Date of Judgment : 24.10.2024]; **Sadhana Tomar and others vs. Ashok Kushwaha and others, Civil Appeal no. 3763 of 2025** [Date of Accident : 25.09.2016 & Date of Judgment : 24.01.2025]; **Janabai W D/o Dinkarrao Ghorpade and others vs. M/s ICICI Lambord Insurance Company Ltd., SLP[Civil] no. 21077 of 2019** [Date of Accident : 01.06.2007 & Date of Judgment : 10.08.2022]; **the Oriental Insurance Co. Ltd. Vs. Niru @ Niharika and others, SLP[C] no. 11340 of 2020** [Date of Accident : 18.11.1995 & Date of Judgment : 14.07.2025], the Hon'ble Suprme Court has applied the principles recorded in paragraph 59.8 in **Pranay Sethi** [supra] for adding amounts under the conventional heads.

19. In the absence of any iota of evidence / material with regard to the claim of the appellant-claimant, the deceased was earning an amount of Rs. 6,000/- monthly, this Court is of the considered view that no interference is called for in so far as taking of Rs. 3,000/- as monthly income of the deceased by the Tribunal.

20. On the basis of the above observations, the compensation payable is calculated as under :-

Heads	Final Compensation Payable
Monthly Income	Rs. 3000/-
Annual Income	Rs. 36,000/-
Future prospects	@ 25% [750] + Rs. 3000/- =Rs. 3,750/-
Personal Expenses [Deduction of 1/3]	Rs. 3,750/- - Rs. 1250/- = Rs. 2,500/- p.m.
Annual loss of dependency	Rs. 30,000/-
Multiplier	14
Loss of dependency	Rs. 30,000/- x 14 =Rs. 4,20,000/-
Loss of Estate	Rs. 18,150/- [10% increase after 3 yrs + 3 yrs]
Funeral Expenses	Rs. 18,150/- [10% increase after 3 yrs + 3 yrs]
Loss of Consortium	Rs. 48,400/- [10% increase after 3 yrs + 3 yrs] x 3 = Rs. 1,45,200/-
Total compensation	Rs. 5,04,700/-

21. It is submitted at the Bar that the compensation amount of Rs. 3,48,000/- awarded by the Tribunal vide its Judgment and Award dated 10.10.2012 along with interest has already been disbursed by the respondent no. 3-insurer to the

appellant-claimant and the appellant-claimant has duly received the said amount.

22. Therefore, the additional amount of compensation awarded above Rs. 3,48,000/- i.e. Rs. 72,000/- [Rs. 4,20,000/- - Rs. 3,48,000/-] shall carry interest at 6% per annum from the date of claim application till payment. The respondent no. 3 – insurer, in addition to the said amount, shall also pay the additional amount calculated under the conventional heads, Rs. 72,700/- [Rs. 84,700/- - Rs. 12,000/-] before the Tribunal within a period of two months. Upon such deposit, the Tribunal shall disburse the amount to the appellant-claimant upon due identification. The appeal stands allowed to the extent indicated above.

23. The TCR is to be returned to the Tribunal forthwith.

JUDGE

Comparing Assistant

Pallabi Das

Digitally signed by Pallabi Das
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