

GAHC010013912014



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

Case No. : MACApp./211/2014

NATIONAL INSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE and HEAD OFFICE AT 3, MIDDLETON STREET KOLKATA AND ITS REGIONAL OFFICE AT G.S. ROAD, BHANGAGARH, GUWAHATI AND REPRESENTED BY THE CHIEF REGIONAL MANAGER, GUWAHATI REGIONAL OFFICE G.S.ROAD, BHANGAGARH, GUWAHATI.

VERSUS

MANJU BAISHYA and 6 ORS.
W/O LATE HIREN PATOWARY

2:HIRAKJYOTI PATOWARY

S/O LATE HIREN PATOWARY

3:BHARGAV PATOWARY

S/O LATE HIREN PATOWARY

4:BISOY CH. DAS @ SRI BIKSHOY CH. DAS

S/O LATE SONARAM DAS

5:SMTI MANOMATI DAS

W/O SRI SRI BISOY CH. DAS @ SRI BIKSHOY CH. DAS
ALL ARE THE RESIDENTS OF REHABARI
BANINAGAR
P.S. PALTAN BAZAR
DIST. KAMRUP
ASSAM.

6:MRS. LIPIKA KALITA

W/O MR. DEBOJIT KALITA
R/O KOCHGAON
P.O. BISWANATH CHARIALI
DIST. SONITPUR
ASSAM OWNER OF VEHICLE MARUTI CAR

7:LALIT CH. DAS

S/O SRI TRILOK CH. DAS
R/O K.R.C. ROAD
KHANAPRA
GUWAHATI DRIVER OF VEHICLE MARUTI CA

Advocate for the Petitioner : MR.I ALAM

Advocate for the Respondent : MR.K BHATTACHARJEE

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT & ORDER (CAV)

Date : 14-03-2024

Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Mr. K. Bhattacharya and Ms. B. Bhuyan, learned counsel for the respondents.

2. The insurance company is on appeal against the judgment and award dated 30. 11. 2013 passed by the learned Member, MACT no 2, Kamrup, in MAC case no 2269/2008.

3. The respondents no 1 to 5 as claimants filed a claim case before the Member, MACT Kamrup claiming compensation for the death of the husband of the respondent no 1 in a vehicular accident on 21. 04.2008. The factum of accident has not been challenged in this appeal.

4. This appeal has been preferred on the ground that the learned Member, MACT, Kamrup has erroneously considered the income of the deceased vide income tax return which was filed by the claimants one year ten months after the death of the deceased disregarding the income disclosed in the returns filed before his death i.e., when he was alive. The learned Member ignored the principle laid down by the Hon'ble Apex Court in this regard holding that income tax returns filed after the death of a person cannot be relied upon for assessment of the income of the deceased.

5. Learned counsel for the appellant submits that in the present case, the death of the deceased had occurred on 21. 04. 2008 and the income tax return relied upon by the Tribunal was filed on 10. 02. 2010 which is not permissible.

In support of his submission the learned counsel for the appellant has relied on the following case law –

a. (2008) 4 SCC 224 (V. Subbulakshmi and others vs. S. Lakshmi and another).

6. Another point raised by the learned counsel for the appellant that the accident occurred due to head on collision. Hence the insurance company is liable to pay 50 % of the awarded amount.

7. Learned counsel for the claimants/respondents, on the other hand, has admitted the law on the principle laid down by the Apex Court regarding income tax return. However, the learned counsel for the claimants/respondents has stated that merely because the accident was head on collision, it will not make it a case of contributory negligence.

8. I have considered the submissions made by learned counsel for the parties. I have also perused the judgment of the learned Tribunal and the documents available in the records.

9. As per judgment of the learned Tribunal, the claimant has furnished the income tax

return of the deceased for the year 2006-2007, 2007-2008 and 2008-2009. As per the income tax return, the last gross total income of the deceased for the year 2006-2007 was Rs. 1, 19, 100/-. As per the income tax return for the year 2007-2008, the last gross total income of the deceased was Rs. 1, 41, 802/-. For the income tax return of the year 2008-2009, the last gross total income of the deceased was Rs. 2,11, 975/-. As per documents available on the record the said income tax return was submitted in the year 2010 i.e., after the death of the deceased which is not permissible in law. According to learned counsel for the appellant, the last gross total income of the deceased was Rs. 1, 04, 500/- prior to his death for the year 2006-2007 and which was not opposed by the learned counsel for the claimant/respondent. Hence, the yearly income of the deceased be considered as Rs. 1, 04, 500/-.

10. Regarding Contributory Negligence, it is the trite law that even if the accident has occurred as a head on collision, the same cannot lead to inference that it was on account of negligence of both the drivers. The same has to be determined in the light of evidence on record in form of ocular evidence led with respect to accident and the documentary evidence in the form of site plan etc. Thus, it cannot be held as a Rule that any head on collision between the two vehicles should be taken as a case of Contributory Negligence.

11. In the case in hand, no any evidence has come out that the accident occurred due to negligence of the driver of both the vehicles. Hence, the appellant/ Insurance Company is directed to pay the entire amount of compensation.

12. As per the claim petition, the deceased was 42 years of age which has also not been disputed by the appellant.

13. In the case of **National Insurance Company Ltd. v. Pranay Sethi and Ors.** reported in **SLP(Civil) No. 25590/2024**, it was observed that while determining the income of the deceased in case of self-employed or an a fixed salary, an addition of 40 % of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40-50 years and 10

% where the deceased was between the age of 50-60 years should be regarded as the necessary method of computation.

14. In the present case, the age of the deceased was around 42 years when the accident took place. Hence, 25% be added to the established income of the deceased i.e. Rs. 1,04,500/- + Rs.26,125/- =Rs.1,30,625/-

15. As per the case of ***Sarla Verma & Ors. vs Delhi Transport Corp. & Anr*** reported in ***2009 (6) SCC 121*** the multiplier would be 14.

16. So far as the dependency is concerned, admittedly the deceased left behind his mother, wife and two minor children. As per Sarla Verma (*supra*), in this case the dependent family members of the appellant is four, the deduction towards personal and living expenses of the deceased would be 1/4th.

17. As per ***Pranay Shethi (supra)*** the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.15,000/- and Rs. 40,000/- respectively. As per the impugned judgment, the aforesaid amount should be enhanced at the rate of 10% in every three years. Hence, amount of funeral expenses comes to Rs.16,500/-, consortium Rs.44,000/- and loss of estate Rs.16,500/-

18. In view of the above discussion, the computation of compensation is awarded as follows-

(a) Annual income of the deceased=Rs.1,30,625/-

(b) After deducting 1/4th of the income of the deceased,

the amount comes to =Rs.97,968/-

(c) After multiplied with multiplier,

the amount comes to =Rs. 97,968 X 14=Rs.13,71,552/-

(d) Funeral expenses=Rs. 16,500/-

(e) Spousal consortium= Rs.44, 000/-

(f) Loss of Estate= Rs. 16,500/-

Total = Rs.14,48,552/- (Rupees Fourteen Lakh Forty Eight Thousand Five Hundred Fifty Two) only.

19. In the result, the appeal is partly allowed. The compensation and award is modified as described above. The National Insurance Company Ltd. is directed to deposit Rs.14,48,552/- (Rupees Fourteen Lakh Forty Eight Thousand Five Hundred Fifty Two) only to the savings account of the wife of the deceased Manju Baishya in any nationalized bank through NEFT. The wife is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment. The compensation so awarded shall carry an interest @6% per annum from the date of filing of the case till full and final realization. Any amount, if paid earlier, be adjusted accordingly.

20. Statutory amount in deposit be refunded to the Insurance Company.

21. With the above observation, the appeal stands disposed of.

22. Send back the trial court record.

JUDGE

Comparing Assistant