

GAHC010009302017



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

Case No. : MACApp./1/2017

ORIENTAL INSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE, A 25/27 ASAF ALI ROAD, NEW DELHI-110002 AND REGIONAL OFFICE AT GUWAHATI-7, REPRESENTED BY THE REGIONAL MANAGER

VERSUS

SMT. ROOPJYOTI KALITA @ GOGOI, (ON THE DEATH OF NIBHA KALITA) and 5 ORS.

W/O LATE SRIMANTA KALITA

3:PRIYANKA KALITA

D/O LATE SRIMANTA KALITA

4:SMT. PRIYADARSIKA KALITA

D/O LATE SRIMANTA KALITA

RESPONDENT NOS. 3 AND 4 ARE MINORS REPRESENTED BY RESPONDENT NO. 2 I.E. MOTHER ALL THE ABOVE RESPONDENTS ARE R/O C/O BONTI PUSTAKALAYA P.O. and P.S. GAURISAGAR DIST. SIVASAGAR ASSAM.

5:KULADHAR KALITA

S/O LATE KESHA RAM KALITA

R/O BONTI PUSTAKALAYA

P.O. and P.S. GAURISAGAR

DIST. SIVASAGAR

ASSAM OWNER OF MARUTI VAN NO. AS-04/D-0075

7:NRIOPEN HAZARIKA

S/O SRI RUPRAM HAZIRAKA
R/O MILON NAGAR
JORHAT
OWNER OF THE OTHER INVOLVED VEHICLE NO. AS-03/A8929 TRUK

Advocate for the Petitioner : MR. S DUTTA

Advocate for the Respondent : MR. D CHETIA

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT & ORDER (CAV)

Date : 11.03.2024

Heard Mr. S. Dutta, learned counsel for the appellant and Mr. S. Bhattacharya, learned counsel for respondent No.7.

2. This appeal is directed against the judgment and order dated 28.04.2014 passed by the learned Member, MACT Sivasagar in MAC Case No. 58/2004.

3. The brief facts of the case is that the respondent Nos.1 to 4 as legal heirs of the deceased Srimanta Kalita, filed a claim petition before the MACT, Sivasagar seeking compensation in connection with the death of Srimanta Kalita who died in an accident which took place on 29.06.2004. It is stated in the claim petition that while the deceased was travelling in a maruti van bearing No. AS-04/D-0075 from Bhutiapar to Gaurisagar, the vehicle was driven by the driver in a rash and negligent manner as a result of which, the said maruti van collided with a stationary truck bearing No. AS-03/A-8929 from the back side, resulting grievous injury on the person of the victim Srimanta Kalita. Immediately, after the accident the injured was taken to Sivasagar Civil Hospital and subsequently, he was also shifted to Aditya Hospital, Dibrugarh for treatment. However, he succumbed to his injuries on 03.07.2004.

4. The respondent Nos. 5 and 7 are the owners of both the vehicle. They appeared

before the Tribunal and filed their respective written statements. But the respondent Nos. 6 and 8 who are the drivers of the vehicle, did not contest the case. The appellant company, insurer of both the vehicles contested the case by filing written statement and denied all the averments made by the claimants/respondents in the claim petition.

5. Before the tribunal, the claimants/respondents examined three witnesses and also exhibited some documents in support of their claim. On the other hand, the appellant company also adduced one witness. After hearing learned counsel for the parties, the learned Member, MACT delivered the judgment awarding compensation, amounting to Rs. 9,77,000/- in favour of the claimants.

6. Being highly aggrieved and dissatisfied with the judgment and award dated 28.04.2014, the appellant company has preferred this appeal.

7. It was urged by the learned counsel for the appellant that the learned Member, MACT without any application of mind awarded interest from the date of filing of the claim petition i.e. 25.08.2004 till payment. However, although the claim case was filed in the year 2004, the adjudication of the case has been delayed due to the fault of the claimant/respondent. The record reveals that the case was dismissed for default on two occasions i.e. 16.06.2008 and again on 10.12.2010 and therefore, from 2004 to 10.12.2010 the claimants are not entitled to any interest and as such the impugned judgment and order is liable to be modified for the interest of justice.

8. Another contention raised by the learned counsel for the appellant is that the learned Member, MACT has committed grave error in awarding interest towards income on future prospect and as such the award of compensation so passed merits interference of this Court in as much as the respondent Nos. 1 to 4 i.e. claimants are not entitled to interest on future prospect.

In support of his submission, learned counsel for the appellant has relied on the following case laws-

(i) 2002 ACJ 1634 (Chaya Mishra va Oriental Insurance Company and another).

(ii) (2019) 0 Supreme (Gau) 896 (Oriental Insurance Company Ltd. vs Smt. Champabati Ray & 5 others).

(iii) 1998 (2) SEJ 860 (Shankar Prasad Vs Smt. Malti Devi ant others).

9. On the other hand, learned counsel for the respondent submits that the evidence adduced by the witnesses clearly shows that the claimants are entitled for the future prospect as per the case of National Insurance Company Ltd. Vs Pranay Sethi and others (2017) 16 SCC 680.

10. I have considered the submission of the learned counsel for the parties I have also perused the judgment of the learned Tribunal and the documents available on the trial court record.

11. Admittedly, the factum of accident has not been challenged in this appeal. The question is whether the interest on future prospect be awardable in the case. In the case of *Champabadi Ray* (supra) it is elaborately discussed regarding interest on future prospect which is reproduced as follows:

“In the case of Khusbu Chirania @ Kanta Chirania vs Kamal Kumaar Srivastava (2018) 0 Supreme (Gau) 966 and in the case of Nasima Begum Vs Keramat Ali (2019) 0 Supreme (Gau) 507, this Court has stated no interest on future prospect should be given. Though no reasons have been enunciated in the aforesaid judgments, the reason for the same seems to be due to the fact that future prospects is relatable to an income to be received in the future and as such there could not be any loss to the claimants for the payment of future prospect, at the time the deceased met with the accident. The reason for awarding interest on the compensation amount minus the future prospect is due to the fact that though the loss of dependency starts from the date of the accident and the compensation amount is computed on the date of the award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time such as time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospect is with regard to the probable income to be received in the future and as such there is no requirement to compensate the claimant by way of future interest, for the loss that to be occurred in the future, as the future is yet to happen. Further, future prospect is given for the entire future and as such the claimant is getting compensation in a lump sum under future prospect prior to occurrence of future events”.

Thus, with regard to future prospect, this Court is also of the view that there cannot be any interest on future prospect as the same relates to an income to be given in the future.

12. Regarding interest from the date of filing of a case, learned counsel for the appellant has contended that the claimants are responsible for the delay in disposal of the claim case. Two times the case was dismissed for default and subsequently, on filing petition by the respondents/claimants the case was restored to file and ultimately judgment was delivered. Hence, the claimants are entitled for interest from the date of restoration of the case.

13. The claimant deposed that her deceased son was a petty businessman and he earned an amount of Rs.4,000/-, which is not disputed by the insurance company. Hence, the monthly income of the deceased was Rs.4,000/- which be taken into consideration in this case.

14. As per the claim petition, the deceased was 23 years of age which has also not been disputed by the appellant.

15. 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 additional 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.

16. In the present case, the age of the deceased was around 23 years when the accident took place. Hence, 40% be added to the established income of the deceased i.e. Rs. 4,000/-+ Rs.1,600/-=Rs.5,600/-

17. As per the case of ***Sarla Verma & Ors. vs Delhi Transport Corp. & Anr***

reported in **2009 (6) SCC 121** the multiplier would be 18.

18. So far as the dependency is concerned, admittedly the claimant/appellant 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 $1/4^{\text{th}}$.

19. 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/-.

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

(a) Annual income of the deceased=Rs.5,600/-X12=Rs.67,200/-

(b) After deducting $1/4^{\text{th}}$ of the income of the deceased,

the amount comes to =Rs.50,400/-

(c) After multiplying with multiplier,

the amount comes to =Rs. 50,400 X 18=Rs.9,07,200/-

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

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

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

(g) Medial expenses=Rs.39,781/-

Total = Rs.10,23,981/- (Rupees Ten Lakh Twenty Three Thousand Nine Hundred Eighty One) only.

21. In the result, the appeal is partly allowed. The compensation and award is modified as described above. The M/S Oriental Insurance Co. Ltd. is directed to deposit Rs. Rs.10,23,981/- (Rupees Ten Lakh Twenty Three Thousand Nine Hundred Eighty One) only to the savings account of the claimant No.2/wife in any nationalized bank through NEFT. The claimant No.2/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 restoration of trial court case on 06.06.2012 till full and final realization. Any amount, if paid earlier, be adjusted accordingly.

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

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

24. Send back the trial court record.

JUDGE